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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from Richland County  
Court of Common Pleas

MAR 24 2017

The Honorable Doyet A. Early, III, Circuit Judge

SC Court of Appeals

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.

**RECORD ON APPEAL**  
**Volume II of II (pp. 262 - 523)**

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	Civil Action No. 2012-CP-40-350
Adele J. Pope,	)	
Plaintiff,	)	PLAINTIFF'S MOTION TO ALTER
v.	)	AMEND OR VACATE ORDER GRANTING
	)	JAMES BROWN LEGACY TRUST'S
	)	MOTION TO DISMISS
Alan Wilson, in his capacity as	)	
Attorney General of South	)	
Carolina and James Brown	)	
Legacy Trust, by Russell L. Bauknight,	)	
its Trustee	)	
Defendants.	)	

Plaintiff Adele J. Pope ("Plaintiff") hereby moves for an Order altering, amending and/or vacating the Order of the Honorable Doyet A. Early, III, dated June 14, 2016, filed June 20, 2016, and received by Plaintiff on June 24, 2016, pursuant to Rule 59(e), *South Carolina Rules of Civil Procedure*. The grounds of this motion are as follows:

**The McMaster Legacy Trust is Subject to the Freedom of Information Act ("FOIA")**

1. The Court overlooked or misapprehended that, although entitled "James Brown Legacy Trust," the Defendant Legacy Trust is an entity created by former Attorney General Henry D. McMaster and currently, by its terms, at least 50% controlled by AG Alan Wilson.
2. The Court overlooked or misapprehended that a trust created by AG McMaster in his official capacity, which is part charitable and part private, is subject to FOIA.

**The Court's Finding that the Legacy Trust no Longer Exists**

3. The Court overlooked or misapprehended that the McMaster Legacy Trust at all times since the commencement of this action has been an active party in Richland County Case 2010-CP-40-4900 ("Richland 4900"); has moved to intervene in another FOIA case; and has, through its Trustee Russell Bauknight, taken action confirming its existence.

4. The Court overlooked or misapprehended that the Legacy Trust currently has assets, including, at a minimum, an equitable claim to approximately \$2 million distributed to Tommie Rae Brown and others in connection with the sale of three James Brown songs, including "Try Me" and "Please Please Please" [the sale was revealed after the date of the Court's Order but prior to its filing].

5. The Court overlooked or misapprehended that at its inception the Legacy Trust was a partially-charitable trust, and that no action has been taken under the applicable South Carolina statutes to dissolve its charitable portion and distribute its assets to another charity.

6. The Court overlooked or misapprehended that the decision in *Wilson v. Dallas* declared the McMaster settlement deal void, but failed to void the McMaster Legacy Trust.

7. The Court overlooked or misapprehended that Russell Bauknight, Trustee of the Legacy Trust, has confirmed in filings in this case that the Legacy Trust has been actively managed by him in Richland County since 2009.

**The Legacy Trust FOIA Controversy is not Moot**

8. The Court overlooked or misapprehended that the Legacy Trust has never provided any documents responsive to Plaintiff's 2011 FOIA request in this matter.

9. The Court overlooked or misapprehended that, although a copy of the January 2011 amendment to the McMaster Legacy Trust, signed by AG McMaster, has surfaced, this does not constitute FOIA compliance by the Legacy Trust.

10. The Court overlooked or misapprehended that in *Sloan v. Friends of the Hunley*, no justiciable controversy remains after the documents subject to the FOIA are produced by the public body from which they are requested.

**Attorneys' Fees and Other Issues not Addressed by the Court's Order**

11. The Court overlooked or misapprehended that Plaintiff's Due Process rights are violated by the Court's Order, because Plaintiff has been forced to defend herself for six (6) years against a Trust created in 2009 by AG McMaster; now controlled by AG Wilson; and which the Court has declared, with no basis, no longer exists.

12. The Court overlooked or misapprehended that Plaintiff is entitled to attorneys' fees and costs up to and including the date on which the Legacy Trust documents are provided to her by the McMaster Legacy Trust.

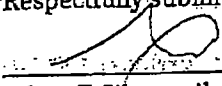
13. The Court overlooked or misapprehended that in another FOIA suit, the Court was incorrectly informed that there are no Legacy Trust amendments.

14. The Court overlooked or misapprehended that the FOIA is intended to provide a speedy and inexpensive method for anyone to obtain public documents from public bodies, as defined therein.

15. The Court overlooked or misapprehended that Plaintiff's FOIA case was, at the request of the Legacy Trust, improperly removed from Newberry County to Richland County, where the Legacy Trust is managed.

16. The Court overlooked or misapprehended that the creation and/or control by a sitting Attorney General, in his official capacity, of a private trust created from assets of a private charitable foundation which he has the statutory authority to oversee is a matter of great public importance.

Respectfully submitted,

  
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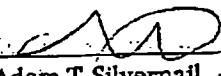
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 27, 2016, he has served a copy of the foregoing document on counsel for the Defendants by depositing a copy of same in the United States Mail, first-class postage prepaid, addressed as follows:

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Adam T. Silvernail

State of South Carolina ) In The Court of Common Pleas  
County of Newberry ) Eighth Judicial Circuit  
2011-CP-36-00364

Adele J. Pope, )  
Plaintiff, )  
vs. )  
Alan Wilson, in his )  
capacity as Attorney General )  
of South Carolina and James )  
Brown Legacy Trust, by )  
Russell L. Bauknight, its )  
Trustee, )  
Defendants )

2011-CP-36-00379

Adele J. Pope, )  
Plaintiff, )  
vs. )  
Alan Wilson, in his capacity )  
as Attorney General of )  
South Carolina, )  
Defendant, )

Transcript of Record

January 11, 2012  
Newberry, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Jr., Judge

000266

1 And this case doesn't need to be transferred to Richland  
2 County and combined with this other case that has numerous  
3 additional parties and different counsel and -- and it --  
4 you know, this should've been simple litigation. And we're  
5 still here 5 1/2 months later.

6 MR. SMITH: Your -- Your Honor, you don't -- the --  
7 the judge designated Case 4900 and Judge Manning as the  
8 judge for a complex case and did that for a reason. And  
9 that process should not be avoided by splintering off of  
10 this issue and bringing it in a separate county.

11 And regarding the ten-days' notice for an alternative  
12 motion for transfer of venue and consolidation, the Court  
13 has the power to shorten the response time. They're on  
14 notice. All these things that we've discussed today, we  
15 discussed in Laurens two months ago. And this -- we  
16 believe that this Court certainly has the authority to do  
17 what it did in Case 379 and do that here.

18 MR. SILVERNAIL: I -- I -- a -- a correction: I --  
19 this is not a splintering of any issue from Case 4900.  
20 While the same documents may be at issue in -- among the  
21 documents sought in discovery there, and while the parties  
22 may be similar, there is no FOIA claim in Case 4900. This  
23 issue is decided under different law, different standards,  
24 and could have a different outcome.

25 And, you know, we are asking for the documents under

000267

1 Freedom of Information Act here. You know, and I get the  
2 impression that if any -- from the logic that the attorney  
3 general is using, if any of these other folks who have  
4 filed an affidavit in this case were to file this -- a  
5 similar suit seeking these documents in their home  
6 counties, I can't imagine they would argue that that case  
7 also had to be consolidated with the litigation in Richland  
8 County.

9 MR. SMITH: Your Honor, we don't need to speculate  
10 about other parties. The only party that's before us as to  
11 FOIA is Ms. Pope, who is a party to the Richland  
12 litigation. And -- and -- and certainly, we -- we've put  
13 into the record, too, as for the purposes of summary  
14 judgment, which Your Honor can consider with regard to  
15 these issues, there is an order of Judge Westbrook -- the  
16 late Judge Westbrook, when he was a circuit court judge,  
17 saying that FOIA can't be used to bypass discovery, which  
18 is what they're trying to do here.

19 MR. SILVERNAIL: Well ---

20 MR. SMITH: The judge that considers the FOIA should  
21 be the same judge considering the discovery who can  
22 determine whether FOIA gives any greater rights than what  
23 they would otherwise have under discovery. We've spent all  
24 this time, the -- the filing of affidavits, and going  
25 around and around in these cases. If they had taken it up

000263

1 in Richland or agreed to move it forward in Richland, we  
2 might be getting some answers, shortly.

3 MR. SILVERNAIL: Your Honor, I -- Judge Westbrook's  
4 order is two pages. It's from a circuit court case. I  
5 believe the order is dated in 2002. I -- I had the  
6 pleasure of seeing a trial before Judge Westbrook long  
7 before I was a lawyer. And I -- he was an excellent judge.  
8 This order has almost no facts. I -- it's a circuit court  
9 order. As far as I know, it's never been reviewed by an  
10 appellate court.

11 And the cases he cites to support the conclusion that  
12 you cannot use FOIA instead of discovery or in addition to  
13 discovery -- forgive me; I -- I'm paraphrasing here because  
14 I don't remember his exact language. The cases he cites  
15 actually say: You get no more and no fewer rights under  
16 FOIA if you are a litigant than you would if you were a --  
17 a member of the public.

18 Now, I think forcing a properly brought, separate FOIA  
19 suit into pending litigation in Richland County with a  
20 bunch of other parties is giving my client fewer rights  
21 than other members of the general public would have. And  
22 that seems like a constitutional problem to me. And we  
23 certainly object to doing so.

24 You know, this is separate issues. The fact that  
25 these documents are among what seem to be many, many

000269

1 documents sought in Case 4900 -- you know, and the purpose  
2 -- you mentioned earlier that you doubted my client just  
3 had intellectual curiosity about these documents. That may  
4 be the case.

5 But the Freedom of Information Act doesn't have -- I  
6 mean, if they are public documents, if they are requested  
7 and if they are held by public bodies, they must be  
8 released. And my client has requested them. We believe  
9 they're public documents, and nobody has told us otherwise.

10 We know the attorney general is a public body. We  
11 believe the James Brown Legacy Trust is a public body. And  
12 so far, we've gotten no response that attempted to place  
13 any of these documents in -- under an exemption under FOIA.  
14 Instead, what we've gotten are, I -- I think, no response  
15 in -- in this case, in -- in other FOIA requests or in the  
16 other case -- if I have these backwards -- the response  
17 was: We think it's wisest to wait until the Richland  
18 County litigation ends. And, you know, in any case, FOIA  
19 provides for -- you make the request, you get the  
20 documents, unless they are exempt or nonpublic or not held  
21 by public bodies.

22 I -- and this seems like a simple question that  
23 doesn't need to be tied up in the discovery matters pending  
24 in the other case. I -- you know, that may be before a --  
25 a judge who's been assigned to it. But I don't know that

000270

1 that -- I -- or I believe that that doesn't provide any  
2 reason to force this case before that judge as well.

3 THE COURT: And I agree with almost everything you're  
4 saying, Mr. Silvernail. I would have to believe that they  
5 have court going on pretty much incessantly in Richland  
6 County. And they have common-pleas terms and common-pleas-  
7 nonjury terms and a lot more court than we get in Newberry.  
8 Would I be mistaken? You practice there.

9 MR. SILVERNAIL: I -- I -- I do practice there, Your  
10 Honor. Frankly, I am a young lawyer. And I have not  
11 practiced extensively in Richland County. I could not  
12 speak to that. I don't -- I -- I would respectfully say  
13 that I don't think it's relevant to whether this case  
14 should be sent to Richland County. I've seen no  
15 affirmative reason for it to be sent there.

16 And -- and we believe, although, you know, the rules  
17 do provide for consolidation when it's available and  
18 transfer when it's available, consolidation, as far as I  
19 can read the rules and the comments, is if you have two  
20 cases before the same circuit, they might be able to be  
21 consolidated. I -- I don't think that this case can be  
22 consolidated with another case in Richland County with no  
23 notice to any of the additional parties who aren't in the  
24 room today.

25 And -- and I don't think it could be consolidated even

000271

1 -- even with that. I think it's sort of making two steps  
2 into one, where neither step might be quite right or  
3 available. And, you know, we are here and talking about  
4 whether there's any good reason not to do it. And there --  
5 you know, my client filed the suit, followed the law in the  
6 request, and -- and here we are.

7 The burden under the Freedom of Information Act is, is  
8 there any good reason not to produce those documents? And  
9 so far, aside from 5 1/2 months of procedural wrangling,  
10 nobody's said that there is. And -- and we're still here,  
11 waiting for ---

12 THE COURT: I'd be ---

13 MR. SILVERNAIL: --- a document.

14 THE COURT: --- very surprised if some other judge  
15 said that you are not entitled to those documents. I'm --  
16 I'm with you on that. I ---

17 MR. SILVERNAIL: Well ---

18 THE COURT: --- agree with you on that.

19 MR. SILVERNAIL: --- Your Honor, you -- you have  
20 previously found that this Court properly had jurisdiction  
21 over -- over the other case. We do not believe that the --  
22 the following part about transferring it was proper, and  
23 we've asked for reconsideration. And -- and we believe  
24 that you were absolutely correct in the portions of the  
25 order we did not ask you to reconsider. It ---

000272

1 THE COURT: Okay. I'm inclined to transfer -- at the  
2 very least, transfer venue to Richland County, if not  
3 consolidate this with Richland County. They'll give you  
4 another case number and another track that you can pursue  
5 this matter on. I ordered the other case consolidated.  
6 Once this matter is transferred to Richland County, in  
7 terms of venue -- and that's the grounds that I'm using to  
8 transfer this case -- either party may seek consolidation;  
9 either party may seek an expedited hearing with the judge.  
10 And I hope you get the information sooner, rather than  
11 later.

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

19 Now, concerning Case 379, the last correspondence I  
20 received from you, Mr. Silvernail, in your motion for  
21 reconsideration, that is still pending?

22 MR. SILVERNAIL: Yes, it is.

23 THE COURT: You don't want to do that today?

24 MR. SILVERNAIL: I ---

25 THE COURT: You sure you want a hearing on it?

000273

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STATE OF SOUTH CAROLINA  
CIRCUIT COURT  
COUNTY OF RICHLAND  
ADELE POPE 2010-CP-40-04900  
-vs-  
ALAN WILSON, et al

-&-

ADELE POPE  
-vs- 2012-CP-40-00350  
ALAN WILSON and  
JAMES BROWN LEGACY TRUST,  
et al

TRANSCRIPT OF RECORD.

Heard on May 17, 2016  
Aiken, South Carolina

BEFORE:  
THE HONORABLE DOYET A. EARLY, III

APPEARANCES:  
Adele Pope, Esq. J. David Black, Esq,  
Russell L. Bauknight J. Emory Smith, Esq.  
Ariail E. King, Esq. David Paavola, Esq.  
Adam T. Silvernail, Esq. Mark V. Gende, Esq.

Cheri L. Young, RPR  
Circuit Court Reporter  
P O Box 5232  
Aiken, SC 29804-5232.

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1 attached an affidavit to our motion to dismiss a  
2 Tracy Meyers of our office and she also referred to  
3 it in a letter of her on August 5th, 2011. The  
4 Plaintiff didn't waste any time and filed suit just  
5 a little over a month after she submitted her FOIA  
6 request.

7 We believe we provided the documents that the  
8 Plaintiff seeks, but we also believe that there are  
9 legal defenses that are set forth in our motion to  
10 dismiss and reiterated in our motion for judgment  
11 on the pleadings. We would move to amend the  
12 motion to dismiss to raise lack of subject matter  
13 jurisdiction. We believe that motion should be  
14 granted because subject matter jurisdiction can be  
15 raised at any time including on appeal. The only  
16 other change in the motion to dismiss was that, to  
17 drop the change of venue ground which had already  
18 been decided at that point.

19 The grounds for the motion to dismiss are  
20 that the FOIA request was not mailed or delivered  
21 as required by Section 30-4-30(C). Upon written  
22 request for records made in this chapter, the  
23 statute provides: It shall within 15 days of the  
24 receipt of any such requests respond. And so it  
25 refers to receiving the request. And we never

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1 received the request transmitted by the Plaintiff  
2 so as to obtain jurisdiction under the Freedom of  
3 Information Act.

4 We -- the fact that we provided some  
5 documents does not trigger relief against the  
6 Respondent but I think that really goes to another  
7 motion rather than the motion to dismiss.

8 THE COURT: Well, is it your position you've  
9 already given them that material?

10 MR. SMITH: Well --

11 THE COURT: Or are you saying that you've  
12 never received the request or given it to them?

13 MR. SMITH: Our position is that there's no  
14 jurisdiction because we didn't get the request from  
15 her.

16 THE COURT: Okay.

17 MR. SMITH: And because this is an attempt to  
18 bypass the rules of civil discovery in the Case  
19 4900 by using FOIA instead, and then this relates  
20 more to the judgment on the pleadings motion. We  
21 believe that we have given her what she seeks and  
22 so --

23 THE COURT: When did you give it to her? How  
24 did you give it to her if you didn't receive a  
25 request?

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1 MR. SMITH: Well, we attached the Legacy  
2 Trust drafts to our answer. They're an exhibit to  
3 our answer. And we also did an answer in this case  
4 after moving to dismiss.

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

9 She tries to argue that we should pull in  
10 Sweeny Wingate firm documents but she did not make  
11 a request for documents from the Sweeny Wingate  
12 firm. She made the request from our custodian of  
13 records. And that is not enough to pull in lawyer  
14 files. And so therefore we believe she is not  
15 entitled to it.

16 And I've set forth extensive authority in our  
17 memoranda as to --

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

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

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

6 MR. SMITH: Because the Plaintiff continues  
7 to press this FOIA case and is asking for  
8 attorney's fees. That's why -- and is not willing  
9 to drop it. That's why we're here.

10 We agree that the documents that she is  
11 seeking, the efforts to obtain documents, should be  
12 made in 4900. In fact, we believe that the,  
13 essentially the same requests have been made within  
14 4900 as to many of the documents she seeks in both  
15 of these cases. And that's where it should be, not  
16 here in an independent Freedom of Information Act  
17 action.

18 THE COURT: But aside from that, though, you  
19 say you've already given her everything that you  
20 have and you don't have the other thing that she  
21 wants?

22 MR. SMITH: Yes, Your Honor. As to Case 350.

23 THE COURT: Anything else you want to tell  
24 me?

25 MR. SMITH: Well, she says we ought to get

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1 them from Sweeney Wingate if they have them. Our  
2 position is she did not ask for that. She asked  
3 for the records from our -- the record for the FOIA  
4 request is for the custodian of records. It's not  
5 for anybody who might have access to a document.

6 And I've outlined extensive authority about  
7 that issue in our brief. And so she can't make us  
8 go get stuff from Sweeney Wingate. And I don't know  
9 if they even have it. And so --

10 THE COURT: But Sweeney Wingate's the lawyers  
11 in 4900, so obviously all of that stuff is  
12 discoverable.

13 MR. SMITH: Your Honor, we believe that  
14 the -- that this is -- anything that she wants  
15 should be sought through discovery in Case 4900  
16 rather than through this independent FOIA action,  
17 and that the rules of civil procedure control  
18 discovery and that a party cannot bypass the rules  
19 of civil procedure and judicial control of the  
20 discovery process by making FOIA requests and going  
21 around and then seeking attorney's fees.

22 It was not set up that way. And that's not  
23 what the law reads. And we set forth extensive  
24 authority as to -- including responding to their  
25 authority that Freedom of Information Act requests

1 who then knew exactly what we were asking for, why  
2 and how, just needed to say, gee, golly, we've had,  
3 you know, a mail error, something's gone wrong, but  
4 here are the documents, here are the public  
5 documents.

6 That's a red herring argument in this case.  
7 The argument that they have used throughout this is  
8 that Mrs. Pope doesn't have any rights to ask for  
9 documents from the Attorney General under the FOIA  
10 because she's involved in litigation. And I  
11 understand Your Honor's concerns about, you know,  
12 discovery being wide open in Case 4900. But I've  
13 got to point out that the FOIA in discovery, they  
14 may intersect at the documents at some point but  
15 they run totally separate tracts that don't  
16 intersect as far as the analysis.

17 The only question under the FOIA is: Are  
18 these documents public. There is no statute under  
19 the FOIA that gives us different classes of  
20 individuals, different people who can and can't.  
21 The law is that if you are a person you are  
22 entitled to make a request for public documents and  
23 you're entitled to a response. And that response  
24 has to be one of three things: Either, here are  
25 the documents we've got that are responsive; or, we

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1 don't have any documents that are responsive; or,  
2 we have documents that are responsive but they fit  
3 into one of the few specific exemptions under  
4 FOIA. And the response has to identify those and  
5 identify the exemption under which they don't  
6 release it.

7 And so we've never gotten that response from  
8 the Attorney General in this case. We have instead  
9 gotten assertions that because discovery was  
10 ongoing in Case 4900, and although I think the two  
11 are unrelated I would point out that Your Honor  
12 inherited all the whatever-number-of-dozens  
13 discovery motions there were in 4900. That didn't  
14 go anywhere too quick over the last five or six  
15 years.

16 These documents were not forthcoming in  
17 discovery but it really doesn't matter. If she had  
18 gotten them in discovery she would be entitled to  
19 ask for them under the FOIA because this law  
20 doesn't set out any procedure for differentiating  
21 between one person and another. The only thing  
22 this laws sets out procedures for differentiating  
23 are the documents: If there's a privilege that  
24 applies; if there's sensitive personal information;  
25 if there's an ongoing criminal probe. And as far

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1 as we know they don't claim any of those  
2 exemptions. We haven't seen that.

3 And, you know, it's clear the Attorney  
4 General did in fact have public records that were  
5 responsive to our request because he produced them  
6 in his amended answer in 2013, those two drafts of  
7 the Legacy Trust documents.

8 THE COURT: So you want -- I'm not sure. You  
9 want me to order them to, under FOIA to produce it  
10 again even though you've already gotten it?

11 MR. SILVERNAIL: We have sued here for  
12 declaratory relief. We would like a declaration  
13 that these are public documents and Mrs. Pope is  
14 entitled to them. And under the case law including  
15 very recent case law in South Carolina, the Supreme  
16 Court has found that production of the documents  
17 along the way after litigation begins does not moot  
18 the question of declaratory relief or attorney's  
19 fees.

20 And we've cited in our brief and I bring Your  
21 Honor's attention to the 2014 case of Sloan versus  
22 the South Carolina Department of Revenue. That was  
23 a case in which the Department of Revenue had  
24 responded to Mr. Sloan's FOIA request in some way  
25 that seemed to defer a final answer until some

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1 later date.

2 And, three weeks, I believe, after he filed  
3 suit they said, okay, okay, here are your  
4 documents." That went all the way to the Supreme  
5 Court after the Circuit Court decided we really  
6 don't have a case here. You know, you got the  
7 documents. We're all finished.

8 The Supreme Court said, no, indeed you are  
9 entitled to declaratory relief because you sought  
10 it. You're also entitled to your attorney's fees,  
11 I believe, including the fees incurred on appeal or  
12 at least with the possibility of that.

13 And so, you know, at the very best we've got  
14 a similar situation here if that's all the Attorney  
15 General has. However, the other argument that we  
16 take issue with from the Attorney General is that  
17 he doesn't have to produce the valuation because he  
18 does not possess it.

19 Now, number one, the Summer versus Wilson  
20 case was a Newberry County FOIA proceeding. My  
21 client wasn't a party to that. I don't think we're  
22 bound by any of the findings in that case.

23 However, I don't know that it matters much because  
24 the FOIA does not require a public body to possess  
25 a document in order for it to be available under

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1 the FOIA. There's a laundry list in the FOIA of  
2 documents which have been, among other things,  
3 possessed or used by a public body. And the end of  
4 that list is an or which indicates any one of those  
5 things is satisfactory.

6 Now this idea that Mrs. Pope needed to seek  
7 out the Attorney General's lawyers, Sweeny, Wingate  
8 and Barrow, and make a specific request to the  
9 Attorney General that I would like this from their  
10 files is a little bit troubling because I don't  
11 know that we ever have to come to a public body,  
12 especially a state agency, and identify for them  
13 where they will find the documents that we want.

14 ~~This is the Attorney General's lawyer. The~~  
15 fee agreement that was produced, that we'll talk  
16 about in a little bit in the other case, in another  
17 court says that the lawyer's files are subject to  
18 the FOIA. It is the Attorney General's  
19 responsibility to figure out what documents are  
20 where, if they have been used by him, if they're  
21 possessed by him. All right. Otherwise this  
22 statute would be meaningless. If it required you  
23 to hold the documents then it would just say  
24 possessed. It would not have this list that was  
25 possessed, used, or other things.

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1           And so, we believe that that's not an  
2 adequate response. And as far as I can tell in the  
3 record in this case the Attorney General has never  
4 stated, and Mr. Smith I believe just said, that  
5 they don't know whether or not Sweeny, Wingate,  
6 Barrow has that. But we're entitled to a proper  
7 FOIA response that says what they've got, what  
8 they're producing, and if they claim any exemption  
9 what that is. And we've never gotten that in what  
10 now amounts to nearly five years.

11           Now, you know, this idea that we should have  
12 gone and done this through discovery is just way  
13 outside the law. There are cases that say FOIA  
14 ~~doesn't expand the scope of discovery, it's not a~~  
15 ~~supplement or a replacement.~~ We couldn't go to  
16 Judge Manning until the case was sent to him but  
17 within Case 4900, you know, it claimed that we have  
18 a FOIA right to this so they should give it to us  
19 in discovery. Apparently does not fly.

20           Now, this was not that. This was a FOIA  
21 request. It was done. --

22           THE COURT: Just stop a second. If you were  
23 to win, get what you want, tell me succinctly what  
24 you're asking for.

25           MR. SILVERNAIL: I am asking for a

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1 declaration that Mrs. Pope is entitled to all  
2 public documents responsive to her request, an  
3 injunctive section directing the Attorney General  
4 to turn those over to us and/or give a proper  
5 response identifying what would not be turned over  
6 and why, and for the attorney's fees in having had  
7 to pursue this action rather than getting a  
8 response of some sort anywhere along the line  
9 between now and 2011.

10 MR. SMITH: Your Honor, may I respond?

11 THE COURT: Sure.

12 MR. SMITH: First of all, I think it's  
13 interesting that he said that the only question in  
14 this case is, are the documents public --

15 THE COURT: Public.

16 MR. SMITH: -- because Ms. Pope has filed at  
17 least 14 affidavits in this case about why she  
18 thinks she needs these documents. And we  
19 believe -- we've moved to strike all of them, and  
20 if he's correct that the only question is whether  
21 the documents are public, then this was a complete  
22 waste of our time. And we believe it was.

23 THE COURT: Well, are they public?

24 MR. SMITH: Your Honor, we believe that we've  
25 given them everything that we have. The Legacy

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1 for June -- well, had it set. Now we got some  
2 bumps in the road. I'm just going to go ahead and  
3 set it. If you come you come, if you don't you  
4 don't. It's too hard to get too many peoples'  
5 schedules lined up.

6 But once we consider that, discovery is going  
7 forward. All of these documents are going to be  
8 discoverable I would think. And --

9 MR. SMITH: That's why, Your Honor, we think  
10 that the FOIA case should be dismissed and that any  
11 documents that are retrievable during discovery be,  
12 through discovery be sought in that manner. In  
13 fact, in these cases some of the very documents at  
14 issue are at issue in the discovery process.

15 THE COURT: I would think most all of them  
16 are. But anyway, they made a FOIA request so I've  
17 got to rule whether or not it should be dismissed  
18 or whether or not you should produce them, whether  
19 or not they're public, whether or not they're  
20 entitled to attorney's fees for their FOIA  
21 requests. And I will do that.

22 Anything else dealing with the FOIA that we  
23 need to deal with here today?

24 MR. SMITH: That's in Case 350. We do have  
25 Case 4900 which has got similar issues.

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1 requested and we believe that moots the case as  
2 well under Sloan V Friends of the Hunley, 369 SC  
3 20.

4 THE COURT: Any response?

5 MR. SILVERNAIL: First, Your Honor, the fact  
6 that Mrs. Pope is already in possession of a  
7 document from somewhere else is irrelevant under  
8 the FOIA. In fact, what we all hope for when we're  
9 working under FOIA that we ask the public body for  
10 documents, we find that there is no surprise  
11 there. That's why the FOIA exists. They call it  
12 the Sunshine Law because it lets us look in to see  
13 what's going on.

14 ~~And so the provision of documents from~~  
15 another source just doesn't satisfy any public  
16 body's FOIA obligations. If you got them you  
17 produce them and then your obligations are met.

18 Now as to this about the Legacy Trust not  
19 existing, it's a confusing argument to get around,  
20 I feel like, because it's got some lawyers from a  
21 fine law firm standing here with us today who seem  
22 to have a client and it's been here since 2011  
23 defending this case as well anybody can defend a  
24 case. And so the Legacy Trust additionally appears  
25 to have a current asset because it's a Plaintiff in

1 Case 4900 against Mrs. Pope and claims to have a  
2 claim worth tens of millions of dollars against  
3 her.

4 The Legacy Trust has never notified the Court  
5 in that action that it has any doubt about its  
6 continued existence, and it's never sought to  
7 change anything in that case as far as I'm aware.

8 And as I cited in my brief though, once a  
9 trust is created which can be done the property  
10 requirement for creating a trust is met even with a  
11 revocable designation of a beneficiary to an  
12 insurance policy. That, meaning that the trust is  
13 created even if you later change the beneficiary,  
14 ~~stop paying the premiums on the policy. The trust~~

15 may never actually have a dollar in its coffers but  
16 this expectancy that's revocable is satisfactory to  
17 create a trust. I'm not aware of any proceeding  
18 that's been brought to terminate the Legacy Trust  
19 and it's identified none.

20 This trust was also funded, according to the  
21 settlement agreement, with contributions that had  
22 already been made or were being made at the time of  
23 copyright termination interests by some of the  
24 parties to the settlement.

25 And that really brings us to the crux of the

1 situation with the Legacy Trust being a public  
2 body. And that is no case that any of the other  
3 parties have cited identifies a situation where a  
4 public official acting in his official capacity has  
5 created an entity. And in this case that's what  
6 happened. The Attorney General was one of the  
7 identified grantors to the Legacy Trust. At that  
8 point I don't believe that we have as harsh a test  
9 for public support.

10 Even if we do, though, the Attorney General's  
11 office and several members of his staff spent years  
12 defending the Legacy Trust's existence in the  
13 Supreme Court. And, that wasn't successful  
14 though. The settlement was thrown out. But

15 whatever was produced in the meantime doesn't cease  
16 to exist. When the restaurant goes out of business  
17 there are still dishes in there.

18 And so if it isn't a body at all anymore,  
19 okay, the Court still is able to determine whether  
20 it was a public body and if it was then those  
21 documents are available.

22 Now, in 2013 for the first time the Legacy  
23 Trust took the position that it did not exist and  
24 as I understood that was an absolute. It did not  
25 exist.

1 I've noticed in the briefs in the affidavit  
2 of Mr. Bauknight that the Legacy Trust presented  
3 shortly before this hearing, their position seems  
4 to be a bit more nuanced. And that it does not  
5 exist as a court-approved trust, and it does not  
6 exist in the form Ms. Pope sought to get documents  
7 from it.

8 If it exists it exists. If it did exist  
9 there were documents. If there aren't then  
10 somebody needs to respond. And mind you, the  
11 Legacy Trust has produced nothing because its taken  
12 the position it's not a public body. When Ms. Pope  
13 made a FOIA request to it it responded by writing  
14 her a letter saying if you make another FOIA

15 request to us we'll sue you or seek sanctions or  
16 something along those lines.

17 And so here we are just asking the Court to  
18 declare the Legacy Trust to be a public body and  
19 that we're entitled to the public documents within  
20 its possession. Thank you.

21 THE COURT: All right. That brings us down  
22 to -- what does it bring us down to? We've done  
23 the motion for summary judgment, motion to dismiss,  
24 motion to strike the affidavits. Where are we now  
25 with 350? Anything else left in 350?

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HENRY McMASTER  
ATTORNEY GENERAL

December 28, 2006

The Honorable Glenn F. McConnell, M.C.  
Member, South Carolina Senate  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator McConnell:

We received your letter requesting an opinion of this Office on the issue of "whether the St. Johns Water Company is a 'public body' subject to the Freedom of Information Act (FOIA) requirements." In your request, you informed us that "St. Johns Water Company was incorporated as a non-profit on May 29, 1975, and is currently in good standing with the South Carolina Secretary of State." You also informed us that:

In 1975, St. Johns Water Company received a \$100,000 grant from the state to help form the company. Subsequently, the company received a \$500,000 loan (for installation of water lines) and has been approved for another \$9,200,000 loan from the United States Department of Agriculture (USDA). The loans received from the USDA were at a rate of about 4.5% and were in exchange for the water company providing services to the rural areas for customers that wanted to tie into the water line.

You also point to several facts that you believe "weigh in favor of the St. Johns Water Company being a 'public body' subject to FOIA requests." These factors are as follows:

1. Provision of water through water lines is commonly considered to be a government service.
2. If St. Johns Water Company has the power of eminent domain, then it would have one of the sovereign powers enjoyed only by public bodies.

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3. St. Johns Water Company has a monopoly on providing water through water lines which ultimately gives it the power to control growth in the area and might be considered a sovereign power enjoyed only by public bodies.

Based on our analysis as set forth below, we believe because the St. Johns Water Company (the "Company") received grant funds from the State of South Carolina, a court would find it is supported, at least in part, with public funds. Therefore, we opine that the Company is a public body and is subject to the South Carolina Freedom of Information Act's requirements.

Law/Analysis

Chapter 4 of title 30 of the South Carolina Code contains South Carolina's Freedom of Information Act ("FOIA"). Section 30-4-30 of the South Carolina Code (1991) affords individuals the "right to inspect or copy any public record of a public body, except otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access." Thus, as you stated in your letter, whether or not the Company is subject to this provision depends upon whether it is considered to be a public body. Section 30-4-20(a) of the South Carolina Code (Supp. 2005) defines "public body" as

any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

(emphasis added).

In Weston v. Carolina Research and Development Foundation, 303 S.C. 398, 401 S.E.2d 161 (1991), the South Carolina Supreme Court considered whether the Carolina Research and

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Development Foundation (the "Foundation") was a public body as described in section 30-4-20(a). The Foundation was a registered nonprofit corporation operating exclusively for the benefit of the University of South Carolina. The Court considered four specific transactions in an effort to determine whether the Foundation was supported by public funds and thus, met the definition of a public body. These transactions included the Foundation's receipt of part of the proceeds from the sale of a hotel by the University, the receipt and management of a federal grant money in connection with the construction of a building, the receipt of real estate and grants from the City of Columbia and Richland County, and routing of contracts related to research and development performed by University employees through the Foundation, resulting in the Foundation receiving a percentage of the contract amount. Id. at 401-03, 401 S.E.2d at 163-64. Based on its consideration of these transactions, the Court concluded:

Each of the above transactions alone would bring the Foundation within the FOIA's definition of "public body". Taken together, they lead to the unavoidable conclusion that the Foundation is a "public body". This conclusion is mandated by the clear language of the FOIA. The Foundation's argument that the FOIA only applies to governmental and quasi-governmental bodies would rewrite the statutory definition of "public body" by deleting the phrase, "or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds." According to the Foundation's position, a corporation that cannot be labeled governmental or quasi-governmental would be exempt from the FOIA, regardless of whether it received support from public funds or expended public funds. Such a construction would obliterate both the intent and the clear meaning of the statutory definition.

Id. at 403, 401 S.E.2d at 164. The Foundation contended a common law distinction existed between public and private corporations, allowing private corporations to be exemption from the FOIA. Id. However, the Court stated: "the unambiguous language of the FOIA mandates that the receipt of support in whole or in part from public funds brings a corporation within the definition of a public body. The common law concept of 'public' versus 'private' corporations is inconsistent with the FOIA's definition of 'public body' and thus cannot be superimposed on the FOIA" Id.

The Court noted a limitation on the FOIA's application in certain circumstances.

As the trial judge correctly noted, this decision does not mean that the FOIA would apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms length basis. In that situation, there is an exchange of money for identifiable goods or services and access to the public body's records would show how the money was spent.

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Id. at 404, 401 S.E.2d at 165. Nonetheless, the Court found such an exception not applicable here, stating

when a block of public funds is diverted en masse from a public body to a related organization, or when the related organization undertakes the management of the expenditure of public funds, the only way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds.

Id.

Subsequent to the Weston decision, the South Carolina Court of Appeals considered whether the Palmetto Electric Cooperative was a public body under the Whistleblower Act. Sutler v. Palmetto Elec. Coop., Inc. 325 S.C. 465, 481 S.E.2d 179 (Ct. App. 1997). According to the Court's opinion, the Cooperative received its main source of funding through the sale of electricity to its members, but also received loans from the Rural Utility Service at an advantageous interest rate. Id. at 466, 481 S.E.2d at 179. The Court noted the Cooperative did not receive any financial assistance from the State or any political subdivision. Id.

Because the Whistleblower Act's definition of public body is the same as the definition provided under the FOIA, the Court of Appeals looked to the Supreme Court's holding in Weston and the limitation the Court set on its holding with regard to the exchange of money for goods or services. Id. at 468, 481 S.E.2d at 180. With that decision in mind, the Court determined: "to find that [the Cooperative] is a public body we must find that it is (partially) supported by the loans and interest rate it receives." Id. at 468, 481 S.E.2d at 181. Ultimately, the Court concluded: "Just as the FOIA does not apply to enterprises that accept payment from public bodies in exchange for services, the Whistleblower Act does not apply to [the Cooperative], who provides electricity to rural areas in exchange for loans with beneficial interest rates." Id. at 469, 481 S.E.2d at 181. Thus, the Court declined "to hold these loans constitute the 'support' that would transform Respondent into a public body under the Whistleblower Act." Id.

This Office, in several opinions, also addressed issues of whether a particular entity constitutes a public body under the FOIA. In a 1992 opinion, we considered whether the Family Counseling Center of Greenville was a public body for purposes of the FOIA. Op. S.C. Atty. Gen., January 16, 1992. The Family Counseling Center of Greenville was a private nonprofit organization, which received funding from a variety of sources including private contributions, program fees, and public monies. We cited to Weston and noted "the FOIA is not limited, in its application, to governmental bodies, for to do so would render meaningless [that portion of section 30-4-20(a) encompassing organizations, corporations, and agencies supported in whole or in part by public funds or expending public funds.]" Id. We also commented on court decisions and other opinions of this Office providing insight into the concept of "support."

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While the notion of "support" is not defined in the FOIA, the South Carolina Supreme Court has construed "support" to mean "to maintain or aid and assist in the maintenance," Harris v. Leslie, 195 S.C. 526, 12 S.E.2d 538, 542 (1940), or to "uphold or sustain," State v. Stokes, 133 S.C. 67, 130 S.E. 337, 339 (1925). What kind of support, or how much, is needed to bring an entity under the FOIA is likewise not found in the FOIA. Payment of incidental expenses of a committee established by a county legislative delegation to oversee an audit of the county school system from public funds, was arguably enough support to bring that committee under the FOIA. Op. Atty. Gen. dated July 11, 1983. An ad hoc citizen' committee apparently totally supported (actually or "in kind") by public funds of some kind was felt to be subject to the FOIA. Op. Atty. Gen. dated September 21, 1989.

Id. Nonetheless, we were unable to conclude whether or not the Family Counseling Center of Greenville is supported by public funds, because this question "remains a question of fact which may require resolution by the judicial system."

Recently, in an opinion issued in May of 2006, we considered whether the Majority Caucus of the South Carolina House of Representatives is a public body under the FOIA. Op. S.C. Atty. Gen., May 19, 2006. In our opinion, we relied Weston and other cases decided in South Carolina and in other jurisdictions. Id.

[W]e have previously concluded that FOIA contains no provision exempting support of an entity through public funds when such support might be characterized as "de minimis" or insignificant. Indeed, the language of the statute is phrased "in whole or in part." Based upon the literal text of the statute, any expenditure of public funds is sufficient to meet the requirement of "in part" support or the "expend[ing] public funds" portion of the statute. Here, Majority Leader Merrill notes that three staff members of the Caucus are receiving office space in the Blatt Building rent-free. That, in itself, in our view, meets the requirements of the Act. Moreover, according to Representative Merrill's letter, the Caucus is using space, equipment and other resources provided to those members generally. While it is true that these are resources received as a result of House membership, the fact that the Caucus is also obtaining access to these resources is a further indicia of the "support" the Caucus receives from public funds. Finally, it is our understanding that other House staff personnel from time to time assist the Caucus. The salaries of these employees are not paid by Caucus funds, but by the State. This

The Honorable Glenn F. McConnell

Page 6

December 28, 2006

was a basis for the conclusion that there existed public funds "support" in Weston, our 1989 opinion, and Sebelius. We do not believe the Freedom of Information Act attempts to draw a quantitative line between "insignificant" or "de minimis" support and substantial or significant support from public funds. Accordingly, we are of the opinion that the House Majority Caucus is supported in whole or in part by public funds and is expending public funds. Thus, the Caucus is, in our view, a "public body" and is, therefore, subject to the South Carolina Freedom of Information Act.

Id.

In your letter, you indicated although the Company is a private nonprofit corporation, it received and has been approved to receive loans from the USDA. Although, the Court of Appeals decision in Sulter dealt with whether the electric cooperative was a public body under the Whistleblower Act, because the Legislature used the same definition of "public body" in both pieces of legislation, we believe this decision is instructive as to what a court would hold should the same question arise under the FOIA. In that decision, the Court of Appeals clearly indicated its view that a loan from a governmental agency does not constitute support under the definition of a public body contained in the Whistleblower Act, regardless of the favorability of the interest rate. The Court put such loans on par with a payment by a public body in exchange for goods and services, which the Supreme Court determined did not qualify as support under the FOIA definition of a public body. Thus, considering Sulter, we do not believe a court would find the USDA loans to the Company qualify as support for purposes of the FOIA, regardless of a favorable interest rate.

However, the fact that the Company received a \$100,000 grant from the State of South Carolina presents a more difficult question with regard to whether the Company is supported with public funds. Two of the transactions considered in Weston involved the receipt of grant funds from federal and local governmental bodies. In that case, although the Court considered all four transactions in question to determine if the Foundation was supported by public funds, the Court emphasized each of those transactions "alone would bring the Foundation within the FOIA's definition of 'public body.'" Weston, 303 S.C. at 403, 401 S.E.2d at 164. Thus, the Court in Weston clarified that the receipt of grant funds constitutes public funding under the FOIA's definition of a public body.

From your letter, we gather that the Company only received one grant in 1975, when the Company incorporated. Thus, we imagine one could argue the one time receipt of public funds over thirty years ago is not sufficient to subject the Company, a private entity, to the FOIA today. However, as we noted in our opinion issued in May of this year, based on a plain reading of the FOIA provision defining a public body, "[w]e do not believe the Freedom of Information Act attempts to draw a quantitative line between 'insignificant' or 'de minimis' support and substantial or significant support from public funds." Op. S.C. Atty. Gen., May 19, 2006. Therefore, we believe

000297

The Honorable Glenn F. McConnell

Page 7

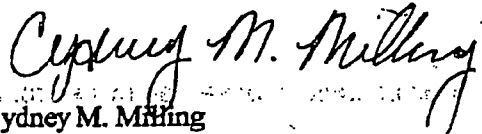
December 28, 2006

a court would find the receipt of the grant funds by the Company evidences it is supported, at least in part, with public funds. Accordingly, it is our opinion that the Company is a public body and is subject to the FOIA.

**Conclusion**

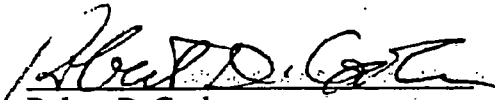
We believe the Company's receipt of a grant from the State of South Carolina sufficiently evidences the support of the Company with public funds. Thus, we find the Company meets the definition of a public body provided in section 30-4-20(a) of the South Carolina Code. Because we find the Company is covered under this definition, it is subject to the FOIA requirements found in article 4 of title 30 of the South Carolina Code.

Very truly yours,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General

000298

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

RICHLAND COUNTY  
FILED  
2012 JAN 17 PM 4:40  
Civil Action No. 2011-CP-36-364  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

Adele J. Pope, Plaintiff,

v.

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

Defendants.

AFFIDAVIT OF ADELE J POPE  
OPPOSING MOTION TO DISMISS  
AND REQUESTING EXPEDITED  
HEARING

SCANNED

FILED  
NEWBERRY COUNTY  
2011 SEP -6 P 12:27  
KYLE S. BOWERS  
CLERK OF COURT

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes  
and says:

1. This affidavit is based on my personal knowledge and belief.
2. For 35 years I have tried to be a careful lawyer, waiting for the documents to tell the story that needed to be told. In this case, Attorney General Alan Wilson is refusing to release public documents which, I believe, will tell the scandalous story of what his own office and predecessor have done.
3. I am informed and believe AG Wilson is refusing to release these public documents to cover up for illegal and/or improper actions of Henry McMaster, and his Sr. Assistant Sonny Jones since September 2007.
4. I am informed and believe that AG Wilson is intentionally, and with knowledge that his acts violate FOIA, denying and delaying my legal FOIA requests made on June 30, July 19 and July 20, 2011.
5. I am informed and believe that AG Wilson is intentionally violating his own

policies as described in the FOIA Handbook, because his office has determined that concealing public documents which show what McMaster, Sonny and Russell Bauknight did is taking precedence over complying with FOIA. [See Exhibit A]

6. Between March 2007 and today I have been a party to more than 20 lawsuits, most in Aiken County, related to James Brown's \$100 Million worldwide music empire.

7. I do not believe being in any of these suits, including one in Richland County, should take away or diminish my FOIA rights.

8. I am seeking a copy of the "Legacy Trust" McMaster and Russell created about 2 years ago to hold Brown's \$100 Million music empire when McMaster, in his official capacity, took it over.

9. On January 30, 2009 Bauknight told the Aiken County Court that it was fair and reasonable for McMaster to take over Brown's assets; put them in the Legacy Trust (also called the Settlement Entity) and then give away about \$50 million of Brown's assets to people Brown intentionally disinherited from his music empire.

10. Russell didn't tell the Court he was already trustee of the Legacy Trust.

11. On April 6, 2009 Sonny told the Aiken Court:

THE ATTORNEY GENERAL IS GOING TO MAKE SURE IT IS TAKEN CARE OF AND WE HAVE CONTROL OVER THE CHARITABLE TRUST AND SETTLEMENT ENTITY, SO WE'LL MAKE SURE THIS CHARITABLE TRUST AS SET UP PER THIS SETTLEMENT WILL BE CARRIED FORTH PROPERLY...

12. A May 26, 2009 Aiken County Court Order approved McMaster's takeover of Brown's assets.

13. With a duty to uphold James Brown's Estate Plan, Bob Buchanan and I

appealed the May 26<sup>th</sup> Order.

14. Our appeal is now in the S. C. Supreme Court, but I do not believe my FOIA rights should be denied or suspended until the Court decides.

15. Whether or not the Supreme Court allows McMaster to destroy what should have been South Carolina's largest private foundation dedicated solely for scholarships for needy and deserving students — about \$80 Million — I believe I still have FOIA rights.

16. On April 30, 2010 Alan Medlin, attorney for Brown's companion Tommie Rae, threatened that Sonny had already hired contingency-fee lawyer Ken Wingate who would sue Bob and me if we did not drop our appeal.

17. For almost a year Alan and Sonny had tried to force Bob and me to sign a document not to criticize McMaster and what he had done to destroy Brown's "I Feel Good" Trust.

18. As the draft article Jeff Smith and I are writing, "Private Foundations, Copyright Heirs, and Musical Millionaires — Why the James Brown "I Feel Good"

Foundation doesn't...", describes, anyone who advises private foundations or charities in South Carolina — including me — would have to criticize what McMaster did to destroy private philanthropy in our State.

19. On May 19, 2010, the State, without any attorney from the AG's office — but using the private, contingency fee Wingate Firm — sued me, accusing me of criminal and civil wrongdoing.

20. The Complaint is strange.

21. The State accuses Bob and me of the crime of overstating Brown's assets to the IRS — at about \$85 Million — just to get a big commission.

22. I believe that Bauknight, McMaster and Sonny fabricated the suit for 1 reason: to ruin my career as a trust and estate lawyer and Bob's as a distinguished lawyer and federal magistrate judge because we dared to challenge what McMaster had done.

23. McMaster and Bauknight held awesome power. In May 2009 McMaster was hoping to be South Carolina's next governor, and the managing partner of Bauknight's law firm was running to be South Carolina's next Attorney General.

24. In his 8 years as AG, McMaster used outside contingency-fee counsel only about 7 or 8 times. McMaster said these contingency-fee lawyers were needed because the State's opponents were huge multi-national drug companies. All except Bob and me.

25. I wondered why the State could not bring its own suit against Bob and me.

26. I knew tens of millions of dollars in damage had been done to James Brown's music empire, but I knew McMaster and Sonny had done it.

27. I wondered how Russell could be authorized to speak for the State.

28. I still wonder, and believe the public documents AG Wilson is withholding will tell me.

29. I do not believe the State should be allowed to sue me through a private lawyer; refuse for 15 months to produce a single document to supports its false criminal claims; then claim I have no FOIA rights.

30. I believe the public documents AG Wilson is refusing to disclose will show that his own office was also deeply involved in Bauknight's fraudulent devaluation of Brown's worldwide music empire described below.

31. In December 2010, Russell, at the same time he was receiving reports that Brown's Royalties for 2010 were \$5.4 Million, secretly told the IRS that Brown's music empire was worth only \$4.7 Million and that Bob and I fraudulently overvalued it by \$79 Million.

32. I believe anyone familiar with Brown's assets and income, including the 5 AG lawyers who worked on the James Brown matters, knows this is outrageous.

33. In April Jeff Smith and I finished a draft of "Private Foundations...":

34. I am also working on two other pieces:

a. An article about tort reform and what McMaster did, tentatively called: "What Happens to the Subjects when the Attorney General becomes the King of Torts?" and

b. Something longer – maybe only for my family – called The House of James, about my experience with James Brown's Estate, Trust and wonderful home, and my great, great-grandfather James, who – like Brown – lived in Beech Island and had a big, wonderful house.

35. I believe that as a citizen of South Carolina I should be able to view any public document I want to see while I work on these articles – or for any other reason.

36. In May 2011 Russell told the Aiken County Probate Court, in a sworn Inventory, that Brown's worldwide music empire was worth only \$4.7 Million.

37. In May 2011 the State, now through AG Wilson, asked the Supreme Court to supplement the appeal record with Russell's \$4.7 Million value.

38. When Bob and I opposed the supplement because the \$4.7 Million conflicts with at least 3 offers; 50 references in the record to a value between \$80 Million and \$100 Million; and the value placed on Brown's assets by all fiduciaries except Bauknight, AG Wilson, through Sonny, and Bauknight asserted:

The Respondents moved to supplement the record on appeal, in part, to clarify that the asset valuation figures tossed around by the Appellants [Bob and me] were not based upon a due diligence analysis of the assets -...

...Appellants' claim that the charitable trust will receive less than \$1 Million is grossly misleading (Appellants Return at 6)

...To be clear, from the date of James Brown's death until Russell Bauknight was appointed PR/Trustee no one conducted any due diligence to determine the value of the assets. Every valuation Appellants rely on is nothing more than speculation.

Appellants have misrepresented to this Court that "offers" were made to the Estate and Trust to buy its assets. . .

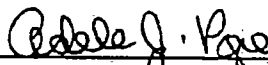
39. I was, of course, curious about what basis the State had to make these strong allegations against me to our Supreme Court.

40. Between June 30 and July 20, 2011 I made several FOIA requests - and I intend to make more - because I want to find out from public documents how deeply the State, Sonny, Terry Brown, Tommie Rae and others were involved in Bauknight's outrageous \$4.7 Million valuation and these representations our Courts.

41. I am informed and believe that the story of the McMaster/Sonny/Russell's attempt to turn Brown's assets into a private political pocketbook for McMaster needs to be told.

42. I ask the Court to hear these matters as soon as possible.

FURTHER DEPONENT SAYETH NOT.

  
ADELE J. POPE

SWORN TO before me this  
6th day of September, 2008

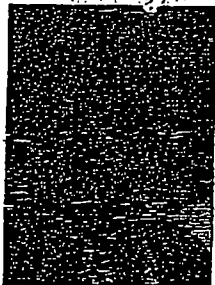
  
Notary Public for South Carolina (L.S.)

My Commission expires: 7/12/2016

6  
000304

Exhibit A

SOUTH CAROLINA FREEDOM OF INFORMATION ACT • 1



ATTORNEY GENERAL



Dear Public Official:

The Freedom of Information Act (FOIA) was enacted to provide direct access to the functions of government to the general public and the press. In fact, sunlight is essential to the survival of our representative democracy.

Government agencies and public officials have a duty to disclose any public information requested through FOIA- unless that information is protected as described in this handbook.

While drafting South Carolina's FOIA, the General Assembly offered the following:

*"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 in 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 cost or delay to the persons seeking access to public documents or meetings."*

As public officials, the people of this state have placed a great amount of trust in our ability to perform the tasks of government. In turn, we have an obligation not only to adhere to the letter of this law, but also live up to its spirit through compliance with every reasonable FOIA request without delay or obstruction to the individual or entity seeking their right to public information.

The Attorney General's Office uses and recommends the following FOIA guidelines:

- When in doubt, disclose requested information
- When in doubt, post the time, place, and purpose of the meeting
- When in doubt, open the meeting to the public
- When in doubt, release the document

The following guide provided by the S.C. Press Association should answer the majority of questions you may have regarding FOIA requests.

When fulfilling a request, remember a vigilant press corps is a requisite for good government. As public officials, we have an added obligation to aid members of the media with their quest to properly inform the public.

Sincerely,

*Alan Wilson*

Alan Wilson  
Attorney General

FILED  
NEWBERRY COUNTY  
SEP - 6 P 12: 27  
MCKIE S. BOWERS  
CLERK OF COURT

000305

RICHLAND COUNTY  
FILED

As STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY ) THE COURT OF COMMON PLEAS  
2012 JAN 17 PM 1:39  
JEANNETTE W. HARRIS  
C.C.P. & G.S. Civil Action No. 2011-CP-36-364

Adele J. Pope, )  
Plaintiff, )  
v. )  
Alan Wilson, in his capacity as )  
Attorney General of South Carolina, )  
and James Brown Legacy Trust, by )  
Russell Bauknight, its Trustee )  
Defendants. )

AFFIDAVIT OF ADELE J POPE  
OPPOSING MOTION OF  
McMASTER'S LEGACY TRUST  
TO DISMISS

SCANNED

FILED  
NEWBERRY COUNTY  
JAN 12 PM 12:34  
MARIE S. FOWERS  
CLERK OF COURT

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes and says:

1. This affidavit is based on my personal knowledge and belief.
2. I incorporate by reference my Affidavits dated August 1, 2011 and September 6, 2011 on file herein, both of which were based on my personal knowledge and beliefs.
3. I reaffirm my belief that McMaster's Legacy Trust is a Public Body as defined in the South Carolina Freedom of Information Act ("FOIA"), and that no suit, so far as I know, is pending in any Court to declare McMaster's Legacy Trust a Public Body under FOIA.
4. I reaffirm that, so far as I know, in the more than 20 James Brown cases filed in Aiken County, the 1 in Richland County, the 3 or 4 Federal District Court Cases, the 1 New York case, and others, nobody has asked for relief under FOIA.
5. The vast majority of the James Brown cases, many still pending, were commenced in the Aiken County Probate Court where, in my 35 years as a Trust and

Estate lawyer, I do not recall anyone asserting a FOIA Suit could be commenced.

6. My FOIA request is for the State/AG to produce communications with Russell Bauknight, the PR of Brown's Aiken County Estate, related to Bauknight's outrageous assertion in a sworn Inventory & Appraisalment ("I&A") filed in the Aiken County Probate Court in May 2011 that Brown's worldwide music empire was worth less than \$4.7 Million when he died.

7. On May 6, 2006 AG Wilson's Office asked our S. C. Supreme Court to supplement the record on appeal ("ROA") in an Aiken County appeal with Bauknight's \$4.7 Million, and said it was the correct value of Brown's music empire. I want to know what basis the State had for this representation to our highest Court.

8. I believe the public and I have a right to know why the Attorney General of South Carolina, who, as the State's chief law enforcement officer, enforces the tax laws, securities fraud, and criminal actions against violators of FOIA, would tell our Supreme Court that Brown's assets are worth less than 1/15 what every fiduciary other than Bauknight who has served James Brown has asserted under oath was their value - about \$100 Million (\$85 Million after Brown's debt to the New York Teachers)

9. I believe the public and I have a right to see the Legacy Trust created by AG McMaster in his official capacity, and to know whether that Trust, now under the direct control of AG Wilson, is a public body under FOIA.

10. I believe I have a right to obtain these and other public documents I have requested since June 30, 2011, which may support my belief that there has been wrongdoing within the Office of AG McMaster, and now AG Wilson's office.

11. I am informed and believe that the valuation documents I request will show

that AG Wilson's office was incorrect and had an improper purpose when it asked our Supreme Court to accept Bauknight's \$4.7 Million value, instead of the true \$100 Million (\$85 Million after TIAA) value of Brown's worldwide music empire.

12. Some documents which support my belief are:

a. I & A of Alfred Bradley and Albert Dallas, two of Brown's three original Personal Representatives (Prs) filed in Aiken County on November 15, 2007 showing value of about \$100 Million (\$85 Million after the TIAA Debt);

b. Sworn Estate Tax Return of Robert L. Buchanan, Jr. and me filed with the IRS on September 25, 2009 showing value of James Brown's worldwide music empire at about \$85 Million;

c. Sworn I & A filed by Bauknight in Aiken in May 2011. Asserts value of Brown's worldwide music empire is about \$4.7 Million;

d. Return of Appellants [Bob Buchanan and me] to motion of AG Wilson/Bauknight to Supplement ROA with \$4.7 Million purported value, appeal from Aiken County Case 2008:CP-02-1647 ("Case 1647");

g. July 2011 Order of S.C. Supreme Court declining to supplement ROA; and

h. The April 2011 draft article Jeff Smith and I wrote: "Private Foundations, Copyright Heirs and Musical Millionaires – Why The James Brown "I Feel Good" Trust doesn't," describing Bauknight's intentional devaluation of Brown's assets to benefit Terry Brown.

13. I am informed and believe that when McMaster put James Brown's name

on the Legacy Trust he created in late 2008 or early 2009 to destroy James Brown's real Estate Plan, he intended for people to believe James Brown had created it. Brown did not.

14. McMaster's Legacy Trust was never a part of James Brown's real Estate Plan. It was created by McMaster and Bauknight as the vehicle for funneling about \$50 Million away from the needy and deserving students Brown's real Estate Plan

intended to help, and giving it to relatives and claimed heirs Brown intentionally disinherited from his worldwide music empire:

15. Brown's real Estate Plan consists of his Will and the James Brown 2000 Irrevocable Trust – both dated (and the Trust funded) August 1, 2000 which all of Brown's fiduciaries other than Bauknight have vigorously defended.

16. Brown's real Estate Plan left his entire \$100 Million worldwide music empire (\$85 Million after the TIAA debt) to education, principally for scholarships for needy and deserving students through The James Brown "I Feel Good" private foundation.

17. Under Brown's real Estate Plan the \$80 Million "I Feel Good" Trust was slated to be South Carolina's largest private foundation dedicated solely to provide education benefits for needy and deserving students.

18. Although Brown's original fiduciaries, Dallas, Bradley and Cannon (the "Dallas Group"), fully supported the Estate Plan, Cannon and Dallas' personal wrongdoing overshadowed their support of the Estate Plan.

19. As Lewis & Babcock (the "Lewis Firm") learned of the respective wrongful acts of their fiduciary clients in the Dallas Group, they took appropriate action, and were relieved as counsel.

20. By contrast, as Cannon and Dallas' bad acts were revealed, AG McMaster's Office ordered a SLED investigation but then continued for years to have secret meetings and communications with Cannon, Dallas and their advisors.

21. And McMaster continued to accept large political contributions from Powell Goldstein, LLP, Atlanta lawyers for Cannon, Dallas, Brown's son Terry and Brown's grandson Forlando (William) – as well as the Cox Group Investors (with Terry and

Forlando as members). All advanced a plan to sell/buy the James Brown assets for \$90 Million - \$102 Million; create and IPO; and pay the options or "kickback" demanded by Cannon and Dallas.

22. A quick review of some of the matters in which Bob Buchanan and I were involved with Dallas, Cannon, the Lewis Firm and others follows:

a. In July 2007, Bob Buchanan and I, with an attorney from the Lewis Firm, discovered that Cannon had taken \$900,000.00 from the 2000 Trust in 2006

b. In July Powell Goldstein, Cannon and Dallas, without our knowledge or the knowledge of the Lewis Firm, tried to secretly move the 2000 Trust, including The James Brown "I Feel Good" private foundation, to Georgia to escape S. C. Court scrutiny.

c. In August 2007 Cannon resigned and Jg. Early released the Lewis Firm from its obligations to him, while it continued to represent Dallas and Bradley.

d. In September and October, Dallas and Cannon, without the assistance of the Lewis Firm, filed \$10+ Million in commissions claims against the Estate and developed a secret relationship with McMaster's Sr. Assistant.

e. By November 2007 Cannon's secret cash purchase of a Million Dollar retirement home in Honduras was discovered; and it was known that more than \$7 Million had been misappropriated from Brown and the 2000 Trust since 1999 while Dallas and Cannon served as his fiduciaries.

f. At hearings from November 15-20, Cannon took the 5<sup>th</sup> Jg. Early and the Lewis Firm recommended that Dallas & Bradley resign, which they did; and Bob and I were appointed Brown's PR/Trustee, with all duty and authority as if appointed by Brown.

g. From November 2007-April 2008, AG McMaster, working with Dallas, Forlando and their advisors, tried to help undo Dallas' resignation.

23. In February 2008 the Brown's Estate/2000 Trust, through court-appointed counsel Kendall Few and James Gilreath, sued Dallas and Cannon, with others, seeking 12+ Million misappropriated from Brown, the Trust and Brown Entities since

1999.

24. Although McMaster's Sr. Assistant told the Court in November he was seeking a SLED investigation of Cannon, and McMaster knew of the \$12+ Million misappropriation, McMaster's Office retained close ties with them while McMaster received and/or solicited big campaign contributions from the 40+ lawyers involved in the James Brown matters.

25. In February 2008, McMaster and Forlando appeared on WIS TV. McMaster said: "What the State is saying is that money should go to the needy children through the trust for education."

26. The WIS article said:

...[Brown's] assets contain his 60-acre Beech Island home and even more importantly, right to James Brown's image and music. All together the estimated worth is more than \$100 million. "So the children", McMaster says, "the needy children stand to gain a lot."

27. When asked if he was concerned that litigation filed in December 2007 by some of Brown's claimed heirs, would dissipate Brown's assets, 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 in the long term.

28. Between October 2007 and March 2008 the Terry/Forlando/Cox Group, now all represented by Powell Goldstein, officially formed "TJBL, LLC" because Bob and I said it was not authorized to use "The James Brown Legacy." TJBL made three separate \$90 Million to \$102 Million proposals to purchase the Brown assets.

29. On March 31, 2008 Powell Goldstein, LLP made a \$1,000 contribution to McMaster's campaign.

000311

30. On April 8, 2008, after a full hearing, Jg. Early dismissed AG McMaster's Office's and Dallas' attempts to get rid of Bob and me, and found that all of Bob's and my service as both SA's and PR/Trustees to that date had been both ethical and appropriate.

31. On July 30, 2008 AG McMaster wrote Bob and me confirming he supported us as 2 of Brown's 3 permanent trustees – provided we were properly appointed under Brown's real Estate Plan, which we were.

32. Eleven days later, on August 10, 2008 McMaster secretly contracted with some of Brown's claimed heirs, all disinherited from Brown's music empire, to:

a. Get rid of Bob and me;

b. Take more than 50% of The James Brown "I Feel Good" Trust from needy and deserving students; ignore Brown two valid Estate Plans, and give about \$50 Million to some of Brown's disinherited relatives and claimed relatives.

c. Create the "Settlement Entity", now McMaster's Legacy Trust, and place Brown's assets under the direct control of AG McMaster - now AG Wilson.

33. In late 2008 or early 2009 McMaster and Bauknight created the Legacy Trust.

34. On or about January 17, 2009 McMaster filed an unsigned, incomplete copy of the Legacy Trust in Aiken County.

35. In February 2009 Bradley and Dallas sought to remove Bauknight for cause for recommending what McMaster did to the Aiken Court. A copy of that complaint is attached as Exhibit A.

36. On March 26, 2009, a second, modified, incomplete, unsigned copy of the Legacy Trust was filed in Aiken County.

0070312

37. On April 6, 2009 AG McMaster's Senior Assistant told the Aiken Court:

THE ATTORNEY GENERAL IS GOING TO MAKE SURE IT IS  
TAKEN CARE OF AND WE HAVE CONTROL OVER THE CHARITABLE  
TRUST AND SETTLEMENT ENTITY, SO WE'LL MAKE SURE  
THIS CHARITABLE TRUST AS SET UP PER THIS SETTLEMENT  
WILL BE CARRIED FORTH PROPERLY...

38. In May 2011 AG Wilson's Office asked our S. C. Supreme Court to accept  
Bauknight's \$4.7 Million valuation of Brown's \$100 Million music empire as correct.

Why?

39. AG Wilson has refused to comply with 7 clear, proper FOIA requests since  
June 30, 2011. Why?

40. I am informed and believe that the threat made by David Black, Esquire,  
attorney for Bauknight as trustee of McMaster's Legacy Trust to sue me if I exercised  
my FOIA rights, was inappropriate.

41. My FOIA request for a copy of McMaster's Legacy Trust – now controlled by  
AG Wilson – seeks important information to which I believe I am entitled regardless of  
the progress or outcome of the Aiken appeal, the Richland Case, the pending Aiken  
Cases, or any other matters that are pending.

42. As recently as July 2011 Dallas – like all fiduciaries who have served James  
Brown except Bauknight – has confirmed in the public media that what McMaster's  
office did to Brown's Estate \$100 Million music empire was outrageous.

43. I am informed and believe the engagement by Bauknight/the State of one  
of the State's most distinguished and powerful litigation firms, Lewis & Babcock, LLP, to  
prevent Wilson's compliance with my FOIA requests signals AG Wilson's resolve to  
cover up wrongdoing within his office.

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44. In my 35 years as an attorney advising estates, trust and fiduciaries, I am unaware of any suggestion that a FOIA suit should - or could legally - be brought in any Probate Court.

45. I am informed and believe that it diminishes our free society for Attorney General Wilson - who instructs State Agencies on FOIA compliance AND prosecutes those who violate FOIA - to refuse to comply with proper FOIA requests for public documents, and assist or support an entity he controls in violating FOIA.

46. I am informed and believe that the I&A filed by Dallas and Bradley on November 15, 2007 accurately values the James Brown's more than 800 published songs and Publicity Rights at about \$85 Million (after the TIAA debt), and the documents I seek under FOIA will support that fact.

47. From August 10 - November 20, 2007, the Lewis Firm and its clients Dallas and Bradley, maintained control over the 80+ boxes of public documents Judge Early ordered placed at a central location in his August 10, 2008 Order, so that all Interested Persons could inspect and copy them. AG Wilson is now trying to conceal even these public documents from public view.

48. This affidavit is based on my personal knowledge, including knowledge from seven months of direct dealings with the Lewis Firm and their clients Cannon, Dallas and Bradley, as court-appointed Special Administrator, with Bob Buchanan, of the Estate of James Brown; the review of tens of thousands of public James Brown records of which Bob Buchanan and I were custodians from November 20, 2007 until May 26, 2009; and my review of other public records.

FURTHER DEPONENT SAYETH NOT

Adele J. Pope  
ADELE J. POPE

SWORN TO before me this  
12th day of September, 2008 .

[Signature] (L.S.)  
Notary Public for South Carolina  
My Commission expires: 7/13/2016

As STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS )  
Civil Action No. 2011-CP-36-364 )

Adele J. Pope, )  
Plaintiff, )  
v. )  
Alan Wilson, in his capacity as )  
Attorney General of South Carolina, )  
and James Brown Legacy Trust, by )  
Russell Bauknight, its Trustee )  
Defendants. )

Affidavit of Adele J. Pope )  
Supporting Summary Judgment )  
Including Determination that )  
James Brown Legacy Trust )  
Created by Henry D. McMaster, in his )  
Capacity as Attorney General )  
is a Public Body Under FOIA )

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes  
and says:

1. This affidavit is based on my personal knowledge and belief.
2. I request that the Court hold an expedited hearing on this matter, review the documents *in camera*; and grant Summary Judgment as follows:
  - a. The James Brown Legacy Trust is a Public Body under the S. C. Freedom of Information Act ("FOIA").
  - b. Defendants should release copies of the Legacy Trust as requested.
  - c. AG Wilson should release documents about Russell Bauknight's \$4.7 Million valuation of James Brown's worldwide music as requested.
  - d. Attorney's fees and costs are appropriate because the State/Legacy Trust have acted in bad faith in refusing the documents.
3. Facts supporting each of the above are set out below.

**The James Brown Legacy Trust ("Legacy Trust")**

4. I am informed and believe the name "James Brown Legacy Trust" is

deceptive because the Legacy Trust was not created by James Brown, but by AG Henry McMaster and his trustee, Russell Bauknight. It was never a part of Brown's Estate Plan – the exact opposite.

5. I am informed and believe the Legacy Trust is a vehicle by which the State, through AG McMaster – and now AG Wilson – intends to destroy James Brown's "I Feel Good" private foundation; put Brown's private assets in the Legacy Trust, created by a public official, now called "private"; take \$50 Million Brown gave to needy students; and use it for the AG's private purposes; then cover it up by saying the worldwide music empire the AG took over was worth only \$4.7 Million.

6. I am informed and believe that the Charts Bob Buchanan and I presented to the Aiken Court in 2009 (A & B), and others I have created and attached to this Affidavit, demonstrate the need for the public information I have requested under FOIA.

a. Exhibit A:

Chart 1 - James Brown's INTENTIONS in his Last Will & Trust (2000) (2009);

b. Exhibit B:

Chart 3 - HOW THE PROPOSED "SETTLEMENT" DESTROYS/IGNORES JAMES BROWN'S INTENTIONS (2009);

c. Exhibit C:

Attorneys' Fees AG Wilson proposes (\$13 - \$15+ Million)

vs.

Attorneys' fees to be paid by PR/Trustees of The James Brown "I Feel Good" Trust if AG McMaster had not taken over (less than \$2 Million)

d. Exhibit D:

Detail, Lawyers AG Wilson Proposes to pay from funds taken by State from Needy Students; (\$13 - \$15+ Million)

e. Exhibit E:

Value of James Brown's Music Empire AG McMaster's August 10, 2008 Agreement Proposes to Transfer to Legacy Trust – \$84 Million or \$4.7 Million?

f. Exhibit F

Legacy Trust Trustees and Beneficiaries' Position about \$4.7 Million value vs. \$100 Million value of James Brown Music Empire Then and Now

7. I am informed and believe that but for the support of the State/AG Wilson, the Legacy Trust would exist, but have no chance of taking over James Brown's music empire or taking \$50 Million from needy students.

8. I am informed and believe the requested documents will show that the mighty power of the State/AG has been used to lend credibility to the fabricated \$4.7 Million valuation of James Brown's worldwide music empire; secrete the alleged independent valuation; and prevent appropriate consequences to those who were involved in the undervaluation scheme, including State employees.

9. I am informed and believe that even though it may have been illegally created, the Legacy Trust now functions as a Public Body under FOIA, and should be subject to FOIA.<sup>1</sup>

a. August 10, 2008 - AG McMaster takes over Brown's assets

10. Entertainment icon James Brown, one of South Carolina's most talented and generous citizens, died on December 25, 2006, leaving his \$100 Million music empire in

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<sup>1</sup> I am informed and believe that the Court should find that it is a Public Body unless the AG confirms on behalf of the State that it is void because it was illegally created.

trust to educate 7 designated grandchildren<sup>2</sup> and needy and deserving students.<sup>3</sup>

11. Bob Buchanan and I became Brown's PR/Trustees on November 20, 2007.
12. In late December 2007 some claimed heirs challenged the Estate Plan.
13. The challenges were baseless.
14. On August 10, 2008, without consulting with any Brown fiduciary, AG

McMaster agreed with some of the claimed heirs Brown intentionally excluded from his music empire:

d. that the parties will create an entity (the "settlement entity") that will receive any and all assets or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to the Charitable Trust; (2) 25% to Tommie Rae. (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. [Emphasis supplied.]

15. In late-2008 or early 2009 the Legacy Trust was created, with Bauknight as its trustee.

16. Modifications to the Legacy Trust were made.

17. The State/AG's office vigorously support the Legacy Trust and its taking of James Brown's private property, intended for needy students.

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<sup>2</sup> A fund of \$285,000 each.

<sup>3</sup> Chart 1 and Chart 3 are part of the Record on Appeal ("ROA") and an attachment to Appellant's brief in the appeal from Aiken County Case No. 2008-CP-02-1647 ("Case 1647").

18. In a hearing on January 30, 2009 AG Jones, five months after AG McMaster asserted control over Brown's private assets, said:

There's never been a question with Attorney General McMaster as far as any resources I needed to proceed in this case. We've had these people, these attorney, including myself, to devote whatever time was necessary to proceed with this action. . . [Tr. 1/30/09, Case 322, p.67]

19. Between August 10, 2008 and May 26, 2009 about 5 attorneys paid by the State joined by more than 20 private attorneys fought all of Brown's fiduciaries to take \$50 Million from The James Brown "I Feel Good" Trust; and transfer Brown's private assets to the Legacy Trust, to be taken over and controlled by the AG.

20. About \$14 Million of the \$50 Million would go to contingency fee lawyers representing clients with baseless claims.

21. The May 26, 2009 circuit court order allowing Brown's assets to be taken by McMaster and put in the Legacy Trust is on appeal, but no stay is in place.

22. I am informed and believe that the State/AG has the awesome duty to control the Legacy Trust and Brown's music empire under ¶ 7.2 of the Trust, which says:

**7.2 Right to Remove and Replace:** The Trustee of the [Legacy] Trust shall be chosen and appointed by the South Carolina Attorney General, who has the power and right to remove and replace the Trustee.

23. As the person who selects and removes the Trustee the Attorney General/Settlor has the duty to insure, as required by Article XIV that:

The Trustee shall administer the Trust in a manner that does not adversely affect the current qualification and continued qualification of the "I Feel Good" Trust as a charitable trust. If necessary or desirable, the Settlers [including AG/State] agree to modify the terms of this

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Agreement to the extent necessary to preserve the charitable tax-exempt status of the I Feel Good Trust to the extent allowed by law.

24. I am informed that the AG's condoning a fabricated "fair market value" of \$4.7 Million for Brown's \$84 Million music empire by the AG's appointee where a private beneficiary has a right of first refusal to buy the music empire is – at best – troublesome, and threatens to take away what remains of The James Brown "I Feel Good" private foundation – now also controlled by AG Wilson.

25. I am informed and believe that the State/AG Wilson is actively supporting the Legacy Trust's devaluation of the \$80 Million "I Feel Good" Foundation, as follows:

- a. First, by reducing the "I Feel Good" Trust from \$80 Million to 47 ½% of \$80 Million LESS \$2 Million, about \$38 Million.
- b. Then by selling the \$80 Million asset to Terry, a family member, for a fake \$4.7 Million "fair market value."

26. Chart C shows how the State/AG Wilson is supporting Terry Brown and Bauknight's other beneficiaries under the Legacy Trust by condoning the fabricated \$4.7 Million value which all know to be false.

27. I am informed and believe that AG McMaster delegated to Bauknight and his advisors the duties of the AG's Office to see that the "I Feel Good" private foundation is managed, operated and invested in accordance with IRS guidelines, making it important for the public to see if Bauknight and others are engaging in self-dealing or impropriety.

28. I am informed that all of the provisions of the Legacy Trust not only allow – but require – the Attorney General/State to support and oversee the management and operation of the Legacy Trust.

29. Between May 26, 2009 and June 8, 2010 the Legacy Trust, supported by

the State, added 10 Nexsen Pruet attorneys and a battery of other attorneys, to insure the Legacy Trust would take over Brown's assets; pay them; and pay the disinherited claimed heirs; and be secured for future control by the AG.

30. At the same time, NP's managing partner announced he was running to be the next AG. And AG McMaster was running to be governor. Both lost on June 8, 2010.

31. The AG's Office, NP and others, however, continued to dedicate extraordinary effort to see that needy students do not get what Brown intended for them.

32. AG Wilson has important day-to-day functions and control over the Legacy Trust, and his active oversight and vigilance is required in at least the following particulars:

- a. Under ¶ 6.1 the approval of AG Wilson or his successor, is required to sell all or substantially all of the assets of the Legacy Trust.
- b. Under ¶ 6.2, however, the State/AG's failure to respond within 30 days to any Beneficiary's request for a vote on any matter could arguably be disastrous. It states:

**6.2 Notice of Vote.** The Trustee or any Beneficiary may at any time request a vote of the Beneficiaries as to any such matter as may require a vote under this Agreement by giving notice and a request to all the Beneficiaries of a vote pursuant to the terms of Sections 8.3 and 8.4 below. If a noticed beneficiary [i.e., the State/AG] does not respond with its vote on the applicable matter in writing within 30 days after such time as the notice is deemed to have been given, such Beneficiary [the State/AG] shall no longer have the right to vote on such matter. [Bolding and brackets supplied]

- c. Under §8.3 of the Legacy Trust instruments are deemed delivered either when sent and confirmed (fax) or three days after mail or express service is received by the sending service.

33. Having served as an advisor to trustees for more than 30 years, and having

qualified without objection as an expert in Probate and Trust law in James Brown Case 2009-CP-02-1647, I can say to a reasonable degree of professional certainty that the terms of the Legacy Trust which I have reviewed:

a. place a high burden of continuing vigilance on the AG to protect the "I Feel Good" Private Foundation, which AG McMaster has already agreed to reduce to less than 47 ½% of its original size; and

b. could arguably cede all power – and loss of the Trust assets – to minority private beneficiaries by the AG's mere failure (or Bauknight's for him) to respond in 30 days to a faxed vote request.

34. The AG/State has supported the Legacy Trust by delegating to Bauknight, its Trustee, essential functions of the AG's office, including the oversight of the dramatically reduced "I Feel Good" private foundation.

35. The AG/State has supported the Legacy Trust by authorizing Bauknight to assert to the court that he "speaks on behalf of" the Attorney General of South Carolina.

36. AG Wilson's Office supported the wrongdoing of the Legacy Trust's trustee by joining Bauknight's representation to the Supreme Court that Brown's music empire at death was worth less than \$4.7 Million.

37. During this period the State/AG has supported the Legacy Trust by condoning the payment of what will be \$14 Million or more in contingency and secret legal fees, to be taken from needy students and funneled and paid through the Legacy Trust.

38. AG Wilson has supported the Legacy Trust by not admonishing or replacing those who fabricated and/or condoned, a \$4.7 Million value of Brown's music empire when all have knowledge (as defined in the Trust Code) it is false.

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:

- a. How much more than \$14 Million does AG Wilson intend to pay lawyers for dismantling The James Brown "I Feel Good" Foundation?
- 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 me 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 same 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?
- e. Does AG Wilson's cover up of AG McMaster's takeover of Brown's private property by resisting all FOIA requests mean those intending to create charitable foundations will not do so for fear their private property will be taken over as "the Attorney General's money?"

40. I am informed and believe that the Court should find that the James Brown Legacy Trust is a Public Body under FOIA.

**c. The Legacy Trust should be disclosed by both Defendants**

41. The Legacy Trust was created by the Attorney General of South Carolina and is now controlled by the Attorney General of South Carolina.

42. The trustee of the Legacy Trust has asserted that he "acts of behalf of" the Attorney General.

43. The Legacy Trust and all modifications are public documents and should be disclosed.

**d. The Valuation Information is public and should be disclosed**

44. The Attorney General of South Carolina has told our Supreme Court that Bob Buchanan and I have misrepresented the value of Brown's music empire to them.

45. The AG's appointee has told the IRS Bob and I lied to them and overstated the James Brown assets to get a big fee.

46. 135+ boxes of James Brown documents which would show that this \$4.7 Million fabrication is an outrage were already made public in August 2007.

47. Documents made public in 2007 show that between 1999 and 2006 Brown earned at least \$50 Million as follows:

In Road Show Revenues, etc.	\$25,000,000.00+
In Royalties	\$25,000,000.00+
	\$50,000,000.00+

And that from 2003 -2006 Brown earned more than \$5 Million per year, with:

Road Shows (Wm. Morris)	\$ 18,000,000.00+/-
Royalties	\$ 12,000,000.00+/-
	\$ 30,000,000.00+/-

48. In February 2007 one of the attorneys for Brown's original Trustees, Rodney Peeples, Esquire, described to the Aiken Circuit Court Brown's worldwide importance by explaining that Brown earned \$1 Million a week in his annual 3-week overseas show tours.

49. The extraordinary value of Brown's Publicity Rights is exemplified by the single example of the Global Gaming contract negotiated just before Brown's death. According both to Brown's original fiduciaries and published reports, it was projected to produce \$500,000 per year after a 2-3 year development period.

50. Just after Brown's death, a family-owned company, Pinnacle, issued a prospectus to raise \$200 Million for the acquisition of the James Brown assets, asserting that exploitation of Brown's assets was virtually without limit.

51. The AG's Office has even filed with the Supreme Court the portions of the

IRS documents it wants the Court to see.

52. The AG's appointed trustee has asserted to the IRS that Bob and I lied and that his independent appraisal is proof of that lie – and the AG's Office has told that to our Supreme Court.

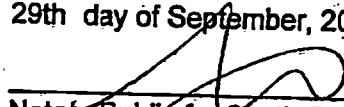
53. I am informed and believe that the documents I seek are public statements by the AG and public documents, and should be disclosed for one or more of the following reasons:

- a. The State has access and control over the appraisal, the IRS documents and the documents it relied on to accuse us of wrongdoing.
- b. There is no basis for confidentiality. All valuations of Brown's assets have been fully aired in Aiken County.
- c. All of Brown's historical financial information was available for inspection and copying without limitation.

FURTHER DEPONENT SAYETH NOT.

  
ADELE J. PORE

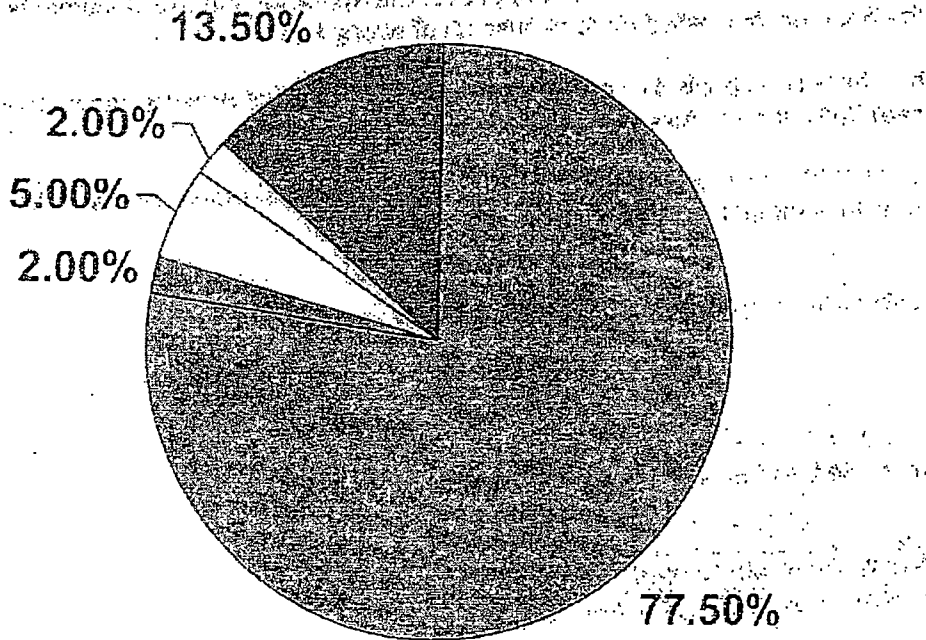
SWORN TO before me this  
29th day of September, 2011

  
Notary Public for South Carolina

My Commission expires: 7/13/2016

(L.S.)

**Chart 1**  
**James Brown's INTENTIONS in his**  
**Last Will & Trust (2000)**



- |                     |                                |
|---------------------|--------------------------------|
| ■ Educational Trust | ■ G'children's Education Trust |
| □ PR/Tr. Comm       | □ Legal Fees/Admin             |
| ■ Debt to Teachers  |                                |

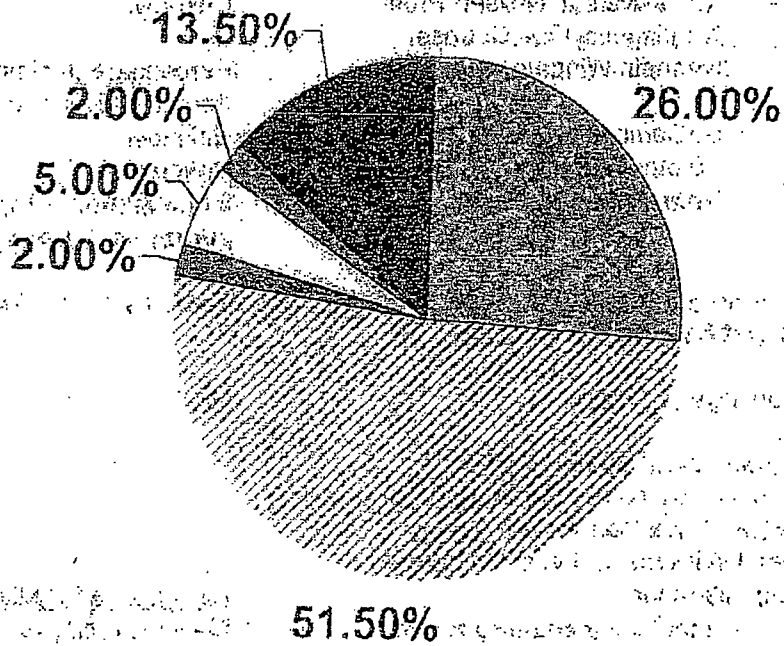
### Chart 3

## HOW THE PROPOSED SETTLEMENT DESTROYS/IGNORES JAMES BROWN'S INTENTIONS

James Brown Estate/Trust Settlement Proposal  
(Hynie Brown/AG/8 of 13+ potential Heirs)

(Over objection of PR/Trustees Buchanan and Pope)

(2/09)



- Educational Trust
- Settling Parties, their Attys., taxes, etc.
- G's children's Education Trust
- PR/Tr. Comm
- Legal Fees/Admin
- Debt to Teachers

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Exhibit C

Attorneys' Fees AG Wilson proposes to pay  
vs.  
Attorneys' fees PR/Trustees would pay<sup>4</sup>

I. AG Wilson proposes to pay attorneys:

A.	Contingency Fees:	
	Rosen and Team (est.):	\$ 6.6 Million
	Levenson	\$ 7.7 Million
B.	Other Attorneys' Fees:	
1.	10 Lawyers at Nexsen Pruet	Unknown
2.	Contingency-Fee Counsel Kenneth Wingate	Percentage of claimed "tens of millions" of losses
3.	A. Camden Lewis	Unknown
4.	19 other attorneys	Unknown
	<b>Total AG-approved fees</b>	<b>\$14.3 Million + Unknown additional payments</b>

II. Attorney Fees of Estate/2000 Trust including The James Brown "I Feel Good" Trust if Appeal Successful.

A.	Contingency Fees	None
B.	Others: James Bailey \$100,000; Lewis & Babcock, Thurmond; A. Silvermail; Hogan & Hartson; Tressa Hayes; Daryl Williams, Cal Watson, further administration:	<u>Less than \$1.9 Million</u>
	<b>Total Buchanan/Pope fees</b>	<b>Max \$1.9 Million, less recovery from Dallas, Cannon, Children, Forlando*</b>

\* Pyt. for frivolous suits sought from TPP proceeds and \$285,000 Forlando Fund

<sup>4</sup> Few/Gilreath claim omitted from both; payable from recovery from Cannon/Dallas.

**Exhibit D**  
**Detail, Contingency Fee and other Lawyers State/AG Wilson**  
**Proposes to pay from State or Legacy Trust, taken by State from Needy Students**

<u>Attorney/Firm</u>	<u>Comment</u>	<u>Pay</u>
<b>State of South Carolina</b>		
1. Henry D. McMaster		State salary
2. Alan Wilson		State salary
3. C. H. Sonny Jones		State salary
4. Mary Frances Jowers		State salary
5. J. C. Nicholson		State salary
6. Emory Smith		State salary
<b>Some Attorneys for Family Members and Claimed Family Members</b>		
7. Louis Levenson	Contingency \$150,000 + 30%	\$7.7 Million
8. Robert Rosen	Contingency Fee (Est'd)	\$6.6 Million
9. David Bell	Represents clients opposing & supporting settlement	Unknown
10. Matt Bodman		Unknown
11. Peter Shahid	Lawyers for claimed child not born of marriage. Refused DNA test	Unknown
12. S. Slotchiver	GAL for claimed child who refused DNA testing.	Unknown
13. Jean Lee	Tax Lawyer	See Rosen
14. David Michel		See Rosen
15. Alan Medlin		See Rosen
16. Heyward Carter		See Rosen
<b>Nexsen Pruet Attorneys</b>		
17. Freddie Kingsmore	Submitted \$4.7 Million to IRS	Unknown
18. Rick Reames	Assisted Kingsmore	Unknown
19. William Newsome		Unknown
20. David Black		Unknown
21. Wm. Wilkins		Unknown
22. Wm Klett		Unknown
23. Julio Mendoza		Unknown
24. Gorge Scott		Unknown
25-26. Other NP Attorneys		Unknown
<b>Sweeney Wingate &amp; Barrow, PC Attorneys</b>		
27. Kenneth Wingate		Contingency Fee % of
28. Mark Gende		"Tens of Millions of
29. Rett Kendall		Dollars," but in default
30. William Calhoun		on counterclaims.
31. A. Camden Lewis		Unknown
<b>Total attorneys' fees from "I Feel Good" Trust</b>		<b>\$14.3 Million +</b>
		<b>Unknown amounts</b>
		<b>paid to attorneys</b>
		<b>listed above</b>

**Affiant believes none of the Estimated \$14+ Million of Attorneys except L&B Would be paid if the State/AG did not Support the Legacy Trust.**

**EXHIBIT E**

**Value of James Brown's Music Empire  
AG McMaster's August 10, 2008 Agreement Proposes to  
Transfer to Legacy Trust – \$84 Million or \$4.7 Million?**

<b>Asset - Description</b>	<b>AG Wilson/Bauknight Value</b>	<b>Buchanan/Pope Value</b>
\$12+ Million claim against Cannon, Morgan Stanley and others. Suits filed 2/08 and later. \$13+ Million documented claim. At death Cannon had \$1,080,000 and 2 beach houses. Had cashed \$5 Million "check to nobody" at defendant Bank.	Unallocated	\$1-10 Million
"Royalties" – rights to more than 800 published and unpublished songs. Averaged \$3+ Million per year before and after death.	Unallocated	\$40-55 Million*
"Publicity Rights" – Worldwide right to exploit image and persona, including finalized Global Gaming Contract.	Unallocated	\$45-55 Million*
Tangible personal property other than jewelry, furs – cars; items sold at Christie's; items on loan to 4 museums, etc. Christie's appraised some of these items.	\$0.5 Million	\$2 Million
Geronimo, LLC; other miscellaneous assets	Unallocated	Unallocated
LESS TIAA Debt	(\$15 Million+/-)	(\$15 Million+/-)
<b>Total</b>	<b>\$4,697,736.00</b>	<b>\$84,000,000.00</b>

\*Range of value placed on assets by Cox, Hammond, Dallas, Bradley and numerous others. Court-approved formula to value royalties/publicity rights without appraisal. 3 letters of intent.

**EXHIBIT F**  
**Position of Settlor/Beneficiaries of James Brown Legacy Trust**  
**\$100 Million vs. \$4.7 Million Value of**  
**James Brown Musical Empire**  
**Then and Now**

**1. Office of the Attorney General of South Carolina:**

December 6, 2007

AG Sonny Jones:

Re: James Brown Legacy initial offer 10-12-07

I, like each of you, have been contacted by Dr. Cox and Toby Byron as to the purchase (see attached 10/12/07 letter) of the Trust Estate for \$100 million plus 5% of the gross profits from the company to be formed. ...please advise as to the following...

...I have heard for the last 3 months that the sky will fall and the offer will go away if we do not accept it now...your thoughts. Also, who else is out there who can make an offer if at all.

February 7, 2008

AG McMaster appears to WIS TV:

"What the State is saying is that money should go to the needy children through the trust for education."

...Those assets contain his 60-acre Beech Island home and even more importantly, right to James Brown's image and music. All together the estimated worth is more than \$100 million.

"So the children" McMaster says, "the needy children stand to gain a lot. . ."

McMaster "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 in the long term.

May 6, 2007

AG Wilson, through Sonny Jones, tells Court \$4.7 Million is correct value of music empire.

**2. Terry Brown:**

Feb. 29, 2008

Terry Cox for "The James Brown Legacy" makes offer (Letter of Intent) for all assets of 2000 Trust: "The purchase price for the Assets will be between \$90,000,000 and \$100,000,000 plus a continuing payment equal to five percent of the gross profits that we generate from licensing those assets that can be licensed....All cash...90 day due diligence period. Terry Brown make simultaneous offer for Estate Assets (TPP), \$2 Million.  
COPIES TO SONNY JONES, BILL SHEARER.

March 27, 2008

Terry Brown, w/ TJBL, offers \$2 Million for TPP and TJBL another \$90 Million - \$100 Million plus 5% from licensing

September 2008

Terry's son Forlando 39% owner and joint venturer with Terry, Cannon, etc., in TJBL, assert \$150 Million offers still open for James Brown assets.

January 30, 2009

AG McMaster gives Terry Right of First Refusal to buy Brown's assets - ie., match a "fair market value" offer.

May 6, 2010

Terry tells Supreme Court that "fair market value" of Brown assets at death is \$4.7 Million

**3. Tommie Rae Hynie:**

February 9, 2007

Tommie Rae asserts, through counsel,

LITERALLY, IF YOU [J.G. Early] DON'T ACT TOMORROW, YOU KNOW, THEY [The Cannon Group] CAN SIGN A CONTRACT TO SIGN ALL OF MR. BROWN'S BOOK OF MUSIC WHICH COULD BE WORTH \$100 MILLION - THEY COULD SELL IT FOR 20 MILLION IN ORDER TO RECEIVE THEIR 2 MILLION.

MR. PEEPLES: ...MR. BROWN WAS VERY FAMOUS IN JAPAN. HE WOULD GET A MILLION DOLLARS A WEEK FOR THREE WEEKS IN JANUARY EACH YEAR. P. 92

MR. ROSEN: I MEAN, SHE LIVED WITH MR. BROWN FOR TEN YEARS. THE ISSUE OF WHETHER SHE'S HIS WIFE OR NOT HIS WIFE, THAT'S A MATTER TO BE DETERMINED LATER...

May 6, 2007

Tommie Rae tells Supreme Court that \$4.7 Million value for music empire is correct.

**4. Dr. Yamma Lumar:**

January 2007

President (Husband CFO) of family company, Pinnacle which issues prospectus to raise \$200 Million to acquire James Brown assets.

May 6, 2011

Yamma and siblings tell Supreme Court \$4.7 Million value is correct.

**5. Daryl, Deanna, Larry, Venisha - See Yamma.**

**6. Russell Bauknight:**

January 30, 2007

Recommends transferring all James Brown assets to his Legacy Trust, but does not know what they are worth. Has heard \$80 Million.

December 2010

Secretly tells IRS music empire worth less than \$4.7 Million

May 6, 2011

Files fabricated \$4.7 Million figure with Probate Court.

May 6, 2011

Presents fabricated \$4.7 Million value to Supreme Court.

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-364

Adele J. Pope, )  
Plaintiff, )

AFFIDAVIT OF ADELE J. POPE )  
IN FURTHER SUPPORT OF ALL RELIEF )  
REQUESTED IN COMPLAINT, EXPEDITED )  
HEARING AND *IN CAMERA* REVIEW )

v. )

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

Defendants. )

FILED  
NEWBERRY COUNTY  
2011 OCT - 6 P 3:41  
JACKIE S. BOWERS  
CLERK OF COURT

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes and says:

1. This affidavit is based on my personal knowledge and belief.
2. I am informed and believe that information I obtained this week (beginning October 4, 2011) further supports my position that Attorney General Alan Wilson, acting through C. H. "Sonny" Jones, is vigorously covering up important public documents, including those sought in this FOIA Suit, which will help the public decide:
  - a. Did AG/Candidate McMaster authorize the State's first contingency-fee tort suit against S. C. Citizens Buchanan and Pope, using only private lawyers to falsely accuse them of crimes, for the improper purpose of silencing their criticism of his takeover of James Brown's assets?
  - b. Did AG McMaster improperly authorize Russell Bauknight to "speak on behalf of" the Attorney General of South Carolina in making the false accusation that Buchanan and Pope caused "tens of millions of dollars" damage to Brown's worldwide music empire while simultaneously supporting Bauknight's "appraisal" of those same assets at less than \$4.7 Million?

c. How involved was the Office of AG McMaster/Wilson in creating and/or presenting the purported \$4.7 Million value of Brown's music empire to the IRS and Courts and in falsely accusing Buchanan and Pope of criminally overstating Brown's assets at about \$85 Million?

3. Yesterday I printed from the Website of Attorney General Wilson, the 10

Litigation Retention Agreement AG Wilson asserts 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. [Emphasis supplied. See Exhibit A]

4. AG Wilson's Website does not assert – as AG Wilson's Assistant Sonny Jones asserted in September – that a stay prohibits the dissemination of the McMaster/Wingate Contract to sue Buchanan/Pope.

5. The McMaster/Wingate Contract to sue Buchanan/Pope is “under review by a court” for only one reason: Wingate, on behalf of two AGs, has refused for a year to produce it, and on August 9, 2011 – more than a month after my FOIA request and several days after this suit was filed – sought a protective order asserting it is a private document — a direct violation of the language of all known Litigation Retention Agreements.

6. Wingate and Bauknight - both purporting to speak for the State/AG through Wingate – asserted:

Fee agreements are the epitome of privileged communication. Plaintiffs [sic] therefore request that this court issue a Protective Order prohibiting the efforts of Defendant Pope from discovering the Fee Agreement. [See Exhibit B]

7. As relates to the purported less-than \$4.7 Million value of Brown's music empire, on September 9, 2011 I requested, among other documents, the following

information from AG Wilson under FOIA:

1. All preliminary appraisal reports and/or other document(s) which support the August 23, 2010 [in bold] statement to the Supreme Court of South Carolina by then-Attorney General McMaster and four Assistants, signed by Clyde (C.H.) Jones, placed in context as follows:

6. Respondents dispute Appellants' assertion that the settlement agreement has the potential to divert "tens of millions of dollars" from the 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) Dollars in affidavits, pleadings, and testimony...

Valuation assertions by Appellants' predecessors were similarly without any underlying appraisal. 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 the 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.

AND

4. Any Document(s) which show when and in what form Russell Bauknight, serving at the pleasure of the Attorney General, notified the Office of the Attorney General that he asserted James Brown's assets at his death on December 25, 2006 were worth about \$6.5 Million and his worldwide music empire less than \$4.7 Million on that date.

8. In response to those two requests, on October 3, 2011, AG Wilson, through

Sr. Assistant AG Tracy Meyers, said:

Responding to your request (numbers 1 and 4)...this office does not possess any such documents, and therefore, is unable to provide this information to you. [Emphasis supplied.]

9. A copy of my October 5, 2011 response to Ms. Meyers' letter of October 3 is attached hereto as Exhibit C.

10. Based on the documents received this week, as of October 6, 2011, I am informed and believe that AG Wilson's continued refusal to comply with FOIA shows:

a. Attorney General Wilson's Office does not have a single document to support the assertion made by two Attorneys' General, in two separate years (2010-11), to our S. C. Supreme Court – that James Richardson, the *pro bono* counsel in the Aiken County Appeal of Case 2008-CP-02-1647, Bob Buchanan and I were not truthful with the Court when we asserted that the damage McMaster did to The James Brown "I Feel Good" Trust has the potential to divert "tens of millions of dollars" from the Trust which James Brown intended for needy and deserving students.

b. Attorney General Wilson is actively concealing his office's authorization of, and/or participation in false representations made by AG Wilson's agent Russell Bauknight, "on behalf of the Attorney General of South Carolina" that Bob Buchanan and I criminally overstated Brown's assets by \$79 Million in sworn IRS documents (at about \$85 Million)

c. Attorney General Wilson is concealing his Office's participation in and/or support of the false representation by Bauknight to the IRS and two Courts that James Brown's worldwide music empire at his death was worth less than \$4.7 Million.

11. A chronology of some of the actions of the Attorney General's Office follows:

April 2010	Agent for Tommie Rae threatens that AG Sonny Jones has hired Wingate to sue Bob and me if we do not drop Aiken Cty. Appeal – which would require us to sign agreement not to criticize McMaster for destroying The James Brown "I Feel Good" Fdn.
May 19, 2010	Wingate sues Bob and me. Seeks "ten of millions of dollars." for alleged damage to Brown's worldwide music empire.
August 2010	AG Sonny Jones tell Supreme Court our assertion that McMaster's actions have potential to divert "tens of million of dollars" from "I Feel Good" Trust is untrue – appraisal will show James Brown assets less than \$12 Million.
September 2010	Bob and I counterclaim against Wingate's clients.

October 2010 Bob asks for copy of Wingate Litigation Retention Agreement. [I ask shortly thereafter.]

November 2010 Wingate clients default on counterclaim.

November-2010-  
October 2011 Wingate/AG McMaster/Bauknight/AG Wilson refuse copy of McMaster/Wingate Agreement to sue Buchanan/Pope

December, 2010 Bauknight presents secret \$4.7 Million "appraisal" of Brown's music empire to IRS and secretly asserts Bob and I overstated Brown's assets at \$85 Million to get a big fee – a crime.

January 2011 IRS issues closing letter after Bauknight's false allegations.

May 3, 2011 Bauknight files sworn I&A in Aiken, asserting \$4.7 Million value.

May 6, 2011 Bauknight/AG Jones ask the Supreme Court to supplement Aiken County appeal record with Bauknight's purported \$4.7 Million value.

May 2011 J. Richardson asks Supreme Court not to supplement Record with Bauknight's purported \$4.7 Million value for music empire.

June 30 - July  
2011 I ask, under FOIA, for Litigation Agreement and Valuation Info. Goes to Wingate and Wilson.

July 2011 Supreme Court declines to supplement record.

July 15, 2011 Bauknight threatens me with lawsuit if I exercise FOIA rights.

August 2011 Bob and I continue to seek Litigation Retention Agreement. Wingate and Bauknight – both purported agents for the State - continue to refuse to produce agreement. Assert on behalf of the Attorney General it is private.

September 2011 Jg. Manning continues hearing schedule for motion to disqualify/enjoin Wingate as counsel for State and 12 private plaintiffs and Bauknight as State's purported agent. No stay sought or granted.

September 2011 AG Sonny Jones asserts Jg. Manning granted a stay, preventing release of Wingate/McMaster Agreement to sue Buchanan/Pope.

September 28, 2011 Jg. Manning's 1-word order confirms hearing continued. No stay. [Exhibit D]

October 2011 AG Wilson's Office notifies press that it must stick with AG Jones' story that there is a stay order despite Order of Jg. Manning.

October 5, 2011 AG Wilson's Office posts all Contingency Fee Litigation Agreements except McMaster/Wingate Agreement to sue Buchanan/Pope on Website. Does not assert stay, instead says:

**CONTINGENCY FEE LITIGATION  
RETENTION AGREEMENTS**

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 the Attorney General's Office itself would otherwise be unable to pursue.

Affinion/Trilegiant (marketing and billing) ...

AstraZeneca (Seroquel)...

Cephalon (Provigil, Gabitril, Actiq)...

GSK (Avandia)...

Janssen (Risperdal)...

McKesson (Average Wholesale Price)...

Merck (Vioxx)...

Multiple pharmaceutical companies (Average Wholesale Price)..

Multiple technology companies (liquid Crystal displays)...

Multiple oil companies (underground storage tanks)

October 6, 2011 AG Wilson still refuses to post or comply with FOIA requests for McMaster/Wingate Agreement to sue Buchanan/Pope.

12. I am informed and believe that the AG McMaster/Wingate Litigation Retention Agreement and other FOIA documents will show that the Wingate suit did not

"require specialized expertise or involve an extensive commitment of financial resources and personnel" on the part of the State, but was intended to ruin Bob's and my careers and force us to drop the appeal of McMaster's destruction of James Brown's Estate Plan.

13. I am informed and believe that the date of the contract – expected to be April or early May 2010 – and other FOIA documents will confirm that Wingate, although a certified specialist, conducted no due diligence before using the power of the State, with Bauknight as the State's purported agent, to falsely accuse us – on behalf of the State – of crimes.

14. I am informed and believe that the Wingate contract will show that Wingate, Bauknight as the State's purported agent, and AG Wilson's Office have consistently violated the following requirement, among others, of the Litigation Retention

Agreement:

**Article III. CASE MANAGEMENT...**

**F. Public Records**

Any material, data, files, discs, or documents created, produced or gathered by Special Counsel or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina Freedom of Information Act, South Carolina Code of Laws, §30-4-10 et seq., and maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of, the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the South Carolina Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying documents. This Agreement shall be considered a public document. [Emphasis supplied.]

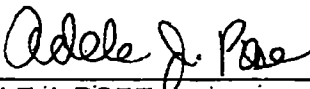
15. I am also informed and believe that the McMaster/Wingate contract to sue Buchanan/Pope will show that either it does not contain, or Wingate has violated, the constitutionally required provision contained in all other Litigation Retention

Agreements:

All pleadings, motions, briefs, formal documents, and agreements must bear the signature of the Attorney General or his designated assistant.

16. Although I have requested a copy of the McMaster/Wingate contract to sue Buchanan/Pope, I believe that the document – authorizing Wingate to use the power of the State to seek to destroy my career and Bob's for the benefit of private individuals – is void as against public policy, as a violation of my Due Process rights and/or for other reasons.

FURTHER DEPONENT SAYETH NOT.

  
ADELE J. POPE

SWORN TO before me this  
6th day of October, 2011

  
Notary Public for South Carolina

My Commission expires: 7/12/2016

(L.S.)

Exhibit A

Enter keyword here

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## CONTINGENCY FEE LITIGATION RETENTION AGREEMENTS

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.

- Affinion/Trilegant (marketing and billing) – litigation retention agreement
- AstraZeneca (Seroquel) – litigation retention agreement
- Cephalon (Provigil, Gabitril, Actiq) – litigation retention agreement
- GSK (Avandia) – litigation retention agreement
- Janssen (Risperdal) – litigation retention agreement
- McKesson (Average Wholesale Price) – litigation retention agreement
- Merck (Vioxx) – litigation retention agreement
- Multiple pharmaceutical companies (Average Wholesale Price) – litigation retention agreement
- Multiple technology companies (liquid crystal displays) – litigation retention agreement
- Multiple oil companies (underground storage tanks) – litigation retention agreement

### LATEST NEWS

[VIEW ALL](#)

#### Silent Witness Ceremony Honored 2010 Victims of Fatal Domestic Violence

Oct 4, 2011

Attorney General Alan Wilson led participants through the annual Silent Witness Domestic Violence ceremony that was held today on the south steps of the State House in Columbia. The ceremony marked the first week of National Domestic Violence Awareness Month. During the solemn ceremony, Attorney General Wilson called the names of thirty-four (34) women and ten (10) men from across the state who lost their lives as the result of domestic violence in the previous year. Victims' family members, friends, or volunteers carried a life-sized dollhouse representing the victim to the State House steps as a bell was rung for...

[LEARN MORE](#)

#### Anderson Police Arrest Starr Man In Child Pornography Case

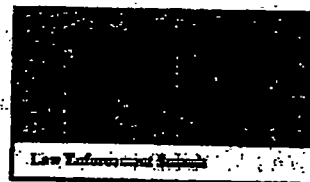
Sep 27, 2011

Attorney General Alan Wilson announced today that the City of Anderson Police Department arrested Kenneth Ray Barnett, 41, of 1642 Mountain Creek Church Road Starr, South Carolina, on September 27, 2011, on one (1) count of Sexual Exploitation of a Minor.

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### PHOTO GALLERY [View All](#)



Law Enforcement Agency

JACKIE S. BOWERS  
CLERK OF COURT

2011 OCT - 9 P 3:42

NEWBERRY COUNTY

FILED

000342

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH CIRCUIT

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

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MOTION FOR  
PROTECTIVE ORDER CONCERNING  
FEE AGREEMENT  
AND/OR MOTION TO STRIKE  
DEFENDANT POPE'S MOTION TO  
COMPEL PLAINTIFFS' FEE  
AGREEMENT**

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,  
Plaintiffs

v.

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

FILED  
NEWBERRY COUNTY  
2011 OCT - 6 P 3:42  
JACKIE S. BOWERS  
CLERK OF COURT

**TO: DEFENDANTS AND THEIR ATTORNEYS:**

**YOU WILL PLEASE TAKE NOTICE** that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order prohibiting the production of Plaintiffs' Fee Agreement in the above-referenced action.

On July 26, 2011, Defendant Adele Pope through counsel filed a Motion to Compel production of Plaintiffs' Fee Agreement. 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.

Also, or in the alternative, Plaintiffs move the court to strike Defendant Pope's Motion to Compel Plaintiffs' Fee Agreement because the motions seeks to contravene a prior decision of the court concerning the order for hearing motions filed in this complex case.

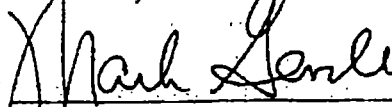
This Motion relies on all applicable statutory and case law and may be supplemented with a memorandum of law, exhibits, affidavits, or other documents.

The Plaintiffs also request costs and fees for the expense in bringing this Motion.

**(Signature page to follow)**

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



---

Kenneth B. Wingate

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

**ATTORNEYS FOR THE PLAINTIFFS.**

Columbia, South Carolina

August 9, 2011.

1228 Walnut Street  
Newberry, South Carolina 29108

October 5, 2011

BY FAX AND FIRST CLASS MAIL  
Fax No. 803-734-3677  
[Fx. Copy amended to correct Fax #]

Tracy A. Meyers, Esquire  
Senior Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

Custodian of Records  
Office of the South Carolina Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

FILED  
NEWBERRY COUNTY  
2011 OCT - 6 P 3:42  
JACKIE S. BOWERS  
CLERK OF COURT

Re: Request for Documents under the South Carolina  
Freedom of Information Act

Dear Ms. Meyers and Records Custodian:

I received yesterday, and thank you for, the letter of Ms. Meyers dated October 3, 2011. With the mailed copy of this letter I am enclosing a deposit of \$300, and ask that I be able to come to your office at the earliest convenience on the first of the following dates you have available:

This Friday, October 7	9:30 - closing
Tuesday, October 11	1 p.m. until closing
Thursday, October 13	9:30 until closing
Monday, October 17	9:30 until closing

My cell phone number is 803-413-0753. Since I am a little over 40 miles away, I would appreciate your letting me know as soon as possible which dates suit.

**Please do not let your answers to the questions below delay scheduling my appointment to review whatever documents you have.**

**I am prepared, each day, to pay the estimated amount - In addition to the enclosed \$300 - of what the additional work we will need to do will take.**

I expect my FOIA inquiries to last a long time, as — in order to receive specific documents — I made my initial inquiries as specific as possible. Since I will be examining records which you apparently do not keep in the form I requested, I want my search to be as efficient as possible. I hope your answers to the following questions will help:

a. The Charges you pose. It is my understanding that FOIA requires you to charge the smallest amount necessary to provide the records. You say \$18.90

000346

\*\*\*\*\*  
per hour is the charge for locating and copying. Is it not possible for me to review the records myself – either computer or hard copy – making notes, and then make specific requests?

For example: The point of my requests 2, 3 and 5 on September 9, 2009 was to determine what information the State has about how much State money has been devoted to James Brown matters since August 2007, and how much to James Brown/James Brown Legacy Trust matters since 2008.

If the State has not compiled this information, as you indicate, I still want to compile my own estimates from the data requested in 2,3 and 5 of my letter of September 9. I have detailed information about hearings, appearances, meeting, etc., which – together with your data – would help put that together.

Will someone at \$18.90 an hour do this with me? Or may I do it myself on a computer at your office – and perhaps bring a more computer-oriented person to assist me? Can it be a combination of the two?

b. Your Response to Requests 2 and 4 Regarding the \$85 Million vs. \$12 Million vs. \$4.7 Million values placed on James Brown's music empire, assets

My request of September 9, 2011 was for:

1. All preliminary appraisal reports and/or other document(s) which support the August 23, 2010 [**In bold**] statement to the Supreme Court of South Carolina by then-Attorney General McMaster and four Assistants, signed by Clyde (C.H.) Jones, placed in context as follows:

6. Respondents dispute Appellants' assertion that the settlement agreement has the potential to divert "tens of millions of dollars" from the 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) Dollars in affidavits, pleadings, and testimony...

Valuation assertions by Appellants' predecessors were similarly without any underlying appraisal. 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 the 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.

AND

4. Any Document(s) which show when and in what form Russell Bauknight, serving at the pleasure of the Attorney General, notified the Office of the Attorney General that he asserted James Brown's assets at his death on December 25, 2006 were worth about \$6.5 Million and his worldwide music empire less than \$4.7 Million on that date.

Ms. Meyer's response was:

Responding to your request (numbers 1 and 4)...this office does not possess any such documents, and therefore, is unable to provide this information to you.

I respectfully suggest that this answer is not correct.

In August 2010 the Office of Attorney General McMaster represented to our Supreme Court what the contents of a draft appraisal contained.

In May 2011, the Office of Attorney General Wilson provided our S. C. Supreme Court with copies of portions of an Estate Tax Closing Letter and related IRS documents from January 2011 directly related to this request, showing that – at least by May 6, 2011 – the AG's Office had this information in that form. Those documents – if no others exist – would be responsive to my request if May 6, 2011 is the first day the AG learned that Russell Bauknight asserted James Brown's worldwide music empire was worth less than \$4.7 Million when Brown died.

If the AG's Office learned this information before May 6, 2011, that is the subject of my request #4 of September 9.

As to Request #1, it is reasonable to assume that the AG looked at something when he represented to the South Carolina Supreme Court on August 23, 2010 that an expected appraisal – already in draft form – showed that James Brown's assets – repeatedly reported by the AG's Office and others to be worth \$100 Million (\$85 Million after the TIAA Debt) – would soon be found to be worth less than \$12 Million, a figure, the AG represented, was already found in a draft proposal.

Because of the importance of understanding the State's involvement, if any, in the representation by the AG's appointee, Mr. Bauknight, to the IRS that Bob Buchanan and I committed a criminal overstatement of James Brown's assets on a sworn Estate Tax Return, I ask that you carefully check to confirm that the AG's Office – as you state – has no documents to support its August 2010 assertion of the less-than-\$12 Million value and no record of when it first learned (before May 6) of the less-than \$4.7 Million for the worldwide music empire it reported to the Court on May 6,

000348

c. My other FOIA Requests Which Are Not the Subject of Pending Litigation.

I hope that your response to my September 9, 2011 FOIA request means that the AG's Office has reconsidered the 5 Requests I made on July 20, 2011, which you did not challenge, but failed to fill, including those briefly described below, which I may now review and copy.

1. July 20, 2011                   - 11-Page Memorandum from "tax experts"  
referenced by CH Jones in April 6, 2009 Hearing,  
Case 122.
  
2. July 20, 2011                   Communications, Meetings, etc., with Toby Byron of  
New York. [ He is the man who asserted in  
December 2007 that Albert H. "Buddy" Dallas had  
offered him 5% of a sale of the James Brown  
assets, then later recanted that representation.  
He wrote several letters to various people 2007 -  
2009, with copies to the SC AG. He had a  
number of telephone meetings with Sr. Assistant  
AG CH "Sonny" Jones as indicated in the email  
of Sonny Jones to RL Buchanan, Jr. and me dated  
December 6, 2007 re: \$100 Million initial offer for  
James Brown assets.]
  
3. July 20, 2011                   Communications, Meetings, Etc. With Dr. Terry  
Bradford Cox . Mr. Cox, also mentioned by Sonny  
Jones in his December 6, 2007 email related to the  
\$100 Million initial offer for the James Brown assets,  
also met at least one additional time – on or about  
July 31, 2008 – with Sonny Jones, another AG and  
an agent for Tommie Rae Hynie. Like Mr. Byron,  
Dr. Cox corresponded with various people and copied  
that correspondence to the AG's Office.
  
4. July 20, 2011                   Communications, Meetings, etc., with Albert H.  
"Buddy" Dallas and/or Forlando Brown. Mr. Dallas  
had numerous documented – and as yet  
undocumented – meetings with the Office of AG  
McMaster, and his joint venturer, Forlando Brown,  
also had various communications, including the  
joint February 7, 2008 TV appearance with AG  
McMaster.
  
5. July 20, 2011                   PG documents.

Please confirm if this is true, so that I may avoid another FOIA suit.

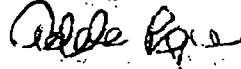
Ltr. to Ms. Meyers, Custodian  
October 5, 2011  
Page 5

\*\*\*\*\*  
As stated above, please do not let your answers to any of these questions delay scheduling a time for me to come review the documents responsive to my September 9, 2011 request, as I want to do that as soon as possible.

I look forward to coming to the Office; obtaining what you have; and spending a day, or more as needed, gathering the information I have already requested; and learning how to make subsequent requests more efficient so that I may acquire the needed public information as efficiently as possible.

Thank you in advance for an immediate response to my cell phone 803-413-0753 or email to allow me to come to begin obtaining this important public information.

Sincerely,



Adele J. Pope

AJP/ja

Enclosure in mailed copy: Check for \$300.00

000350

Exhibit D

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

FILED  
NEWBERRY COUNTY  
2011 OCT -6 P 3:42  
JUDGMENT IN A CIVIL CASE  
CASE NO: 2011PCP4004900

JACKIE S. BOWERS  
CLERK OF COURT

Russell Bauknight  
Plaintiff

vs.

Henry Dargan McMaster  
Defendant

JEANETTE W. McBRIDE  
C.C.P. & G.S.  
2011 SEP 30 PM 10:39  
RICHLAND COUNTY

**CHECK ONE:**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. *continued*
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other:
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other:

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
    - Affirmed;
    - Reversed;
    - Remanded;
    - Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:

*continued*

Dated at Columbia, South Carolina, this 20<sup>th</sup> day of September, 2011.

*[Signature]*  
PRESIDING JUDGE

This judgment was entered on the 3 day of Oct, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth B. Wingate  
Everett Augustus Kendall II  
Mark V. Gende

Daryl L. Williams  
J Calhoun Watson  
Robin A. Braithwaite  
Adam T. Silvernail

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*[Signature]*  
Clerk of Court

3  
RICHLAND COUNTY  
SCANNED FILED

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )  
IN THE COURT OF COMMON PLEAS  
Action No. 2011-CP-36-00364

2012 JAN 17 11:36  
J. ANNETTE W. MCBRIDE  
C.C.P. & C.S.

Adele J. Pope, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. )  
 )  
 ) Alan Wilson, in his capacity as )  
 ) Attorney General of South )  
 ) Carolina and James Brown )  
 ) Legacy Trust, by Russell L. Bauknight, )  
 ) its Trustee )  
 ) Defendants. )

AFFIDAVIT OF ADELE J. POPE  
OPPOSING ALL MOTIONS TO STRIKE

FILED  
NEWBERRY COUNTY  
2011 OCT 19 A 11:17  
JACQUE S. POWERS  
CLERK OF COURT

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes and says:

1. Each affidavit I have submitted herein is based on my personal knowledge, including knowledge gathered and/or obtained by me in one or more of the following capacities:

- a. As Co-Personal Representative of the Estate of James Brown and custodian of the records of the Estate of James Brown.
- b. As Co-Trustee of the James Brown 2000 Irrevocable Trust and custodian of the records of the said 2000 Irrevocable Trust.
- c. As custodian, with Robert L. Buchanan, Jr., of the records of the James Brown Entities as that term is defined in the Order of the Honorable Doyet A. Early III dated August 10, 2007 in Aiken County Case No. 2007-CP-02-0122 ("Case 122").
- d. From Records made public in the said August 10, 2007 Order of Judge Early.
- e. From the public records of Aiken County, the South Carolina Court of Appeals, the South Carolina Supreme Court, Richland County, the S. C. Federal District Court, the New York Supreme Court and/or other public

sources.

2. I am informed and believe that I can authenticate each statement and document and its source.

3. On information and belief, the originals of more than 1 million pages of documents related to James Brown previously made public by the said August 10, 2007 Order, fiduciary policy, and/or as part of the voluminous record in Case 2008-CP-02-1647 are in possession of Defendants and others.

4. At the request of Defendant Attorney General and others, the filings in all Aiken County James Brown cases were entered into the record in Aiken County Case No. 2008-CP-02-1647, now on appeal.

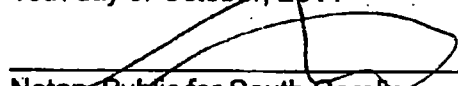
5. I am informed and believe that all statements and documents should be considered by the Court for one or more of the following reasons:

- a. They are relevant to this action.
- b. They are not hearsay.
- c. They show bad faith and intentional delay on the part of Defendants.
- d. They are admissions of one or more Defendants.
- e. If hearsay, they are subject to an exception.

FURTHER DEPONENT SAYETH NOT.

  
ADELE J. POPE

SWORN TO before me this  
18th day of October, 2011

  
Notary Public for South Carolina

My Commission expires: 7/13/2016

(L.S.)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )  
 )  
Adele J. Pope, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Alan Wilson, in his capacity as )  
Attorney General of South Carolina and )  
James Brown Legacy Trust, by )  
Russell L. Bauknight, its Trustee, )  
 )  
Defendants. )  
 )

IN THE COURT OF COMMON PLEAS

Case No. 11-CP-36-364

MEMORANDUM OF  
ATTORNEY GENERAL

IN SUPPORT OF:  
MOTION TO DISMISS AND  
MOTIONS TO STRIKE  
AND IN OPPOSITION TO  
SUMMARY JUDGEMENT

**INTRODUCTION AND BACKGROUND**

The Office of the Attorney General has a long history of advocating the importance of the Freedom of Information Act, but whether the documents Plaintiffs seeks are subject to disclosure under FOIA is not the real issue in this case. Despite the numerous motions pending in this case and seemingly countless affidavits submitted by Plaintiff, the suit presents very simple issues of deference to ongoing judicial proceedings and court rulings in another county. These issues are all directed to whether Plaintiff can bring a separate Freedom of Information Act action in Newberry County to sidestep or make an end-run around pending judicial proceedings in Richland County involving the same documents that are at issue in civil discovery in Richland.

For reasons discussed below, the Defendant Wilson's Motion to Dismiss should be granted which will moot all other issues. Alternatively, his Motions to Strike should be granted to strike the multiple affidavits of Plaintiff that are riddled with hearsay, speculation and completely irrelevant material. Plaintiff's Motion for Summary Judgment should be denied

because of the pending Richland motions and the stay issued in that case and also because the Defendant Attorney General has not answered the Complaint and should be given an opportunity to address the FOIA substantively if, *arguendo*, this case is not dismissed.

The relationship of the instant action to Richland proceedings is set forth in Plaintiff's complaint. Instant Plaintiff Pope acknowledges that she is the Defendant in a Richland County suit brought by the former Attorney General McMaster and the current trustee of the James Brown Legacy Trust. (2010-CP-40-4900). She contends that the Richland suit alleges that she caused millions of dollars in damage to the Legacy Trust and that her and her co-defendant's valuation of the trust was incorrect and improper. The Court issued a ruling in case 4900 that stated that venue of that case was proper in Richland County because it was the principal place of administration of the trusts at issue in that case. Order, The Honorable L. Casey Manning, November 8, 2010, Exhibit A to Attorney General's Motion to Dismiss.

Despite the pendency of the Richland action, Plaintiff alleges that she personally sent the Attorney General a FOIA request from her Newberry Office, dated June 30, 2011, for records she alleges are related to the Trust. Complaint, p. 4, ¶18. Plaintiff asked for the following documents in a letter addressed to the "Custodian of Records of the Office of the Attorney General":

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.
2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknicht between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

The documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900 as Plaintiff acknowledges; Plaintiff's Return to MTD, p. 2, ¶6; *See, also*, Exhibit D to Complaint, ¶2b; MTD Exhibit B, Motion to Compel, p. 3, ¶3, June 7, 2011 ["[a]ny and all documents which support any position you may have as to the value of the James Brown assets as of December 25, 2006."](attachments to Motion omitted); MTD Exhibit C, Motion for Protective Order and including Exhibits D [appraisals] & E [objections to appraisals] thereto (exhibits B & C (including Exhibits D & E) are attached in support of only the Rule 12(b)(8) Motion).

In particular, as shown by the attached portions of the transcript from the Richland action, Judge Manning expressly stayed the Richland action including motions pending therein until a determination could be made as to which Judge would hear motions and other matters pending in Richland. Tr., pp. 2 and 3, *Bauknight v. Pope* (September 14, 2011; 2010-CP-40-4900; Honorable Casey L. Manning). His Court has exclusive jurisdiction over any issues related to the documents at issue in the instant case, and this Court lacks subject matter jurisdiction to proceed. Rule 12(b)(1), SCRPC; *Richardson, Plowden, Grier & Howser v. Pyle*, 472 S.E.2d 232, 233 (1996).

#### **THE DEFENDANT ATTORNEY GENERAL'S MOTION TO DISMISS**

Both of these grounds are affected by the exclusive jurisdiction of the Richland County Court of Common Pleas as to the documents at issue and its rulings in this case. Because of those proceedings, the Court lacks subject matter jurisdiction in the instant case as discussed above and below. Rule 12(b)(3).

**Another Action is Pending Among the Same Parties**

Another action is pending among the same parties as to the same or substantially the same claim under Rule 12(b)(8). *Bauknight, etc.; McMaster in his capacity as Attorney General, etc., et al, v. Pope and Buchanan*, 2010-CP-40-4900. Although the claims in the complaints are not identical, that suit is the subject of a number of allegations in and a lengthy exhibit to the instant complaint. *See, eg.* Complaint at paragraphs, 7-11 and Exhibit D to Complaint (all references to this exhibit are subject to Motion to Strike, *infra*). Moreover, the documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900. *See*, Exhibit D to Complaint, ¶2b; Attached Exhibit B, Motion to Compel, p. 3, ¶ 3, June 7, 2011 (attachments to Motion omitted); Attached Exhibit C, Motion for Protective Order and including Exhibits D & E thereto. Plaintiff is essentially pursuing through the instant suit the same discovery issues that are pending before the Court in Case 4900 and are subject to the stay directive. Therefore, this case is subject to dismissal under Rule 12(b)(8).

This defense is closely related to one of concurrent jurisdiction under which the first court to exercise jurisdiction controls the case. The rule is well settled that "where there is concurrent jurisdiction, the first tribunal to acquire jurisdiction has exclusive jurisdiction." *Richardson, Plowden, Grier & Howser v. Pyle*, 472 S.E.2d 232, 233 (1996)(fee dispute matter). Although, as follows, *Tucker v. Tucker*, 264 S.C. 172, 177-78, 213 S.E.2d 588, 590 (1975) discussed the rule in the context of administration of an estate, its reasoning and holding apply to the instant case, as well:

While it is true that the circuit court has general jurisdiction in civil matters, once the forum for the administration of an estate has been chosen, the forum or court so assuming jurisdiction has control of the administration of the estate and parties interested in estate matters should apply to the judge of the court. Administration of an estate cannot be in two courts simultaneously. Counsel for the appellant argues, and counsel for the respondent admits in his brief, that the Probate Court of Chesterfield County has jurisdiction to hear an action for the removal of an executor.

A discussion of the question involved is to be found in 20 Am.Jur.2d Courts §128.

'C. Priority Principle as Controlling Exercise of Concurrent Jurisdiction . . .

's 128. Generally. As a rule the exercise of concurrent jurisdiction is controlled by the principle of priority. According to this principle the court of concurrent jurisdiction that first exercises it thereby acquires exclusive jurisdiction to further proceed in the case. In other words, once a court of concurrent jurisdiction has begun to exercise its jurisdiction over a case its authority to deal with the action is, subject to appellate review, exclusive until it is completely disposed of, and no other court of concurrent jurisdiction may interfere with the proceedings thus pending. . . .

'In several opinions 'comity' has been indicated as a motive of the courts to abide by the priority principle, but it appears that it is a legal duty of a court to abide by it, and that the rationale of the rule is to reduce the possibility of the conflicting exercise of concurrent jurisdiction, especially to reduce the undesirable possibility that a case involving the same subject matter and the same parties be simultaneously proceeded upon in more than one court. Several cases have pointed out that the applicability of the priority rule does not depend on whether one of the two courts of concurrent jurisdiction is superior in rank to the other such court. . . .

*See also, Jordan v. Moses*, 10 S.C. 431, 433 (1879) ("no proposition is better settled than that where two tribunals have concurrent jurisdiction, the one which first obtains possession of the subject must adjudicate, and neither party can be forced into another jurisdiction.") *State v. Howell*, 220 S.C. 178, 66 S.E.2d 701 (1951)(criminal proceedings); *see also Sparrow v. Nerzig*, 228 S.C. 277, 89 S.E.2d 718 (1955). Similarly, issues regarding the same documents cannot be in two courts, one in Richland and the other in Newberry. When the Richland Court has exercised jurisdiction first, it now has exclusive jurisdiction over the matter and this Court lacks

subject matter jurisdiction of this case.<sup>1</sup> Rule 12(b)(1), SCRPC.

B

Improper Venue

Venue is improper in that Judge 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. *Bauknight, supra*, 2010-CP-40-4900, November 8, 2010 (copy attached as Exhibit A only in support of 12(b)(3) motion). Plaintiff cannot evade that order by bringing a separate FOIA action in another county not connected to case 4900. One Circuit Judge cannot overrule another Circuit Judge. *Cook v. Taylor*, 272 S.C. 536, 538, 252 S.E.2d 923, 924 (1979); *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 603, 340 S.E.2d 546, 547 (1986); *Department of Social Services v. Laura D.* 386 S.C. 382, 688 S.E.2d 130 (Ct. App., 2009). Although this authority appears to arise in the context of different circuit judges within the same case, Plaintiff cannot attempt to split off a document issue pending before the Courts in Richland County, put a FOIA label on it, and get a Court in a different County to step in and rule on a matter pending in Richland. Our Courts were not set up this way.

Further, even if, *arguendo*, the Richland venue Order were not controlling, under S.C. Code Ann. § 15-77-50 (1976), suits against officials of the State in their official capacities must be brought in the circuit where such question, action or controversy shall arise, and the Complaint does not allege a basis for venue in Newberry County. Plaintiff claims that her office is in Newberry, but she is using that office as a basis for avoid raising this issue in Richland

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<sup>1</sup> "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Rule 12(h)(3), SCRPC.

where she and the other parties are already represented by counsel. She cannot splinter the Richland action this way and set up one Court in Newberry against another in Richland County. She characterizes the FOIA action as different, but it is a different theory involving the same documents. Venue should be in Richland where the other suit is pending.

## II

### THE ATTORNEY GENERAL'S MOTION TO STRIKE SHOULD BE GRANTED

The Attorney General has moved to strike five affidavits and some related exhibits of Plaintiff. The affidavits are filled with vitriole and baseless speculation. They should be struck because they are not based upon personal knowledge, contain hearsay, and are speculative and irrelevant. Examples abound of these violations by Plaintiff of the basic rules for affidavits:

1. Affidavit attached to Complaint

p.2, ¶ 5 "agent [of party not involved in instant proceeding] advised that if Bob and I did not drop a pending James Brown appeal AG . . . [note omitted] would to[sic] sue us . . . ." [hearsay, irrelevant]

p. 3, ¶ 7 Augusta Chronicle cite [hearsay]

p. 3, ¶8, " I believe the Retention Agreement will show whether AG McMaster . . . was in fact acting to punish Bob and me . . . ." [lack of personal knowledge; speculation]

2. Affidavit Opposing MTD, September 6, 2008 [sic]

p. 1, ¶2 "public documents, which, I believe, will tell the scandalous story" [lack of personal knowledge, irrelevant, speculative]

p. 4, ¶28, "I still wonder, and believe the public documents AG . . . is withholding will tell me" [lack of personal knowledge, irrelevant, speculative, hearsay]

p. 4, ¶30, "I believe the public documents will show . . . ." [lack of personal knowledge; speculative]

p. 3, ¶16 On April 30, 2010, . . . attorney for Brown's companion . . . threatened that . . . had already hired contingency-fee lawyer" [hearsay, irrelevant]

3. Supplemental Affidavit, September 16, 2011

Directed to earlier affidavit applying to other Defendant

p. 3, ¶5 quotations from *The Enquirer* which she acknowledges in paragraph 6 is not entirely accurate [lack of personal knowledge, hearsay, irrelevant]

4. Affidavit in Further Support, October 6, 2011

p. 4, ¶10, speculation about what requested documents will show [speculative, lack of personal knowledge, irrelevant]

p. 4, ¶11, chronology including some hearsay such as April 10 statement of agent for person not involved in instant litigation [hearsay, irrelevant]

p. 8, ¶¶15 and 16 speculation about what requested documents will show.

5. Affidavit and exhibits attached to Motion for Summary Judgment

p. 3, ¶¶ 7-9 speculation about documents and other matters [lack of personal knowledge, speculative, irrelevant]

Exhibit F to MSJ, p. 15 quotations from persons not involved in the instant suit [hearsay, irrelevant]

“The rule governing summary judgment provides that ‘[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.’” Rule 56(e), SCRCP (emphasis added). *Dawkins v. Fields*, 354 S.C. 58, 64, 580 S.E.2d 433, 436 (2003). Because all of the affidavits appear to be directed to summary judgment, they must meet this standard of Rule 56(e) rather than Rule 11(c) which provides that affidavits and verifications may include matters stated on information and belief.

In numerous respects, the affidavits fail to meet standards of being based upon personal knowledge and containing admissible evidence. They contain inadmissible hearsay and refer to news articles<sup>2</sup> which are not admissible. In particular, all of the affidavits are irrelevant. They contain Plaintiff’s account of litigation related to the James Brown estate and the Legacy Trust and allegations about why she needs the documents, but all of those statements are irrelevant to whether she is entitled to the documents under FOIA. As set forth above, Plaintiff is not permitted to bypass proceedings in Richland County pertaining to the trust, but even if, *arguendo*, she could bring this separate FOIA action in Newberry County, all that is relevant to the substance of her request is whether Plaintiff is entitled to the documents at issue under the terms of FOIA. That statute does not contain standards of disclosure based upon alleged importance or need. S.C. Code Ann. §§30-4 through 30-30-4-50, *et seq.* Plaintiff’s lack of entitlement to the documents is discussed *infra* regarding her motion for summary judgment, but those grounds have nothing to do with the alleged need for or importance of the documents.

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<sup>2</sup> *Trustees of Erskine Coll. v. Cent. Mut. Ins. Co.*, 241 S.E.2d 160, 162-63 (1978).

III

**PLAINTIFF IS NOT ENTITLED TO SUMMARY JUDGMENT**

A

**Plaintiff Cannot Use FOIA To Overrule or Bypass Judicial Proceedings In Richland**

As discussed above regarding the Motion to Dismiss, this Court lacks the authority to overrule proceedings in Richland and that Court has exclusive jurisdiction of proceedings and issues related to the documents in question. In particular, noted above, Judge Manning expressly stayed the Richland action including motions pending therein until a determination could be made as to which Judge would hear motions and other matters pending in Richland. Tr., pp. 2 and 3. Any ruling in this Newberry case in favor of Plaintiff would overrule the stay in Richland of motions that include the documents at issue in the instant FOIA request. This Court lacks such authority as discussed above regarding the Motion to Dismiss. Moreover, nothing in FOIA, the Rules of Civil Procedure or the Court system of this State would permit Plaintiff to make a FOIA request outside a pending judicial proceeding involving discovery motions pertaining to the same documents. She cannot avoid the Richland proceeding through this process.

Even if discovery motions were not pending in Richland, legal authority suggests that Plaintiff would not be permitted to use FOIA as a discovery tool regarding those proceedings. Clearly she is attempting to use FOIA as a discovery tool because her affidavits contain lengthy accounts regarding the pending Richland litigation from her perspective. The Order of the late Marc Westbrook submitted by the Defendant Wilson (*Lominack v. Myers*, 2002-CP-32-1890,

October 25, 2002 stated that "it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants." Although our Supreme Court has not expressly addressed the issue in the civil context, it has recognized that FOIA is not to be used to bypass discovery in criminal proceedings. *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005).<sup>3</sup> Moreover, our Supreme Court has recognized that "[i]n construing the federal FOIA, the United States Supreme Court has held that the FOIA does not supplement or displace the applicable rules of discovery. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146 (1989); *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214 (1978)." *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991). Although *Robinson* involved criminal proceedings, the State Supreme Court's recitation of the federal rule suggests that it would apply the same limitation on the use of FOIA as a discovery tool as Judge Westbrook did; however, this issue need not be reached because judicial proceedings are already pending in Richland regarding the same documents, and this Court should not allow Plaintiff to bypass those proceedings nor issue a ruling contrary to the stay order in Richland.

**B**

**The Defendant Attorney General Has Not Answered the Complaint**

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<sup>3</sup> As stated in *Robinson*, "the Court of Appeals misapprehended that *Robinson* merely reflects the widely accepted principle that FOIA is not to be used by those under criminal charges to circumvent the limitations of discovery. See, e.g., *State ex rel. Wyant v. Brotherton*, 589 S.E.2d 812, 816-17 (W.Va.2003); *Henderson v. State*, 745 So.2d 319 (Fla.1999). That principle is not implicated here, because the 911 tape was available through both criminal and civil discovery."

The Attorney General has filed a Motion to Dismiss the Complaint which should be granted. Even if, *arguendo*, the Motion were not granted, he should be given the opportunity to Answer. Although Rule 56 allows a summary judgment motion to be made before an answer is filed, the standards for granting the motion are much stricter. As stated in *Guterman-Musicant-Kreitzman, Inc. v. I.G. Realty Co.*, 426 So. 2d 1216, 1217-18 (Fla. Dist. Ct. App. 1983):

Although a plaintiff may move for summary judgment before the defendant has answered, the motion should not be granted unless it is clear that an issue of material fact cannot be presented. At such point in the pleading when the plaintiff moved for summary judgment, the plaintiff had the burden of showing the absence of any genuine issue as to all the material facts which, under applicable principles of substantive law, entitled it to judgment as a matter of law. This burden is upon the movant irrespective of whether he or his opponent would at trial have the burden of proof on the issue concerned, and it rests on the movant whether he is by it required to show the existence or non-existence of facts.... In such an instance, the burden is upon the plaintiff to make it appear to a certainty that no answer which the defendant might properly serve could present a genuine issue of fact.

Certainly, Plaintiff cannot demonstrate that an issue of material fact cannot be presented or that "no answer which the defendant might properly serve could present a genuine issue of fact." *Id.* As set forth in the affidavit of Tracy Meyers, Senior Assistant Attorney General, the Office of the Attorney General was not properly served with the FOIA request at issue.

C

**Plaintiff's Apparent Failure to Mail or Deliver the FOIA request to the Office of the Attorney General Defeats Any Alleged Entitlement of her to Relief**

As stated in Ms. Meyers Affidavit:

She never received from Ms. Pope the June 30 letter Ms. Pope claims to have sent to the Office of the Attorney General. She requested checks of Office mail logs, none of which showed that the letter had been mailed or delivered to the Office of the Attorney General by Ms. Pope or her attorney which is necessary to require a response from this Office under FOIA..

4. Attachment of the June 30, 2011 letter to the complaint in the [instant] suit does not constitute a request under FOIA to which the Office of the Attorney General must respond.

This affidavit is consistent with the terms of FOIA, itself. Section 30-4-30 (c) states that "[e]ach public body, upon written request for records made under this chapter shall within fifteen days . . . of the receipt of any such request notify the person making such request of its determination . . . ." Therefore, the public body must receive a written request from the person making the request. According to Ms. Meyer's affidavit, she did not receive the request in this manner. Attachment of the FOIA request to the Complaint in this suit alleging a failure to comply, does not constitute a mailing or delivery of the request to the Office of the Attorney General. Accordingly, Plaintiff cannot obtain judicial relief under FOIA when she has not complied with the terms of that statute.

**D**

**Even if This Court Were to Rule that the Defendant Must Produce Respond Substantively to the FOIA Request, Exempt Matters May Be Withheld**

Even if, *arguendo*, this Court were to find a failure to respond to the FOIA, the Defendant Attorney General is still entitled to determine if any requested matters are exempt from disclosure. *Litchfield Plantation Co., Inc. v. Georgetown County Water & Sewer Dist.*, 443 S.E.2d 574, 575 (1994) ("We decline to hold these exemptions can be waived by the public body's failure to respond within fifteen days.")

**CONCLUSION**

The Freedom of Information Act is a very important law, but it does not permit Plaintiff to bypass other judicial proceedings or, in effect, ask one judge to overrule another. The Richland County Court of Common Pleas has exclusive jurisdiction of matters pertaining to the documents at issue. For the foregoing reasons, this Court should grant the State's Motion to Dismiss, alternatively grant its Motions to Strike and deny Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

ALAN WILSON  
Attorney General

J. EMORY SMITH, JR.  
Assistant Deputy Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3680

BY: 

ATTORNEYS FOR THE ATTORNEY GENERAL

October 25, 2011

STATE OF SOUTH CAROLINA FILED IN THE COURT OF COMMON PLEAS  
 COUNTY OF NEWBERRY NEWBERRY COUNTY Civil Action No. 2011-CP-36-364

2011 DEC 14 A) 9:57

Adele J. Pope, Plaintiff, )  
 v. )  
 Alan Wilson, in his capacity as )  
 Attorney General of South Carolina, )  
 and James Brown Legacy Trust, by )  
 Russell Bauknight, its Trustee )  
 Defendants. )

JACKIE S. BOWERS )  
 CLERK OF COURT )  
 AFFIDAVIT OF W. JEFFREY SMITH )  
 SUPPORTING RELEASE OF ALL )  
 PUBLIC DOCUMENTS REQUESTED )  
 UNDER THE )  
 S. C. FREEDOM OF INFORMATION ACT )  
 BY ATTORNEY GENERAL ALAN WILSON )  
 AND BY )  
 THE JAMES BROWN LEGACY TRUST )

PERSONALLY APPEARED BEFORE ME, W. Jeffrey Smith, who being  
 duly sworn deposes and says:

1. I am over eighteen years old.
2. I have been a resident of Newberry County for more than twenty years.
3. This affidavit is based on my personal knowledge and belief.
4. I received a JD degree from Georgetown Law Center and formerly served as a patent examiner with the U. S. Patent Office.
5. I am not a party to any James Brown lawsuit, but have a personal interest in James Brown's musical career and am writing an article with Plaintiff Adele Pope about James Brown's "I Feel Good" private foundation.
6. A copy of the April 2011 draft of our article, *Private Foundations, Copyright Heirs and Musical Millionaires: Why The James Brown "I Feel Good" Trust doesn't...*, is attached to this affidavit as Exhibit A.

7. In April 2011 *Private Foundations* was circulated for comment to entertainment and private foundation professionals, and we hope to complete and publish it in 2012.

8. I am informed and believe that the general public, and especially those involved in estate planning and intellectual property issues, have a right to learn whether by taking over James Brown's private assets and creating the Legacy Trust former Attorney General Henry McMaster – who was acting in his official capacity – was serving the public interest, or promoting his campaign to be governor.

9. I have read with interest the articles of Newberry journalist Sue Summer about what McMaster did and about what appears to her – and to me – to be a coverup by Attorney General Wilson of what McMaster did.

10. I am informed and believe that the Legacy Trust, not created by James Brown, but by McMaster as AG, is a public body – as is AG Wilson – under the S. C. Freedom of Information Act, and both should comply with FOIA.

11. My writing about James Brown has three areas of emphasis:

a. The manipulation of the value of Brown's securities and other assets, especially the fabricated \$4.7 million valuation of Brown's worldwide music empire, including any participation the AG's office may have had in that manipulation.

b. The false representations made about who are James Brown's heirs under the Federal Copyright Act, and whether an AG should participate in or condone false statements to courts about Brown's heirs.

c. The Public Policy implications of allowing Attorneys General – as McMaster attempted to do – to take over private foundations, which are private property.

12. I believe that it is wrong for Attorney General Alan Wilson and the Legacy Trust McMaster created in his official capacity to refuse to deliver properly requested public documents related to these issues.

13. I have read, and attach hereto, copies of affidavits filed in another Newberry County FOIA Case which, I am informed and believe, also apply to this case:

Exhibit B            Affidavit of Thomas R. Young, Jr.

Exhibit C            Affidavit of Deborah W. Spence

Exhibit D            Affidavit of Thomas H. Pope III

Exhibit E            Affidavit of Sue Summer

14. I am informed and believe that these people properly assert that prompt compliance with FOIA is important — especially where, as here, there is great public interest in why a public official chose to take over and give away James Brown's private property.

15. I especially endorse Mr. Young's reference to the intent of FOIA, which is to provide members of the general public with prompt access to public documents "at a minimum cost or delay."

16. I am informed and believe that AG Wilson's intentional stonewalling, along with the Legacy Trust, of the FOIA requests of Mrs. Pope and journalist

Sue Summer is wrong.

FURTHER DEPONENT SAYETH NOT.

W. Jeffrey Smith  
W. JEFFREY SMITH

SWORN TO BEFORE ME this 9<sup>th</sup> Day  
of December, 2011.

Robert J. Pipe (L.S.)  
Notary Public for South Carolina  
My Commission expires: 12/11/13

**Private Foundations, Copyright Heirs and Musical Millionaires:  
or  
Why The James Brown "I Feel Good" Trust doesn't...**

By Adele J. Pope and W. Jeffrey Smith<sup>1</sup>

©<sup>2</sup>

2011

God has Smiled on Me<sup>3</sup>

Entertainment icon James Brown died on Christmas Day 2006. Although he was a grammar school dropout, he left the bulk of his \$100 million music empire to The James Brown "I Feel Good" private foundation. The "I Feel Good" Trust was restricted solely to providing scholarships for needy and deserving students.

Over his long career, Brown had earned the reputation as "the hardest working man in show business." Through hard work, tenacity—and years of litigation with publishers, family and others—he had amassed and held onto his fortune, mostly rights in more than 850 copyrights, unpublished works and his publicity rights.

Don't Be a Dropout

About 20 years before his death, Brown decided to create the "I Feel Good" Trust as a monument to his personal philosophy: the way to escape poverty was with education and hard work. Brown's songs such as "Don't be a dropout" underscored this belief.

After four years of work with an estate planning specialist, Brown's final estate plan was completed in 2000. It included a Will that left Brown's residuary estate to his 2000 Irrevocable Trust, which was dedicated solely to education. At Brown's death the 2000 Trust created a \$285,000 education fund for each of seven grandchildren. Everything else went to the "I Feel Good" Trust.

Anticipating trouble from relatives who knew about Brown's estate plan but did

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<sup>1</sup> Ms. Pope received a JD degree from the University of South Carolina and an LLM in Estate Planning from the University of Miami. Mr. Smith received a JD degree from Georgetown Law Center and is a former patent examiner with the U. S. Patent Office.

<sup>2</sup> While the © symbol is not required, it was placed in this article to remind estate planners, fiduciaries and advisors to consider copyrights in all philanthropic estate planning and administration involving authors.

<sup>3</sup> The copyright to "God has smiled on me" by James Brown and Al Sharpton was issued in 1981. The earliest date this copyright could be terminated by heirs under the Copyright Act is 2016.

not complain during his lifetime, Brown directed his fiduciaries to defend "vigorously" all attacks on the approximately \$80 million he gave to the "I Feel Good" Foundation as "an affront to my wishes." He armed his fiduciaries with *In Terrorem* forfeiture clauses and other means to defend the 2000 Trust.

Brown also named and then specifically excluded from his music empire some of his 14 or more claimed children, as he did all other claimed heirs and past and future spouses.

Damn Right, I'm Somebody<sup>4</sup>

At Brown's death his philanthropic legacy was poised to be as impressive as his musical legacy. The \$80 million "I Feel Good" Foundation promised to be his home state's largest-ever private foundation dedicated solely to scholarships for needy and deserving students, as well as one of its largest private foundations.

Then in the fall of 2007 an attorney general with gubernatorial aspirations stepped in to "help" the "I Feel Good" Trust.<sup>5</sup>

Bewildered

Three months later, in February 2008, the AG announced before a television camera that the trustees of the "I Feel Good" Foundation must serve only the interest of the "poor kids," and that any failure to do so went "far past the stop sign of conflict of interest."<sup>6</sup>

He was right about that, but sadly, he did not heed his own advice.

On August 10 of the same year, a mere six months later, the AG signed an agreement that in only two years would destroy the "I Feel Good" Foundation – reducing it to \$2 million or less.

Much of the explanation for this bewildering turn of events lies in the failure of

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<sup>4</sup> The Copyright to sound recording "Damn right, I'm somebody," by James Brown and his famous sideman Fred Wesley, was issued in 1974 and renewed in 2002. The earliest possible date it could be subject to termination under the Copyright Act is 2030.

<sup>5</sup> AG Henry D. McMaster, with the AG of Georgia *pro hac vice* under him, entered Aiken County, SC Case 2007-CP-02-0122 ("Case 122") in October 2007 to help protect the interest of the "I Feel Good" Foundation's charitable beneficiaries.

<sup>6</sup> WIS TV interview, 2/7/08. Henry D. McMaster. McMaster's conclusion that Brown's then-fiduciaries were simultaneously working for the family and the "poor kids" was incorrect. At the time, Brown's fiduciaries were actively seeking dismissal of newly filed – and unfounded – challenges to Brown's 2000 Trust and Wil; claims of Brown's companion; and other claims. [ See Ans. Interrogs. Pls., Case 4900; See Mot. Dismiss, TRHB's filing, Case 122.]

the AG's staff, and later the AG's appointee, to understand and apply basic principles necessary for a private foundation to protect its copyright interests, namely:

1. A precipitous and incorrect determination of heirs can cause decades of damage to the copyright interests, resulting in loss and unnecessary litigation.
2. Fiduciaries and advisors to private foundations with copyrights cannot simultaneously serve the interests of the foundation and claimed heirs.

Brown's interest in 850+ copyrights and unpublished songs made these errors fatal to the "I Feel Good" Foundation.

Termination Rights under the Copyright Act -(Give it Up ) Turn it Alose<sup>7</sup>

Termination rights under Section 203 and 304 of the Copyright Act are designed to help authors who assigned the rights to their creative works before these works were tested in the marketplace: authors are given a chance to take back *some* of the interests they gave up. Depending on the date of publication, the earliest opportunity to terminate a copyright (already in its renewal term for older copyrights) comes either 35 or 56 years after the copyright.

In the case of a deceased author *who has not previously exercised his rights*, the author's statutory heirs, as determined at the relevant time, may exercise the author's termination right. [For a good explanation of termination rights and limitations, see "Copyright Reversions, Protecting Your Musical Copyrights" by Lisa Alter, 2008.]

When an author's statutory heirs are not the beneficiaries of copyrights under his estate plan (this is always the case for copyrights held by a private foundation or charity), then the statutory heirs—in limited instances—may be able to "bump" the author's estate plan and retake some of the copyright benefits themselves.<sup>8</sup>

Emerging case law makes it clear that it is not easy to terminate assigned interests in copyrights.

Where, as with James Brown, valuable interests are at stake, private foundations, advised by *their unconflicted* IP/Entertainment counsel, must dance a delicate dance with publishers, claimed heirs and others. The foundations' primary concern, of course, is to protect and enhance the benefits of *each* copyright for the longest reasonable time.

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<sup>7</sup> (Give it up) Turn it Alose was published in 1969.

<sup>8</sup> The term "estate bumping" was coined by Professor Lee-Ford Tritt to describe this phenomenon. See Lee-Ford Tritt, "Liberating Estates from the Constraints of Copyright, 38 Rutgers L.J. 109 (2006)

By omitting his heirs from any interest in his copyrights, Brown made it easier for his fiduciaries to protect them from actual and claimed heirs, because in questions related to Brown's copyrights the fiduciaries' duty of loyalty is only to the 2000 Trust — and not to any heir.

For private foundations to be ready to protect copyright benefits given to them, their fiduciaries and advisors<sup>9</sup> must take at least take the following basic steps, all of which were in progress for James Brown's estate:

1. Learn the basics about the Settlor's copyright interests, including earliest publication dates and other readily-available facts.
2. Promptly and properly identify the "heirs-at-death"<sup>10</sup> to create a baseline.
3. Where appropriate and available, rely on DNA testing for disputed heirs.
4. Acknowledge heirs only if they are legally established or DNA tested.
5. Identify documents such as the Settlor's will, prenuptial agreements, lawsuit settlements and waivers; which may void, limit or delay an heir's claim to copyright termination rights.
5. Update the baseline heirs data until all copyrights expire.
6. Select IP/Entertainment counsel with no commitment to claimed heirs, publishers or other assignees.
7. As and when helpful, "split heirs"<sup>11</sup> to maximize benefits for the foundation.

For James Brown, with copyrights issued over the six decades from 1956 until his death, the earliest any termination could have occurred was 2012. There was adequate time to prepare, and in August 2008 Brown's fiduciaries were doing just that.

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<sup>9</sup> Where, as with James Brown, the AG and his appointee undertook to step into the shoes of Brown's fiduciaries, rendering the fiduciaries unable to protect the charity, they should have had, and applied, the same knowledge required of the Foundation's fiduciaries.

<sup>10</sup> The terms "heirs-at-death" is used by the authors to emphasize the timing difference between a traditional determination of heirs (death) and the statutory heirs under the Copyright Act, who cannot be determined until the window to terminate assignments as to a particular copyright opens. Statutory heirs under the Copyright Act may be different with respect to each copyright termination.

<sup>11</sup> The heirs must act by majority. This allows foundations to "split heirs" — finding the most cooperative majority of heirs to work with on termination issues related to a specific copyright assignment at the particular time.

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James Brown's Copyrights

A 2007 circuit court order made available to the AG and others interested in Brown's estate about 90 boxes of "Brown Historical Documents." These documents contained virtually everything to be known about Brown's copyrights and related contracts. The documents were placed at a central location that allowed easy access to all.<sup>12</sup>

The available documents, with information from the Copyright Office and other readily available sources, showed that if Brown's copyrights were properly protected any attempt by claimed heirs to take them from the "I Feel Good" Trust was both weak and remote in time.<sup>13</sup>

The known facts included:

1. Brown's royalties continued to earn about least \$3 million per year, as they had for years.
2. Brown's publicity rights – about \$50 million of his music empire – were not subject to any claimed termination rights of heirs.
3. Brown's as-yet-unpublished works would not be subject to termination for decades, perhaps not at all.
4. Copyrights to the many derivative works in which Brown has an interest are not subject to termination right of heirs. [More than 50 CDs, with notes, have been released since Brown's death.]
5. Brown's Will leaves all of his copyrights, most of which are held in his individual or joint name, to the 2000 Trust.
6. Brown's fiduciaries were directed to vigorously protect his estate plan against heirs and claimed heirs.
7. Only 15% or fewer of Brown's many copyright interests faced possible termination before 2016 – ten years after Brown's death. [ See Compilation, Brown copyrights, 1956 - 60 and 1978 - 81.]

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<sup>12</sup> Order dtd. 08/10/07, Aiken County, S.C. Case No. 2007-CP-02-0122. Reflecting Brown's understanding of his place in musical history, in addition to Brown Historical Documents, Brown kept more than 60 boxes of his personal musical collection, unpublished works, and masters under lock and key in the bedroom suite and office of his home estate. In February 2008 these were placed in a secure sound storage facility to await review.

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8. Co-authorship of some of Brown's works could make terminations more complex and heirs' rights, if any, less certain. See Geoffrey P. Hull, "Termination Rights and the *Real* Songwriters", Vanderbilt J. of Ent. Law & Practice, Spring 2005.
9. Brown holds an interest in some of his publishers.
10. Between 1968-1978, one of Brown's most prolific periods, about 250 copyrights were issued, none of which faces possible termination before 2024, with others as late as 2033, including:
  - a. Nearly 40 songs from 1968.
  - b. More than 50 songs from 1969, including "Ain't it funky now," "Mashed potato" and "Popcorn."
  - c. "Funky Drummer," 1970, one of the world's most sampled records; "(Get up) I feel like being a sex machine"; and about 25 other songs.
  - d. "Hot pants", "Soul power" and others from 1971.
  - e. More than 35 copyrights from 1972, including "Get on the Good Foot (with new matter)" and other sound recordings for which copyrights became available that year. [ Polydor, Inc. and/or UMG Recordings, Inc. are listed on some post-1971 copyrights].
11. In the 1990s Brown and his company JBE, Inc., reached important agreements with Warner/Chappell, Warner-Tamberlane Publishing Corp. and other publishers.
12. Documents related to Brown's 1999 \$26 million loan from TIAA, secured by a pledge of his major royalties, prohibit assignments until the loan is paid in full – 5 or more years after Brown's death.
13. Brown settled a 2002 suit over copyrights with daughters Deanna and Yamma.
14. Brown did not file a termination notice for 2016 for the famous 1956 song, "Please, please, please," which he co-authored, although the window for filing a termination notice was open in 2006. Nor did he do so for certain post-1977 copyrights. [This indicates an understanding that the TIAA Debt (at least) prevents the current exercise of termination rights.]

A host of additional impediments existed to prevent any heirs from substantially damaging the "I Feel Good" Foundation's royalty interests. These efforts included motions to dismiss all claims of Brown's companion as invalid, a waiver signed by one

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of Brown's Heirs for the TIAA Debt, and others.

In order to protect the "I Feel Good" Foundation's copyrights, the estate first had to root out non-heirs and those who had waived any claim to Brown's assets. Then negotiation with heirs could begin.

The Estate's Heirs Protocol

In August 2008 Brown's fiduciaries were nearing the completion of a proper heirs-at-death determination begun just after Brown's death. When concluded, it would have provided the "I Feel Good" Foundation with both a sword and a shield to protect its copyrights for decades.<sup>14</sup>

Knowing the importance of this heirs determination, shortly after Brown's death estate attorneys established a brilliant and widely-publicized self-identification protocol to find Brown's claimed heirs. Anyone claiming to be a child of Brown was invited to step forward; pay \$300 for controlled, official DNA testing; and find out the biological truth.

Brown's well-publicized vasectomy about 20 years earlier meant that most requests for DNA testing were made by consenting adults who understood and submitted to the media frenzy surrounding the process.<sup>15</sup>

The significance of the heirs procedure was bolstered by the increased acceptance of the accuracy of properly controlled DNA testing.

By August 2008, the DNA protocol resulted in the rejection of a number of claimants and the identification of three biological children of Brown: Jeanette Mitchell (1), LaRhonda Pettit (2) and Cinnamon Memickle (3).

Brown's fiduciaries rewarded each proven biological child with a public announcement and acknowledgment of her status as an heir. [Like all of Brown's other heirs, they were excluded from the 2000 Trust and Brown's musical empire.]

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<sup>14</sup> Brown acknowledged as his "heirs" four of the five children born of his three marriages, Terry, Larry, Deanna and Yamma. He excluded daughter Lisa, acknowledged in his divorce from first wife Velma Warren. [Will. Trust. Div. Decree. Agreement]. He also acknowledged two children not born of his marriages. *In Terrorem* forfeiture clauses threatened termination of the grandchildren's education benefits and the personal effects he gave to the six. A prenuptial agreement, executed by Brown's (married) companion, waived all of her rights under state and federal law. After discovering that companion was married when she married Brown, he brought an action to void the marriage. It was settled with her agreement and a court order by which she waived any claim to be Brown's common law spouse.

<sup>15</sup> Only one minor claimed to be a child of Brown. Through a GAL he refused official testing.

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Brown's other possible but challenged heirs, none of whom had been DNA tested, included:

- a. 5 presumed children: Terry (4) Lisa (5), Larry (6), Deanna (7) and Yamma (8). Teddy is deceased. (9);<sup>16</sup>
- b. A minor ordered to take official DNA testing, but who had refused (10);
- c. An incarcerated adult whom Brown supported under court order during minority (11);
- d. Brown's companion who:
  1. Waived all state and federal rights in a 2001 pre-nuptial agreement;
  2. Then had a marriage ceremony with Brown although she was already married;
  3. Separated from Brown in 2003 when he discovered she was married;
  4. Obtained an annulment of her previous marriage in March 2004;
  5. Thereafter settled Brown's suit to void his marriage by Court order, finding they were living together and attaching her agreement never to claim to be Brown's common law spouse (12);
- e. Two other claimed-but-not-presumed children (13), and (14);
- f. A claimed grandchild, claimed child of deceased son (9);

Considering other turmoil surrounding Brown's assets <sup>17</sup> and the long-term importance of a correct determination of heirs-at-death, the heirs protocol had progressed at lightning speed. It was close to providing a court-sanctioned heirs-at-death baseline which the "I Feel Good" Trust could use and modify in order to help protect the foundation for the duration of the copyrights.

That changed on August 10, 2008.

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<sup>16</sup> On August 10, 2008 Brown's grandsons, beneficiaries of the 2000 Trust, or others, were seeking DNA testing of some or all of these, as well as of the minor claimant.

<sup>17</sup> Brown's original fiduciaries all resigned in 2007 under a substantial cloud after more than \$12 million secretly misappropriated since 1999 was discovered. One is now deceased. David Cannon was indicted for felony breach of trust for all years 1999 - 2006 and for uttering a forged compensation agreement in 2008. To date he had not been tried. In 2010 Dallas, Brown's longtime attorney, filed bankruptcy. Schedules related to Dallas' filing show that his largest asset is a \$6 million claim he asserts against Brown's Estate and the 2000 Trust.

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"No, no, no, no (don't leave me this way)"<sup>18</sup>

On August 10, 2008 the AG's staff and some of the claimed heirs<sup>19</sup> met privately and reached the following private agreement:

1. Some of Brown's claimed heirs, including Brown's companion and excluding Brown's proven heirs, were declared to be Brown's heirs "for all purposes."
2. The AG proposed to give more than half of Brown's assets to these persons, all of whom had been specifically disinherited by Brown from his copyrights.
3. The AG agreed to prevent DNA testing of the parties to his agreement.
4. The AG agreed to replace Brown's fiduciaries with ones of their mutual choosing.
5. The AG and parties all agreed not to say anything bad about each other or the Agreement they had reached.

After signing the August 10 Agreement, with no apparent knowledge of the devastation he was causing the "I Feel Good" Trust's copyrights, the AG moved on to other matters and left the rest of the destruction of the "I Feel Good" Foundation to his staff and the appointee/fiduciary the AG selected.<sup>20</sup>

Within months, an AG staffer promised Brown's son an exclusive right to buy the James Brown assets – including his 850+ copyrights. [Ltrs. dtd. 2/39/09 and 2/30/09.]

Certain that Brown's fiduciaries could not support the August 10 deal, the AG's staff sought and obtained an "independent" person to evaluate the secret agreement for the Court.

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<sup>18</sup> "No, no, no, no (don't leave me this way)" was published in 1964. The earliest possible year it might be subject to termination is 2020.

<sup>19</sup> The AG did not notify any of Brown's fiduciaries or the three known biological heirs of James Brown of the meeting until after he had signed the August 10, 2008 agreement. [Exhibit B]

<sup>20</sup> According to the AG's senior assistant, beginning in the fall of 2007 six attorneys and six staff members worked on James Brown matters, but none undertook to inquire about or understand Brown's copyrights, even though the copyrights were generally known to make up about half the value of Brown's music empire. Beginning August 10, 2008, the AG relied on advice of counsel for the companion and other "settling parties" whose interest in Brown's copyrights was directly adverse to that of the "I Feel Good" Foundation, but who advised that they now "spoke as one" with the AG.

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On January 30, 2009, three weeks after his appointment--with no knowledge of the Federal Copyright Act, Brown's estate plan, or the tax impact of the AG's deal--the AG's appointee recommended it to the court.

Amazingly, appointee had not reviewed a single copyright or contract -- considering it beyond the scope of his assignment.

After the recommendation, the AG announced that he had selected appointee -- already trustee for Brown's companion and the disinherited settling relatives -- to be the fiduciary for Brown's estate plan, including the "I Feel Good" Foundation.

On the strength of appointee's recommendation an overworked circuit court judge approved the AG's deal.

A last glimmer of hope existed for the copyrights given to the "I Feel Good" Foundation -- the circuit court did not specifically determine that the parties to the AG's deal were Brown's heirs.

The AG's appointee would try to fix that.

"Everybody's doing the hustle and dead on the double bump"<sup>21</sup>

At first the AG appears to have been oblivious to the destruction his August 10 Agreement would cause Brown's copyrights and the "I Feel Good" Foundation. On the other hand, Brown's disinherited claimed heirs and companion knew exactly how important their newly-invented status as Brown's sole heirs was. It was this status--a gift not from Brown but from the AG--that would enable them to execute their plan for the destruction of the "I Feel Good" Foundation.

The monster that the AG had inadvertently created was raising its head. And his appointee knew which side to take.

By early 2009 AG's appointee--now trustee for the disinherited claimants--approved language added to the AG's deal after August 10 asserting that the termination rights of the newly-but-incorrectly determined "heirs"-at-death was of enormous value.

These "heirs" asserted that the termination rights--belonging to them -- not all properly-determined heirs over the duration of the copyrights -- were likely worth as much or more than Brown's publicity rights, 850+ copyrights and other assets. This sleight of hand became their justification for the AG's giving them about 65% of the "I Feel Good" Foundation *plus* the right to buy it all.

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<sup>21</sup> This copyright to "Everybody's doing the hustle and dead on the double bump" was issued in 1975 and renewed in 2003.

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In March 2009 Brown's fiduciaries used a compromise procedure to try to salvage Brown's copyrights for the "I Feel Good" Foundation by continuing with a correct heirs-at-death determination.<sup>22</sup> The AG's appointee, now committed to his role as trustee for Brown's companion, purchaser/son and some of the disinherited family rather than for the "I Feel Good" Foundation, declined.

And the AG never complained.

"Almost nothing"<sup>23</sup>

When it seemed things could not get worse for the "I Feel Good" Foundation, they did.

Soon after son obtained a right to buy all of Brown's assets and the appointee became his trustee, they began to question the \$100-million value of Brown's assets. This was surprising, since in 2008 son himself was involved in two separate letters of intent to purchase the same James Brown assets he was now devaluing for \$90-\$102 million.

The scheme to dismantle the Foundation proceeded, full steam ahead.

In August 2010, appointee announced he had secured an appraisal which would show that Brown's assets at death were worth less than \$12 million.

A sale to son at \$12 million would drive the final nail into the "I Feel Good" Foundation's coffin – reducing it from \$80 million to \$2 million or less.<sup>24</sup>

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<sup>22</sup> In an "offer of compromise" not normally published – but filed in James Brown Case No. 2008-CP-02-1647 – Brown's fiduciaries agreed for the Estate and 2000 Trust to acknowledge 4 of Brown's presumed children, proven children Cinnamon, LaRhonda, and Jeanette, and 3 others as Brown's heirs. Brown's companion, consistent with known facts, was rejected as an heir, but offered a payment to resolve her claim. With ten (10) children acknowledged as a non-exclusive group of Brown's heirs-at-death, Brown's estate and the "I Feel Good" Foundation would have been free to continue the heirs-at-death proceeding as to all others. In the future the "I Feel Good" foundation would have been free to "split heirs" as appropriate to a particular copyright.

<sup>23</sup> The copyright to James Brown's "Almost nothing" was issued in 1979. It will not be subject to possible termination before 2014.

<sup>24</sup> Son/prospective purchaser Terry, poised to buy James Brown's assets for as little as \$12 million, was part of two 2008 letters of intent by TJBL, LLC to purchase Brown's assets for \$90 - \$102 million. [Brown's original PR/Trustees sought about \$5 million each from the proposal, as well as options or a "kickback" from the purchaser. [Hg. 11/20/07, Case 122]. In early 2007 Terry's son and some family members issued a prospectus in early 2007 to raise \$200 million for the purchase of the James Brown assets.

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James Brown would have been rolling over in his. Between 2003 and 2006 he had earned about \$9 million each year.<sup>25</sup>

Think (about it)<sup>26</sup>

James Brown left two legacies – a musical legacy and a charitable legacy. Whoever benefits from it, Brown's musical legacy will live on. Brown's charitable legacy, the "I Feel Good" Foundation, cannot be recovered once it is lost. The dismantling of that legacy by the AG, his appointee and Brown's disinherited claimed relatives could have easily been avoided.

Unfortunately, it was not.

But it should serve as cautionary tale to other "needy and deserving" foundations holding valuable copyrights. It should also raise an alarm for all philanthropists and their estate planning advisors in states where the government, through activist attorneys general, is moving to take over the private property and operation of the private charitable foundations these private individuals.

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<sup>25</sup> In 2009 AG and appointee, at the behest of purchaser/son, rejected a 2-year publicity rights contract with GreenLight. Among other deceased celebrities, GreenLight has successfully exploited the publicity rights of Steve McQueen and Einstein. According to a May 2011 New York times Article, Einstein, whose publicity rights are claimed by Yeshiva University in Israel, earned more than \$60 million in 2010.

<sup>26</sup> The copyright to "Think (about it)" was issued in 1973.

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COMPILATION  
Registered Copyrights of James Brown  
1956 - 60 and 1978 - 81

<u>Date of Publication/ Copyright</u>	<u>Description of Works</u>	<u>Earliest Possible Termination</u>
1956	About a dozen works, including "Please, please, please"	2012
1957	About six songs, including "Fine old foxy self"	2013
1978	About 30 songs	2013
1958	About 12 songs, including "Try me"	2014
1979	About 15 songs, including "Mother popcorn"	2014
1959	About 5 songs, including "Good good lovin' "	2015
1980	About 35 songs, including "Get up offa that thing"	2015
1960	About 8 songs, including "And I do what I want"	2016
1981	About 16 songs, including "God has Smiled on me"	2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Civil Action No. 2011-CP-36-379

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as  
Attorney General of South Carolina,

Defendant.

**AFFIDAVIT  
SUPPORTING IMMEDIATE RELEASE  
OF McMASTER/WINGATE CONTRACT  
TO SUE BUCHANAN AND POPE**

Personally appeared before me, Thomas R. Young, Jr., who being duly sworn,  
deposes and says:

1. I am a resident of Aiken County.
2. I am over 18 years of age.
3. I make this affidavit based on my personal knowledge and belief.
4. I am a member in good standing of the South Carolina Bar with Bar

number 11643.

5. Currently, I am attorney of record for Robert L. Buchanan, Jr. and Robert L. Buchanan Law Office, P.A. in the declaratory judgment action filed against Buchanan by Cincinnati Insurance Company in federal court.<sup>1</sup> That action involves the malpractice coverage which is in place to defend and to indemnify Buchanan in the lawsuit filed in Richland County against Buchanan by the Attorney General of South Carolina ("Richland County lawsuit").

<sup>1</sup> Cincinnati Specialty Underwriters Ins. Co. v. Buchanan Law Office, P.A., et al. 3:10-cv-02986-WOB.

TM

6. The litigation retention agreement signed by former Attorney General Henry McMaster to authorize attorney Kenneth Wingate to sue Robert L. Buchanan, Jr. of Aiken is a document relevant to some of the issues in the declaratory judgment action filed by Cincinnati Insurance Company against Buchanan.

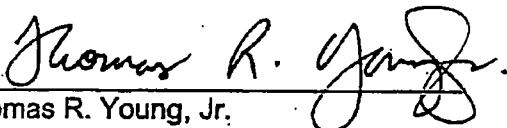
7. My understanding is that Buchanan attempted to obtain a copy of that contract in the Richland County lawsuit. The contract has not been produced in that action.

8. My understanding also is that litigation retention agreements entered into by the Attorney General of South Carolina are public documents.

9. I also understand that the Freedom of Information Act is intended to provide members of the general public with prompt access to public documents "at a minimum cost or delay." See S.C. Code Sec. 30-4-15 (emphasis added).

10. While I have the ability to issue a federal court subpoena upon the Attorney General of South Carolina to obtain the contract, it will save my client both time and money by having this Court rule that the contract should be released pursuant to the Freedom of Information Act.

FURTHER THE DEPONENT SAYETH NOT.

  
Thomas R. Young, Jr.

SWORN TO before me this  
day of December, 2011

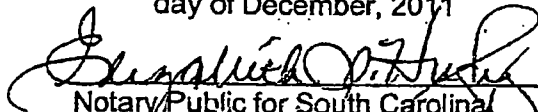
  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)  
My Commission expires: 3/3/13

Exhibit C

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF NEWBERRY ) CIVIL ACTION No. 2011-CP-36-379  
 )  
ADELE J. POPE, ) AFFIDAVIT OF DEBORAH W. SPENCE  
 ) ASKING FOR RELEASE UNDER  
PLAINTIFF, ) FREEDOM OF INFORMATION ACT OF  
 ) AG HENRY MCMASTER'S 2010 CONTRACT  
V. ) WITH ATTY. KENNETH B. WINGATE TO  
 ) SUE ADELE POPE AND ROBERT  
ALAN WILSON, IN HIS CAPACITY AS ) BUCHANAN FOR APPEALING ORDER  
ATTORNEY GENERAL OF SOUTH ) IN JAMES BROWN AIKEN CASE  
CAROLINA, )  
 )  
DEFENDANT.)

PERSONALLY APPEARED BEFORE ME, DEBORAH W. SPENCE, WHO BEING DULY SWORN, DEPOSES AND SAYS:

1. I AM A RESIDENT OF LEXINGTON COUNTY AND OVER 18 YEARS OLD.
2. THIS AFFIDAVIT IS BASED ON MY PERSONAL KNOWLEDGE AND BELIEF.
3. I AM THE WIDOW OF FLOYD D. SPENCE.
4. THROUGH THE YEARS I HAVE KNOWN ATTORNEY GENERAL ALAN WILSON AND HIS FAMILY, AND HAVE BEEN REPRESENTED BY A MEMBER OF FORMER AG HENRY MCMASTER'S FAMILY.
5. KENNETH B. WINGATE HAS SERVED BOTH AS MY LAWYER AND ATTORNEY FOR MY HUSBAND'S ESTATE.
6. MRS. POPE BECAME MY LAWYER IN 2002, RECOMMENDED BY AG MCMASTER'S BROTHER WHO HAD WORKED FOR MY HUSBAND.
7. I LOVE MUSIC AND HAVE BEEN A FAN OF JAMES BROWN FOR DECADES.
8. IN 2007 MRS. POPE BECAME TRUSTEE OF JAMES BROWN'S TRUST, WHICH INCLUDED THE JAMES BROWN "I FEEL GOOD" PRIVATE FOUNDATION. I LEARNED THEN THAT BROWN HAD GIVEN HIS ENTIRE MUSIC EMPIRE TO PROVIDE

000387

SCHOLARSHIPS FOR NEEDY AND DESERVING STUDENTS.

9. SINCE LEARNING THAT HENRY MCMASTER - OVER THE OBJECTION OF BROWN'S TRUSTEES - GAVE MORE THAN HALF OF THE "I FEEL GOOD" FOUNDATION TO DISINHERITED CLAIMED RELATIVES, I HAVE FOLLOWED THE AIKEN CASE FAIRLY CLOSELY.

10. I WAS DISTURBED IN THE SPRING OF 2010 WHEN I LEARNED THAT HENRY MCMASTER HAD SUED MRS. POPE USING KENNETH WINGATE, A PRIVATE ATTORNEY WHO ALSO REPRESENTED SOME OF BROWN'S DISINHERITED RELATIVES.

11. I WAS TROUBLED AND INCREDULOUS THAT THE AG WOULD ALLOW MR. WINGATE AND MR. BAUKNIGHT TO FIGHT THE PEOPLE WHO WERE TRYING TO SAVE THE "I FEEL GOOD" FOUNDATION AND GET MONEY FOR PEOPLE BROWN LEFT OUT OF HIS ESTATE PLAN, AND I STILL DON'T UNDERSTAND HOW HE COULD DO THAT.

12. IN AUGUST OF 2011 WHEN I READ THAT MRS. POPE HAD FILED A FREEDOM OF INFORMATION ACT SUIT TO GET THE CONTRACT MCMASTER SIGNED WITH KEN WINGATE I THOUGHT IT MIGHT ANSWER SOME OF MY QUESTIONS.

13. I KNOW THAT AG WILSON HAS STATED THAT ALL OF HIS LITIGATION RETENTION AGREEMENTS WITH OUTSIDE COUNSEL ARE PUBLIC DOCUMENTS, AND BELIEVE THAT THEY SHOULD BE.

14. I THINK THAT THE MCMASTER'S CONTRACT WITH KEN WINGATE SHOULD BE DELIVERED RIGHT AWAY BECAUSE THE PUBLIC HAS A RIGHT TO KNOW WHETHER WHAT AG MCMASTER AND WINGATE AGREED TO WAS APPROPRIATE.

15. I AM CONCERNED THAT AG WILSON'S REFUSAL FOR MORE THAN FOUR MONTHS TO RELEASE A PUBLIC DOCUMENT MAKES IT APPEAR THAT HE IS COVERING UP AN INAPPROPRIATE OR QUESTIONABLE AGREEMENT.

16. ON OCTOBER 31, 2011 ATTORNEY DAVID BLACK OF NEXSEN PRUET,

SPEAKING FOR RUSSELL BAUKNIGHT, MADE VICIOUS STATEMENTS ABOUT MRS. POPE AND MR. BUCHANAN THAT WERE REPEATED IN HUNDREDS OF MEDIA OUTLETS.

16. THE NEXT DAY, I HEARD ANOTHER NEXSEN PRUET LAWYER AND MR. JONES FROM AG WILSON'S OFFICE TRYING TO JUSTIFY TO OUR SUPREME COURT WHY HENRY MCMASTER GAVE AWAY WHAT WAS CORRECTLY DESCRIBED AS BROWN'S "NOBLE ESTATE PLAN."

16. SINCE THEN, AG WILSON'S REFUSAL TO RELEASE THE MCMASTER CONTRACT WITH WINGATE HAS FOCUSED MY ATTENTION ON OTHER TROUBLESOME THINGS MCMASTER DID - OR IS SAID TO HAVE DONE - IN CONNECTION WITH JAMES BROWN'S ESTATE AND TRUST, AND I BELIEVE THE PUBLIC HAS A RIGHT TO LEARN WHAT REALLY HAPPENED..

17. I RECENTLY READ THAT JAMES BROWN MADE A TAPE DISCUSSING HIS INTENTIONS IN HIS WILL AND TRUST WHICH MCMASTER APPARENTLY DID NOT CONSIDER WHEN HE GAVE AWAY HALF OF THE "I FEEL GOOD" TRUST.

17. THIS MORNING I READ THAT BROWN'S GRANDSON FORLANDO, WHO APPEARED ON TELEVISION IN 2008 WITH MCMASTER TO CRITICIZE MRS. POPE AND MR. BUCHANAN, NOW CONFIRMS THAT THEY PROPERLY DEFENDED BROWN'S ESTATE PLAN.

18. MOST TROUBLESOME, HOWEVER, IS AN ARTICLE BY SUE SUMMER DATED DECEMBER 7, 2011 IN WHICH FORLANDO DESCRIBES A VISIT HE AND HIS FATHER TERRY HAD TO AG MCMASTER'S OFFICE BEFORE TERRY BROWN ABANDONED HIS SUPPORT OF BROWN'S NOBLE ESTATE PLAN WHICH STATES:

"AFTER MY FATHER REFUSED TO JOIN THE FIGHT (TO CONTEST THE WILL AND TRUST), THEY CALLED US TO SOUTH CAROLINA, TO THE ATTORNEY GENERAL'S OFFICE. THEY SAID THEY COULD SETTLE WITHOUT US, AND THEY'D MAKE SURE WE GOT NOTHING. WE WERE GIVEN AN ULTIMATUM," FORLANDO SAID.

19. I AM INFORMED AND BELIEVE THAT AG WILSON SHOULD IMMEDIATELY  
RELEASE THE WINGATE CONTRACT.

FURTHER DEPONENT SAYETH NOT.

  
DEBORAH W. SPENCE

SWORN TO BEFORE ME THIS  
8TH DAY OF DECEMBER, 2011

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 7/13/2016

(L.S.)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )  
 )  
 Adele J. Pope, )  
 Plaintiff, )  
 v. )  
 Alan Wilson, in his capacity as )  
 Attorney General of South Carolina, )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

AFFIDAVIT  
 SUPPORTING IMMEDIATE RELEASE  
 OF McMASTER/WINGATE CONTRACT  
 TO SUE BUCHANAN AND POPE

Personally appeared before me, Thomas H. Pope III, who being duly sworn,  
 deposes and says:

1. I am a resident of Newberry County and a practicing attorney.
2. I am over 18 years of age.
3. Since the death of James Brown, I have read news reports about the various James Brown cases.
4. I understand that a request under the S.C. Freedom of Information Act has been made by at least one newspaper reporter for a copy of the public litigation retention agreement signed by former Attorney General Henry McMaster to authorize attorney Kenneth Wingate to sue Robert Buchanan of Aiken and Adele Pope of Newberry because they appealed an Aiken County settlement related to James Brown.
5. The Freedom of Information Act is intended to provide all members of the public with easy and prompt access to public documents. As far as I know, it contains no provisions that tie its application to any pending action in the same or any other county.

6. To deny prompt relief under the F.O.I.A serves only to encourage secrecy in government.

7. As I understand, all litigation-retention contracts between the Attorney General and private attorneys are public documents, and the documents sought in this suit are the only ones of this type that the Attorney General's office has ever refused to produce.

8. While I am the husband of plaintiff, I affirm that this does not affect my view of the legitimacy of the F.O.I.A. suit to produce what even the Attorney General's office has not denied are public documents.

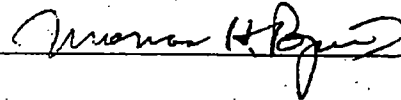
9. I was not asked to write this affidavit by anyone. I do so voluntarily.

10. The public interest in James Brown, legendary musician and philanthropist (per his Will), could not be greater. The public interest in the former Attorney General's decision to hire private attorneys under a cloak of secrecy is equally great.


11. As a former legislative sponsor of the Whistleblower statute, I have always been a proponent of openness in government.

12. I believe that any citizen or journalist who asks for this public document should get it without delay.

FURTHER-DEPONENT SAYETH NOT.



SWORN TO before me this  
8<sup>th</sup> day of December, 2011

 (L.S.)  
Notary Public for South Carolina  
My Commission expires: 8-12-2020

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )  
 )  
 Adele J. Pope, )  
 Plaintiff, )  
 v. )  
 Alan Wilson, in his capacity as )  
 Attorney General of South Carolina, )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

AFFIDAVIT OF SUE SUMMER  
 SUPPORTING IMMEDIATE RELEASE  
 OF THE McMASTER/WINGATE CONTRACT  
 TO SUE BUCHANAN AND POPE

Personally appeared before me, Sue Summer, who being duly sworn, deposes  
 and says:

1. I am a resident of Newberry County; over 18 years of age; and make this affidavit based on my personal knowledge and belief.
2. I am a journalist and contribute to the *Newberry Observer*.
3. During the last few months, I have written several articles for the *Observer* on the various James Brown court cases. In writing these articles, I have done extensive factual research, including the review of many documents and interviews with several people.
4. I have requested that the Attorney General's office provide me with a copy of the Litigation Retention Agreement between former Attorney General McMaster and attorney Kenneth Wingate, which is one of the documents Plaintiff Adele Pope seeks in this action, no fewer than 6 times.
5. I have reviewed a recent letter of Senior Assistant Attorney General C. Havird

Jones confirming that this is a public document, but have not to date been provided a copy of this document.

6. I have reviewed other Litigation Retention Agreements which the Attorney General has posted on his website, and am informed and believe that each of them states that it is a public document.

7. As both a journalist and a citizen, I have an interest in seeing the Litigation Retention Agreement, which I understand Attorney General McMaster signed in his official capacity.

8. I believe that the spirit of the Freedom of Information Act is violated if journalists and members of the general public are denied both easy and prompt access to public documents.

9. I do not believe my FOIA rights or the rights of the general public should be tied to a Richland County lawsuit.

FURTHER DEPONENT SAYETH NOT.

Sue Summer  
SUE SUMMER

SWORN TO before me this  
day of December, 2011

Nina Elizabeth Brooks (L.S.)  
Notary Public for South Carolina  
My Commission expires: 2/17/2015



3. I am informed and believe that all are based on personal knowledge and belief; are not hearsay, or come under an applicable exception; are relevant; and support one or more of the material facts in this case, namely:

a. I, along with the general public, have been damaged by the AG/Legacy Trust's failure to promptly deliver the public information I requested under FOIA.

b. The role, if any, of the AG's office in Bauknight/Terry Brown's manipulation of the value of Brown's music empire which the AG took over is of great public interest.

c. FOIA compliance relates only to the delivery of public documents.

d. Essential to the right of individuals and the public under FOIA is that the public documents be delivered at a minimum of cost and delay, without regard to any use to be made of the documents.

e. At least in the civil context, the claims, defenses, lawsuits, publications, articles, critique of public officials and all other uses which are or could result from the release of public documents under FOIA is unrelated to the FOIA request/claim itself, which is a separate and distinct claim.

f. The McMaster Legacy Trust, having been created by a public official acting in his official capacity; holding an expectancy in private property taken over by a public official; and run by a trustee who serves at the pleasure of the AG, is a public body under FOIA.

g. My legal fees and costs to date of approximately \$7,525, and future costs as described below, are reasonable because AG Wilson refuses to produce the public documents I requested under FOIA and the Legacy Trust has both refused them and threatened me with sanctions.

h. Where the State/Legacy Trust is represented by a seasoned Assistant Deputy AG and has authorized the Legacy Trust to engage a Superlawyer whose hourly rate in 2007 was \$500 to fight release of public documents, my attorney's fees of \$100 per hour (with a maximum of \$1,500 per month for this case), and costs are reasonable to seek Court direction for FOIA compliance, and McMaster's Legacy Trust and the AG/State should be directed, jointly and severally, to pay such attorney's fees and costs until each complies with my FOIA request.

i. If AG Wilson and McMaster's Legacy Trust are not charged with my cost of securing their FOIA compliance which should have been made 6 months ago,

while the awesome power and resources of the State are used, and thousands of dollars of State-approved costs are being incurred for Mr. Lewis to fight FOIA compliance, FOIA will be rendered meaningless – damaging both the general public and me.

j. The Legacy Trust's threat to sanction me for exercising my FOIA rights was made in bad faith.

k. The affidavit of Tom Young, Esq., and presence of the firm of Camden Lewis, Esq., former counsel to Brown fiduciaries David Cannon and Albert Dallas demonstrate that my FOIA claims in this suit for compliance, are not the same or similar to Richland County Case 4900 or any other James Brown case.

3. I am informed and believe that the affidavits of Mr. Smith, Mr. MacDonald and Ms. Summer constitute expert opinions by writers and/or journalists of the importance to the press and the public of swift and inexpensive compliance with FOIA.

4. I am informed and believe that the affidavits of Mr. Young and Mr. Pope constitute expert opinions as to FOIA's role in open government and the public's right to prompt access to public documents under FOIA at a minimum cost or delay.

5. Mr. Lewis' former fiduciary clients have taken positions directly opposed to the Wingate Firm, sole counsel in Case 4900 to Brown's companion, the Legacy Trust and other persons Brown intentionally disinherited, as follows:

a. The Lewis Firm and their clients vigorously assert that Tommie Rae was not married to Brown and is entitled to none of Brown's assets, while Wingate/Bauknight assert she is his wife, and should get 23 ½ % of Brown's assets.

b. The Lewis Firm knew nothing of Powell Goldstein's attempt to move Brown's 2000 Trust to Georgia, or Cannon and Dallas' attempts to obtain options or a "kickback" in the IPO to be created on a sale of Brown's assets, while the Bauknight and the Legacy Trust have worked directly with Powell Goldstein to secure for Terry Brown, a joint venturer with Cannon and Dallas, the right to buy Brown's assets.

c. The Lewis Firm's clients valued Brown's worldwide music empire at death at about \$85 Million, based in large part on a \$90 - \$100 Million offer in October

2007. The Legacy Trust/Bauknight assert there was no offer and the value of the music empire is \$4.7 Million

d. The Lewis Firm's clients collected, and agreed to make public, the diary of Brown's companions and other records confirming she was not Brown's wife and had waived any claim to be his spouse or enjoy his property.

e. The Lewis Firm's clients established a proper DNA protocol to determine heirs-at-death under the Federal Copyright Act. The Legacy Trust made an incorrect determination, omitting proven heirs and including those who are not.

6. I am familiar with the Lewis Firm's legal services to the Estate/2000 Trust for 9 months in 2007 because Bob Buchanan and I were SA's at the time, and later – as PR/Trustees -- reached a stipulation with the Lewis Firm describing in detail the nature, extent and limitations of their services.

7. The stipulation was made in connection with the Lewis Firm's approximately \$595,000 claim for legal services to the Estate/Trust in 2007, which claim is still pending.

8. The Lewis Firm, like attorney Rodney Peoples, represented Dallas and Cannon as fiduciaries only, refusing to help them file \$10+ Million in commission claims.

9. The Lewis Firm knew about the \$100 Million offer and was present when it was discussed with the Court on November 20, 2007, but did not know Dallas and Cannon were secretly seeking option or a "kickback" from the purchasers.

10. While represented by the Lewis Firm, Dallas and Bradley filed a sworn Inventory valuing Brown's music empire at about \$85 Million – based, at least in part, on the \$100 Million offer (LESS the TIAA debt).

11. The Lewis Firm and its fiduciary clients took the following steps to protect Brown's Estate Plan:

- a. gathered and made public Brown's companion's personal diaries, contracts and lawsuits, to demonstrate she knew she was not married to Brown when he died;
- b. established, with attorney Peeples, a proper DNA protocol, which identified Pettit, Parris and Mitchell as Brown's children and heirs;
- c. obtained Brown's vasectomy records, sworn testimony and other documents showing companion's son was not likely Brown's son;
- d. Sought DNA testing of all who claimed to be Brown's heirs.

11. When the Lewis Firm became aware that Cannon and Dallas were involved in more than \$12 Million of misappropriations from Brown, including the \$5 Million "Check to Nobody" Cannon cashed and kept in 1999, they advised Dallas and Bradley to resign<sup>1</sup>.

12. Since the resignations of Cannon and Dallas, the Lewis Firm has remained loyal to its representation of them as fiduciaries, although Mr. Babcock, along with Bradley, was called to testify in 2008 that – contrary to what his former client Dallas said – Mr. Lewis did not help or advise Dallas and Cannon to fabricate a second, post-death Schedule B to the 2000 Trust.<sup>2</sup>

13. I am informed and believe that Lewis' representation of the Legacy Trust in this FOIA case is unrelated to the primary claims, counterclaims, and main thrust of

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<sup>1</sup> Cannon had already resigned in August 2007 after which the Lewis Firm obtained court approval NOT to represent him in answering discovery requests.

<sup>2</sup>Dallas had testified that Mr. Lewis, hired in February 2007, helped him fabricate the post-death Schedule B. Testimony of Mr. Babcock and Bradley confirmed not only had the Lewis Firm had no part in the fabrication, but that it was done after Brown's death and BEFORE January 3, when it was presented to Bradley as part of the 2000 Trust. The Lewis Firm, without knowledge of the fabrication, had distributed copies of the fabricated post-death Schedule B as part of the 2000 Trust.

Case 4900 for the past 18 months, namely:

- a. Should Tommie Rae and Mr. Wingate's other private plaintiffs, be required to appear at depositions, which they have refused to attend for almost a year ?
- b. Should Mr. Wingate's private clients be released from default as to the counterclaims Bob Buchanan and I have against them?
- c. Was it illegal or improper for Mr. Wingate to bring a tort suit on behalf of AG McMaster to benefit Tommie Rae and Wingate's other private clients where the AG's office did not sign pleadings or appear as counsel for the AG/State?
- d. Was it illegal or improper for Russell Bauknight to assert that he speaks on behalf of former AG McMaster?
- e. Was the tens of millions of dollars damage to Brown's Estate Plan done by Bob Buchanan and me, or by Bauknight, Tommie Rae and Terry by:
  1. Thwarting the collection of \$12+ Million taken from Brown by Cannon and others and the \$1.2 Million owed by Cannon for costs of Aiken Case 122?
  2. Fabricating Brown's heirs under the Federal Copyright Act?
  3. Manipulating the value of Brown's music empire so Terry can buy it?
  4. Telling the Supreme Court that Brown's Estate/2000 Trust has no corpus to speak of?
  5. Misrepresenting the impact of the Federal Copyright Act on Brown's assets?
  6. Representing to the Court and/or others that Brown's Estate/2000 Trust, even if properly managed, will have no value at some time between 2015 (Deanna) and 2023 (Bauknight).
  7. Destroying The James Brown "I Feel Good" Trust by the above actions?
  8. Protecting the interests of Tommie Rae and Terry over Brown's Estate/Trust?

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope  
ADELE J. POPE

SWORN TO before me this  
3rd day of January, 2012

[Signature] (L.S.)  
Notary Public for South Carolina  
My Commission expires: 7/11/11

000401

Exhibit A

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Case #2011-CP-36-379

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as  
Attorney General of South Carolina,

Defendant.

AFFIDAVIT SUPPORTING  
IMMEDIATE RELEASE OF  
F.O.I.A. DOCUMENTS

Personally appeared before me, Vic MacDonald, who being duly sworn, deposes and says as follows:

1. I am a resident of Newberry County, and I am a reporter for the *Manning Times*, which is a newspaper in Manning, SC.
2. I have been a journalist for over 35 years, and I have followed the articles in the *Newberry Observer* on the various James Brown court cases.
3. I am the recipient of numerous South Carolina Press Association Awards. I was a former editor for the *Newberry Observer*, the *Greenwood Index Journal*, and the *Florence Morning News*.
4. During my time as an editor of the *Newberry Observer*, the newspaper successfully sued to obtain a State Law Enforcement Division file in a matter concerning the Clinton-Newberry Natural Gas Authority, and the newspaper was the recipient of the SCPA's Reid Montgomery F.O.I.A. Award.
5. I understand that an F.O.I.A. request has been made to the SC Attorney General's office to get a copy of the "litigation retention agreement" between former Attorney General McMaster and his private attorneys.
6. It is my understanding that the Attorney General's office has not denied that the document is "public," but it has failed and refused to produce copies of this agreement.

7. As a journalist, I have attended numerous local and state governmental meetings, and I have followed the workings of local and state governments at various levels. I have made F.O.I.A. requests..

8. As a journalist, I believe that the letter and the spirit of the Freedom of Information Act is that public officials should give access to public documents promptly and completely. The spirit of that Act is violated if journalists and members of the general public are not allowed easy and quick access to public documents.

9. Although I am not a lawyer, I do not believe there are any exceptions to the production of documents requested under the Freedom of Information Act unless those documents are not considered "public."

10. I am aware that the Attorney General's office has posted on his website other private attorney agreements, as they are public documents.

11. I cannot imagine the reason why the documents requested in this suit should not be produced promptly, particularly considering the public importance of the late James Brown, his estate, and his philanthropy. I believe that the F.O.I.A. is intended to require prompt access to public documents and that there is great public interest in James Brown, his estate, and any challenges to his will or his estate intentions.

SWORN to before me this 9<sup>th</sup>  
day of December, 2011

Cynthia H. Joyner )  
(Notary Public for SC)

My Commission expires: Mar 28 2020

Vic MacDonald  
Vic MacDonald

000403

STATE OF SOUTH CAROLINA )

COUNTY OF NEWBERRY )

Adele J. Pope, )

Plaintiff, )

v. )

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

Defendant. )

IN THE COURT OF COMMON PLEAS

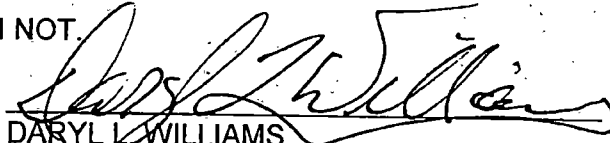
Civil Action No. 2011-CP-36-364

AFFIDAVIT OF DARYL L. WILLIAMS

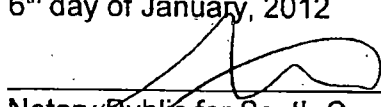
Personally appeared before me, Daryl L. Williams, who being duly sworn,  
deposes and says:

1. Attached is a true and correct copy of the letter I sent to Ms. Tracy Meyers today.
2. Neither Attorney General Wilson nor any member of his staff is attorney of record in Case No. 2010-CP-40-4900, and none attended the status conference.

FURTHER DEPONENT SAYETH NOT.

  
DARYL L. WILLIAMS

SWORN TO before me this  
6<sup>th</sup> day of January, 2012

  
Notary Public for South Carolina

My Commission expires: 7/13/2016

(L.S.)

Jeter & Williams, P.A.

ATTORNEYS AND COUNSELORS AT LAW

Edvin Russell Jeter  
Daryl L. Williams

1204 Main Street, Suite 200 (29201)  
Post Office Box 7125  
Columbia, South Carolina 29202

Tel. 803/765-0600  
Fax 803/765-0619

January 6, 2012

Hon. Tracy Meyers  
Senior Assistant Attorney General  
Office of the South Carolina Attorney General  
PO Box 11549  
Columbia, SC 29211-1549

Re: Letter of January 5, 2012 to Ms. Sue Summer

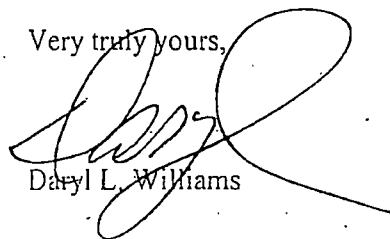
Dear Tracy:

I am in receipt of your letter of January 5, 2012 to Ms. Sue Summer. As you know, I am one of the attorneys representing Adele J. Pope in the Richland County civil case (No. 4900) you mention in that letter, as well as a suit pending in the United States District Court.

Your description of the events at the December 12, 2011 status conference held in No. 4900, at which neither you nor any attorney on the AG's staff were present, reflects a misunderstanding of what occurred. No counsel for Mrs. Pope stopped or attempted to stop the production of any document to the Court or to anyone else.

With best personal regards.

Very truly yours,



Daryl L. Williams

000405

2012-350

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-364

Adele J. Pope, )  
Plaintiff, )

AFFIDAVIT OF ADELE J. POPE )  
SUPPORTING ATTORNEY'S FEE )  
AND COSTS )

v. )

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

Defendants. )

2012 JAN 17 PM 4:32  
JANETTE W. MCBRIDE  
CLERK OF COURT  
RICHLAND COUNTY  
FILED

STATE OF SOUTH CAROLINA )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

Adele J. Pope, )  
Plaintiff, )

v. )

Alan Wilson, in his capacity as )  
Attorney General of South Carolina, )

Defendant. )

2012 JAN 10 A 11:33  
JACKIE S. BOWERS  
CLERK OF COURT  
NEWBERRY COUNTY  
FILED

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes and says:

1. The Office of Attorney General Wilson and the trustee of the James Brown Legacy Trust who serves at his pleasure, with the aid of many AG/State-employed and private attorneys, have refused to comply with my several requests since June 2011

under the South Carolina Freedom of Information Act ("FOIA"), and have vigorously fought release of public documents.

2. The reasonable fee and costs of my attorney Adam Silvernail to attempt to correct this systematic refusal to comply with my FOIA requests are at least:

a. To obtain the contract and documents by which the AG/State authorized Kenneth Wingate, Esq. to bring a tort suit for tens of millions of dollars of alleged lost in the name of the AG/State against Bob Buchanan and me, and authorized Russell Bauknight to speak for the State/AG in the suit: ("FOIA 1"): \$9,000, plus costs of (approx.) \$300, plus future fees and costs.<sup>1</sup>

b. To obtain a copy of the Legacy Trust and the AG's correspondence about a less-than \$4.7 Million valuation he used as a basis to assert to our Supreme Court that I committed the crime of overstating Brown's assets by \$79 Million: \$9,000 plus \$250 costs, plus additional fees and costs to compliance.

c. Advice (no fee agreement) about the AG's related failures comply with FOIA. Approx. \$1,300

Total to date: \$19,850

3. I am informed and believe that the fees of Mr. Silvernail are extremely reasonable in light of the factors to be considered, namely:

- a. The nature, extent and difficulty of the case;
- b. The time necessarily devoted to the case;
- c. Professional standing of counsel;
- d. Contingency of compensation;
- e. Beneficial results obtained;
- f. Customary legal fees for similar services. See Donahue v. Donahue, 299 S.C. 353, 384 S.E.2d 741 (1989).

4. While Mr. Silvernail has practiced law for only a year, he has extensive knowledge of the James Brown matters from working in my office for several years when Bob Buchanan and I were SAs, and then PRs under Brown's Will and trustees of

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<sup>1</sup> For each case, Mr. Silvernail has contracted to work at a rate of \$100 per hour, with a maximum of \$1,500 per case for each month or part the case has been pending.

the James Brown 2000 Irrevocable Trust.

5. Mr. Silvermail is also working on non-FOIA James Brown matters pending in Aiken County, the S. C. Supreme Court and elsewhere.

6. I am informed and believe that Mr. Silvermail knows as much or more about the Estate, 2000 Trust and James Brown cases as any other single attorney, including:

- a. The 5+ State-paid attorneys who work[ed] for AG McMaster and AG Wilson on James Brown matters;
- b. The 10+ Nexsen Pruet attorneys hired by McMaster's appointee Bauknight to secure for the Legacy Trust what McMaster "gave" the Legacy Trust when he took over Brown's assets;
- c. The Lawyers at Lewis & Babcock, even though they billed hundreds of thousand of dollars for legal services to the Estate/2000 Trust in 2007;
- d. The 4 lawyers at Atlanta firm, Powell Goldstein, LLP, (now Bryan Cave) who have advised Cannon, Dallas, Forlando and Terry Brown since 2007.

7. I am informed and believe that Mr. Silvermail's \$100 per hour is reasonable for legal services of the type and quality rendered by him in the FOIA cases, especially when compared to the rates and charges of those other attorneys, such as:

a. Lewis & Babcock, whose attorneys and their hourly rates in James Brown matters in 2007 were:

Camden Lewis, Esq.	\$500
Keith Babcock, Esq.	\$300
Arial King, Esq.	\$225
Jonathan Harling, Esq.	\$200

b. Sweeney, Wingate & Barrow, attorney listed below, with rates unverified:

Kenneth Wingate, Esq.  
Rett Kendall, Esq.  
Mark Gende, Esq.

c. State/AG attorneys McMaster, Wilson, Jones, Nicholson, Jowers, Smith, and

Meyers,<sup>2</sup> for whom A. G. Wilson asserts he has no separate records to show time spent or costs incurred by each on Brown matters.

d. Nexsen Pruet Attorneys:

David Black, Esq.  
Wm. Wilkins, Esq.  
Wm. Klett, Esq.  
F. Kingsmore, Esq. and others

8. I am informed and believe that the nature, extent and difficulty of James Brown work, including this FOIA case, is indicated by a single monthly bill, part of the claim of Lewis & Babcock filed in 2007, attached hereto as Exhibit A.

9. I am personally familiar with the services rendered as described on Exhibit A.

10. The Lewis & Babcock bill, covers a period of just 15 working days during which the firm billed more than Thirty Thousand (\$30,000.00) dollars in legal fees.<sup>3</sup>

11. While Judge Early has not yet ruled on the Lewis & Babcock claim for payment, Schedule A demonstrates what is involved in working on Brown cases.

12. As for beneficial results, Mr. Silvermail, has not yet obtained the FOIA documents. He has, however, made substantial progress on bringing to light questionable actions and practices of the Office of the AG, including:

a. That the McMaster/Wingate contract to sue Buchanan/Pope which AG Wilson said in September he was ready and more than willing to provide may not even be a contract binding on the State.

b. That AG Wilson is taking direction about how to handle FOIA requests from private attorney Wingate, even though the State's standard Litigation Retention Agreement requires that Wingate, if under contract with the State,

---

<sup>2</sup> In response to a FOIA request, AG Wilson, through AG Meyers, notified me in October that AG Wilson has no separate records of the time spent and costs incurred on James Brown matters by the many attorneys in the AG's office who have worked on James Brown matters since 2007.

<sup>3</sup> The sole entry by Mr. Lewis (ACL) during the month was a \$300 charge for 6/10 of an hour of "fact investigation."

comply with FOIA and take directions from the AG.

c. Russell Bauknight apparently brought suit against me speaking on behalf of the Attorney General of South Carolina when he had no authorization to do so.

d. Mr. Wingate apparently brought a contingency fee lawsuit against me on behalf of the AG/State with no contract to do so.

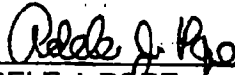
e. One page of the 16-page "contract" document is now either missing or has not been identified.

13. I am aware that several attorneys – myself included – have recommended Mr. Silvermail to people seeking legal services because we trust his scholarship and integrity.

14. Both Mr. Silvermail and I have worked vigorously to keep costs down in these FOIA matters, and I am informed and believe we have done so.

15. I am informed and believe that all of the legal fees I have requested in FOIA 1 and FOIA 2 are reasonable; and should be charged to Defendants, jointly and severally in FOIA 1, with continuing fees and costs until each has fully complied with FOIA.

FURTHER DEPONENT SAYETH NOT.

  
ADELE J. POPE

SWORN TO before me this  
9th day of January, 2012

  
Notary Public for South Carolina

My Commission expires: 7/18/2016

(L.S.)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS  
FOR THE EIGHTH JUDICIAL CIRCUIT

Adele J. Pope, )  
 )  
Plaintiff, )

C/A No. 11-CP-36-364

vs. )

DEFENDANT JAMES BROWN  
LEGACY TRUST's MEMORANDUM  
IN SUPPORT OF THE MOTION TO  
DISMISS AND THE MOTION TO STRIKE

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

The Defendant James Brown Legacy Trust, by Russell L. Bauknight, its Trustee ("Legacy Trust"), by and through its undersigned attorney, hereby adopts and incorporates all arguments of Defendant Alan Wilson, as set forth in the Memorandum of Attorney General in Support of Motion to Dismiss and Motions to Strike and in Opposition to Summary Judgment, in support of Legacy Trust's Motion to Dismiss and Motion to Strike Affidavits.

A. Camden Lewis  
Ariail E. King  
LEWIS, BABCOCK, & GRIFFIN LLP  
P.O. Box 11208  
Columbia, South Carolina 29211

By: 

Ariail E. King

Attorneys for Defendant James Brown Legacy  
Trust, by Russell L. Bauknight, its Trustee

Columbia, South Carolina

January 9, 2012

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STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Adele J. Pope,

Plaintiff,

vs.

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

Defendants.

Case No. 2011-CP-36-00364

**AFFIDAVIT OF RUSSELL L.  
BAUKNIGHT**

PERSONALLY APPEARED BEFORE ME, the affiant, Russell L. Bauknight, who,  
being sworn, deposes and states the following:

1. I am a resident of Richland County, South Carolina;
2. The principal place of administration and usual place of business for the below mentioned Estate and Trusts is located at 1517 Gervais Street, City of Columbia, Richland County, South Carolina 29201;
3. For nearly three years I have served as the court-appointed Personal Representative and Trustee of the James Brown Estate and August 1, 2000, Irrevocable Trust Agreement (Trust);
4. For nearly three years I have also served as the Trustee for the James Brown Legacy Trust. The Legacy Trust was created pursuant to a settlement agreement that ended years of litigation surrounding the validity of James Brown's Will and Trust.
5. As its Trustee, I manage, control, and oversee the Legacy Trust. While the South Carolina Attorney General has a right to remove and replace me, the beneficiaries of the Legacy Trust—the James Brown Children, for example—also have the right to remove me pursuant to the Trust Code.
6. Ms. Adele Pope appealed the settlement agreement and that appeal is pending at

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the South Carolina Supreme Court; both briefing and oral argument have already occurred in that appeal and the parties are awaiting the Court's opinion;

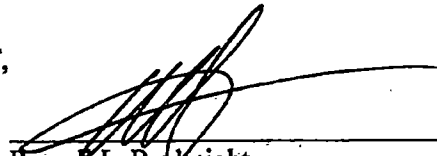
7. At the briefing stage of the appeal, Ms. Adele Pope affirmatively stated that "[p]rivate foundations such as the 'I Feel Good' foundation/trust are not public charities." (Appellants' Brief, p. 5) (attached as Exhibit A)). Her position that the Trust is private can be found throughout her briefs. (E.g., *id.* at pp. 3,4,5,6,7; Appellants' Reply Brief, pp. 2,5);
8. The Trust was to be funded with the private property of James Brown. Consequently, Ms. Adele Pope correctly referred to the Trust in her brief as "private";
9. Similarly, the Legacy Trust will be funded with the private property of James Brown pursuant to the terms of the settlement agreement. The Legacy Trust is designed to carry out the same private charitable goals as the Trust. Consequently, the Legacy Trust is also private;
10. I understand a Freedom of Information Act (FOIA) request has been filed seeking documents establishing the Legacy Trust;
11. It is my understanding that FOIA exists to allow a citizen to request documents and information related to public bodies and public documents. Accordingly, I do not believe that the Legacy Trust—a private trust—is the proper object for a FOIA request;
12. The Legacy Trust is not a public body as defined in the South Carolina FOIA Statute. See S.C. Code Ann. § 30-40-20(a) (Attached as Exhibit B);
13. Because the Legacy Trust is not a public body, it does not possess public records as defined in the South Carolina FOIA Statute. See S.C. Code Ann. § 30-40-20(c);
14. The Legacy Trust is not supported in whole or in part by public funds, nor does the Legacy Trust expend public funds. Accordingly, it is my understanding that the Legacy Trust documents are private trust documents;
15. Pursuant to the South Carolina Trust Code, Circuit Judge Casey Manning previously ruled that actions involving the James Brown Trusts, including the Legacy Trust, are subject to venue in Richland County. (See Judge Manning's

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November 8, 2010 Order on Trust Venue Attached as **Exhibit C**);

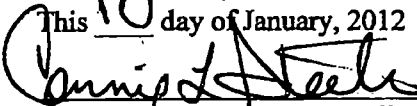
16. In the event that this action is not dismissed, it should be transferred to Richland County or consolidated with the action pending there.

FURTHER AFFIANT SAYETH NAUGHT,

  
\_\_\_\_\_  
Russel L. Bauknight

SWORN and subscribed to before me

This 10<sup>th</sup> day of January, 2012

 (L.S.)  
Notary Public for South Carolina

My commission expires: 2-19-2019

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# EXHIBIT A

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**THE STATE OF SOUTH CAROLINA  
IN THE Supreme COURT**

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

**Doyet A. Early, III, Circuit Court Judge  
Case No. 2008-CP-2-1647**

**Henry Dargan McMaster, in his  
capacity as Attorney General of  
the State of South Carolina;  
Daryl J. Brown, on behalf of his  
minor children, Lindsey B. and  
Janise B.; Deanna J. Brown Thomas,  
on behalf of her minor child, Jason  
L.; Yamma N. Brown, on behalf of  
her minor children, Sydney L. and  
Carrington L.; Tonya Brown;  
Vanisha Brown; Larry Brown;  
Tommie Rae Hynie Brown; and  
James B., through his Guardian  
ad Litem, ..... Respondents,**

**v.**

**Albert H. Dallas, Alfred A. Bradley,  
and David G. Cannon, Individually  
and as (purported) Trustees of the  
James Brown 2000 Irrevocable  
Trust; Adele J. Pope and Robert  
L. Buchanan, Jr., Personal Repre-  
sentatives of the Estate of James  
Brown and Trustees of the James  
Brown 2000 Irrevocable Trust;  
Terry Brown; Romunzo Brown;  
Forlando Brown; Cinnamon N.  
M. Paris; LaRhonda Pettit;  
Jeanette Mitchell; and Russell  
L. Bauknight, as Special Adminis-  
trator and Special Trustee for The  
Estate of James Brown and The  
James Brown 2000 Irrevocable  
Trust, Defendants,**

**of whom Robert L. Buchanan, Jr.,  
and Adele J. Pope, as Personal Repre-  
sentatives of the Estate of James  
Brown and Trustees of the James**

**Brown 2000 Irrevocable Trust are the ..... Appellants,**

**and Albert H. Dallas, Alfred A. Bradley,  
and David G. Cannon, Individually  
and as (purported) Trustees of the  
James Brown 2000 Irrevocable  
Trust; Terry Brown; Romunzo Brown;  
Forlando Brown; Cinnamon N.  
M. Paris; LaRhonda Pettitt;  
Jeanette Mitchell; and Russell  
L. Bauknight, as Special Adminis-  
trator and Special Trustee for The  
Estate of James Brown and The  
James Brown 2000 Irrevocable  
Trust are .....**

**Respondents.**

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

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**FINAL REPLY BRIEF OF APPELLANTS**

---

**James B. Richardson, Jr.  
1229 Lincoln Street  
Columbia, South Carolina 29201  
(803) 799-9412**

**Tressa T. H. Hayes  
Post Office Box 7346  
Asheville, North Carolina 28802  
(803) 603-8583**

**Attorneys for Appellants.**

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

The Court has identified the sources of standing, as follows:

Standing may be acquired: (1) by statute; (2) through the rubric of "constitutional standing;" or (3) under the "public importance" exception.

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

The appellants possess standing in all three ways.

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

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

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

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

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

**C. This is a case of public importance.**

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

The case at bar is of public significance on two levels.

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

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

THE STATE OF SOUTH CAROLINA  
IN THE Supreme Court

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge  
Case No. 2008-CP-2-1647

Henry Dargan McMaster, in his  
capacity as Attorney General of  
the State of South Carolina;  
Daryl J. Brown, on behalf of his  
minor children, Lindsey B. and  
Jarise B.; Deanna J. Brown Thomas  
on behalf of her minor child, Jason  
L.; Yamma N. Brown, on behalf of  
her minor children, Sydney L.,  
Carrington L., and Tonya B.;  
Vanisha Brown; Larry Brown;  
Tommie Rae Hynie Brown; and  
James B., through his Guardian  
ad Litem, .....

Respondents,

v.

Albert H. Dallas, Alfred A. Bradley,  
and David G. Cannon, Individually  
and as (purported) Trustees of the  
James Brown 2000 Irrevocable  
Trust; Adele J. Pope and Robert  
L. Buchanan, Jr., Personal Repre-  
sentatives of the Estate of James  
Brown and Trustees of the James  
Brown 2000 Irrevocable Trust;  
Terry Brown; Romunzo Brown;  
Forlando Brown; Cinnamon N.  
M. Paris; LaRhonda Pettitt;  
Jeanette Mitchell, and Russell  
L. Bauknight, as Special Adminis-  
trator and Special Trustee for The  
Estate of James Brown and The  
James Brown 2000 Irrevocable  
Trust.

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of whom Robert L. Buchanan, Jr.,  
and Adele J. Pope, as Personal Repre-  
sentatives of the Estate of James  
Brown and Trustees of the James  
Brown 2000 Irrevocable Trust are, ..... Appellants,

and Albert H. Dallas, Alfred A. Bradley,  
and David G. Cannon, Individually  
and as (purported) Trustees of the  
James Brown 2000 Irrevocable  
Trust; Terry Brown, Romunzo Brown,  
Forlando Brown, Cinnamon N.  
M. Paris, LaRhonda Pettit,  
Jeanette Mitchell, and Russell  
L. Bauknight, as Special Adminis-  
trator and Special Trustee for The  
Estate of James Brown and The  
James Brown 2000 Irrevocable  
Trust are ..... Respondents.

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

---

**FINAL BRIEF OF APPELLANTS**

---

James B. Richardson, Jr.  
1229 Lincoln Street  
Columbia, South Carolina 29201  
(803) 799-9412

Tressa T. H. Hayes  
Post Office Box 7346  
Asheville, North Carolina 28802  
(803) 603-8583

Attorneys for Appellants.

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and was consolidated with the appellants' appeal of subsequent orders appointing and reappointing Mr. Bauknight in various fiduciary capacities.<sup>2</sup>

The consolidated appeals were transferred from the Court of Appeals to the Supreme Court, and this appeal followed.

### STATEMENT OF FACTS

Throughout his lifetime, entertainment legend James Brown advocated the value of education. He determined to leave the great bulk of his estate to that cause. Ten years before he died, he engaged counsel and began planning The James Brown "I Feel Good" private foundation. By early 1999, the components of a complete estate plan — including a will, a revocable trust and a durable power of attorney — were ready for Brown's signature. These were executed on June 15, 1999, four days after Brown completed a \$26 million financing transaction for himself and his wholly-owned company, James Brown Enterprises, Inc. ("JBE, Inc.") in New York (the "TIAA debt").

The will of 1999 gave Brown's entire residuary estate to the trust, which at Brown's death was to be divided as follows: one-half for the education of the seven grandchildren, with a cap of \$2 million;<sup>3</sup> and one-half for the "I Feel Good" private foundation, providing scholarships for students at Voorhees, U.S.C. Aiken, and U.S.C. Salkehatchie. [1999 Will, Item II, R. p. 415; 1999 Trust, Article V, R. p. 422.]

Brown specifically excluded all past and future spouses and all children and other claimed heirs from inheriting his music empire. *In terrorem* forfeiture clauses required his fiduciaries to vigorously defend any challenge to Brown's estate plan as an affront to his

<sup>2</sup>

On August 3 and 6, 2009, the Attorney General and some respondents sought and obtained *ex parte* orders appointing Mr. Bauknight as special PR and special trustee. Requests to reconsider and vacate these orders were consolidated as Case 2009-CP-02-1810 ("Case 1810"), and denied.

<sup>3</sup>

The cap was tied to the Generation Skipping Tax exemption available at Brown's death. [1999 Trust, Article III, R. p. 420–21.] Subject to the *in terrorem* forfeiture clauses and the spendthrift clause, each of the seven grandchildren had an education fund of about \$285,000.00 by virtue of the 1999 will and revocable trust.

wishes. [1999 Will, Item X, R. p. 418; 1999 Trust, Article XIX, R. p. 431.] A spendthrift clause confirmed that all funds would be used solely for education. [1999 Trust, Article XVII, R. p. 431.]

Under the 1999 estate plan, Brown named as his fiduciaries: daughter Deanna; attorney Dallas; accountant Cannon; road manager Bradley; friends Willie Glenn and Ella Overton; and office assistant Freida Carter. NationsBank of South Carolina was named backup PR and trustee. [1999 Will, Item II, R. p. 415; 1999 Trust, Intro and Article VI, R. pp. 420, 423.]

The following year, on August 1, 2000, Brown made minor modifications to his estate plan. [2000 Trust, Article VII, R. p. 2083.] He expanded the scholarships to include needy and deserving students attending schools in South Carolina and Georgia. He made the Trust irrevocable and funded it with a deed to his 60-acre home estate at Beech Island, in Aiken County, and with his stock in JBE, Inc., which held about two-thirds of the royalties to Brown's more than 800 published songs.<sup>4</sup> Like the 1999 estate plan, the 2000 will and 2000 Trust contained *in terrorem* forfeiture clauses, and the Trust included a spendthrift clause.

Mr. Brown died at age 73 on December 25, 2006. The part of his music empire that was not already in the 2000 Trust was devised to it. It appeared that Brown had created possibly South Carolina's largest individual private foundation dedicated solely to educating

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<sup>4</sup> As a result of Dallas' conflicting statements to the courts, the question of who owns JBE, Inc. — the estate or the 2000 Trust — was uncertain for some time. Cannon confirmed that JBE, Inc., has been owned by the Trust since its inception. In September 2007 Dallas filed a knowingly false stipulation asserting that JBE, Inc., had never been transferred to the Trust. Dallas told AG Jones that he was forced to agree to the false stipulation. He later testified he authorized the false stipulation in order not to be removed. [R. pp. 106–07.] In their appeal brief in the Court of Appeals, Dallas and Bradley finally confirmed, as Cannon had always asserted, that Brown transferred, and the trustees accepted, JBE, Inc., into the Trust in 2000. [R. p. 1018.]

the needy.<sup>5</sup>

Like the 1999 will, the 2000 will contained a "savings clause," incorporating the trust so that both the grandchildren's education trust and the "I Feel Good" Trust would be created even if the 2000 Trust were not in existence when Brown died. The practical effect of these savings clauses was that four separate documents directed that Brown's music empire go to the Brown Family Education trust and the "I Feel Good" private foundation — the two subtrusts of, first, the 1999 (revocable) trust, and second, the 2000 (irrevocable) trust.

Like the 1999 estate plan, Brown's final estate plan acknowledged as his heirs four of his five legitimate children, as well as two of his more than six claimed children not presumed to be heirs. Among those excluded were three heirs who have qualified as children under the estate's DNA protocol, established by original counsel after Brown's death.<sup>6</sup> [1999 Will, Intro, R. p. 414; 1999 Trust, R. p. 420; Will, Intro, R. p. 2071; Trust, Art. XXII, R. p. 2094.]

For the next seven years the 2000 Trust, of record in two states, operated Brown's home estate at Beech Island. The 2000 Trust also bought and sold a bank building in Augusta [R. p. 1104] and paid education benefits for four of the seven grandchildren.

By 2007 Dallas and Cannon had ransacked at least \$13 million of Brown's assets. [R. p. 1230-71.] It appears that neither Brown nor Deanna and Bradley, co-fiduciaries with

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<sup>5</sup>

The Estate/Trust's original tax counsel valued James Brown's assets at \$80-\$120 million with at least \$20 million already in the 2000 Trust. [R. pp. 2172; 2173.] On June 15, 2008 Atlanta investor and branding executive Dr. Terry Cox estimated the total value of the assets at about \$100 million, with \$40-50 million assigned to publicity rights (image/likeness) and \$36-45 million to royalties for Brown's more than 800 published and unpublished songs. [R. pp. 462-70.]

<sup>6</sup>

Those claimed and presumed heirs specifically excluded by the language of both the 1999 and 2000 estate plans are Deon (incarcerated); Lisa (born of first marriage); Jeanette (DNA protocol); LaRhonda; (DNA protocol); Cinnamon (DNA protocol); James II (orally directed to take, but refused, a prepaid DNA protocol through GAL); Tonya (claimed grandchild, but no DNA and her counsel filed a statement omitting her as an heir). [R. pp. 184; 904-09.]

Dallas and Cannon for seven years, knew of the massive pre-death misappropriations as they were taking place.<sup>7</sup>

In December 2007, immediately after their appointment on November 20, appellants filed the long-overdue application for IRS recognition of the "I Feel Good" Trust, making small technical amendments to the Irrevocable Trust, as allowed by the Trust, to assure IRS approval.<sup>8</sup> By March 2008 they had assembled an Advisory Board for the 2000 Trust, including some of the distinguished leaders Dallas and Cannon had named but never called to serve.<sup>9</sup>

In the final ten days of December 2007, the will and the 2000 Trust were challenged by some of the children and by Tommie Rae Hynie Brown on the ground of undue influence. In March 2008, an amended complaint of some of the children was filed, but it failed to allege any facts to support the claim that Brown's 2000 Trust or the will were the product of undue influence. [R. p. 1156-65.]<sup>10</sup>

No discovery took place, and pending dispositive motions were never heard. Having been impleaded in an earlier action, the Attorney General took over as spokesman for the

7

Brown never used the funds he had intended for retirement not only because they were misappropriated, but also because he continued to be "the hardest working man in show business" until just before his death at 73. Brown grossed about \$6 million per year in road appearances the last three years of his life. Most of Brown's approximately \$3 million per year in royalties was pledged to bring down the TIAA royalty-backed debt. The TIAA debt had been reduced from about \$17 million the summer before Brown's death to about \$11 million when appellants' service was terminated on May 26, 2009.

8

Like most private foundations, the "I Feel Good" Trust, although irrevocable, gave the Trustees the authority to amend the Trust solely to assure IRS compliance.

9

Appointed were: Dr. Leonard McIntyre, Interim President of S. C. State University; Ms. Inez Tenenbaum, former S. C. Superintendent of Education; Ret. Judge Walter Williams; and Ms. Ann Carmichael of U. S. C. Salkehatchie. Ms. Tenenbaum resigned to accept a federal post. [See R. pp. 1005-06.]

10

By administrative directive Case 872, which was originally filed with Case 122, was segregated by the Clerk about May 14, 2008. Earlier documents bear the civil action number of Case 122.

2000 Trust and settled the undue influence claim and the omitted spousal claim of Tommie Rae in a mediation to which the appellants, as trustees of the 2000 Trust, were not invited to attend. The Attorney General took over for the 2000 Trust and agreed for it to relinquish roughly half its devise in settlement of these claims. Instead of about 98% of assets after expenses, with no estate taxes, the 2000 Trust would receive 47.5% percent after estate taxes, but then further reduced by \$2 million — the amount required to fund the grandchildren's education trust.<sup>11</sup> The only expert testimony offered at the hearings below on the subject of taxation was to the effect that the settlement would cause the loss of the estate tax deduction, resulting in about 50% taxes and interest, and moreover that the "Legacy Trust", created by the settlement, would likely cause the "I Feel Good" Trust to be disqualified as a Section 501(c)(3) private foundation, resulting in income taxation problems in addition to the estate tax generated. [R. pp. 1900-03.]

The proponents of the settlement offered no witnesses to support the contention that the claim of undue influence, allegedly voiding the will and the 2000 Trust, was supported by any evidence. The circuit court did not purport to find merit in the claim of undue influence, but found that the claim was brought in good faith. The court found that the Attorney General was entitled to control and speak for the 2000 Trust, not the trustees, and that the Attorney General was empowered to settle the will contest and omitted spousal claim in its behalf. The settlement negotiated by the Attorney General was found to be just and reasonable.

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<sup>11</sup>

See the charts used at trial and reproduced in the Addendum to this brief for a depiction of the effect of the settlement.

# EXHIBIT B

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## CHAPTER 4.

### FREEDOM OF INFORMATION ACT

#### SECTION 30-4-20. Definitions.

(a) "Public body" means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

(b) "Person" includes any individual, corporation, partnership, firm, organization or association.

(c) "Public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except nonidentifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act; nothing herein authorizes or requires the disclosure of those records where the public body, prior to January 20, 1987, by a favorable vote of three-fourths of the membership, taken after receipt of a written request, concluded that the public interest was best served by not disclosing them. Nothing herein authorizes or requires the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of the institutions required to be made by law. Information relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices, is required to be closed to the public and is not considered to be made open to the public under the provisions of this act.

(d) "Meeting" means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

(e) "Quorum" unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.

# EXHIBIT C

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-40-4900

JEANETTE W. McBRIDE  
C.C.P. & G.S.  
2010 NOV -9 AM 9:21

RICHLAND COUNTY  
FILED

ORDER DENYING DEFENDANTS'  
MOTION TO CHANGE VENUE

This matter came before the Court on August 30, 2010 for hearing on Defendants' Motion to Change Venue from Richland County to Aiken County. Counsel for all parties were

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SCANNED

present. Other motions in this case were also heard on August 30 and separate Orders will issue with regard to those motions.

#### PROCEDURAL POSTURE

This is a judicial proceeding involving an irrevocable trust of James Brown dated August 1, 2000, as modified by a court-approved settlement agreement, whose sole, professional trustee administers the trust in Richland County, South Carolina. This irrevocable trust is distinguishable from the Estate of James Brown, the administration of which is in the Aiken County Probate Court.

The complaint alleges causes of action for breach of fiduciary duty, breach of trust, and negligence by former fiduciaries. Plaintiffs brought this action against Defendants by way of a Complaint filed May 19, 2010. Pursuant to Rule 8(a)(1), SCRCF, Plaintiffs asserted that jurisdiction was proper in the Richland County Probate Court. Pursuant to S.C. Code Ann. § 62-1-302(d) (1976, as amended), this matter was removed to the Court of Common Pleas of Richland County. Defendants filed a Motion to Change Venue to Aiken County.

#### FACTS

The original estate plan of James Brown included a Last Will and Testament which "poured over" the bulk of his estate to a separate, irrevocable trust known as the James Brown Irrevocable Trust that was created and funded on August 1, 2000. The James Brown Irrevocable Trust, by its terms, was to be divided into the Brown Family Educational Trust and the James Brown "I feel Good" Trust after his death.

After extensive litigation to determine the identification of beneficiaries, the ownership of assets, and the identification of fiduciaries, all beneficiaries of the estate and trust came to a global settlement and entered into a written settlement agreement. The Settlement Agreement is

attached to the complaint as Exhibit A. The Settlement Agreement was approved by the Honorable Doyet A. Early, III, on May 26, 2009, by an Order Approving Settlement Agreement, which is attached to the complaint as Exhibit B. Pursuant to the Settlement Agreement, the estate plan of James Brown was revised to create a "Settlement Entity" in which are vested all assets, including all royalties, tangible and intangible property of James Brown. The order provides that: "A charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable." The order also affirmed the provision of the settlement agreement that a professional fiduciary, Russell Bauknight, would replace Buchanan and Pope as fiduciaries of both the Estate of James Brown and as trustees of the August 1, 2000, Irrevocable Trust of James Brown.

Plaintiffs are all of the beneficiaries of the settlement trust, including the South Carolina Attorney General. Defendants are former fiduciaries of Brown's estate and trust. This suit alleges mismanagement of the estate and trust by Defendants.

By Order of the Honorable Doyet A. Early, III, dated May 26, 2009, Russell L. Bauknight was named Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as well as Personal Representative of the Estate of James Brown. Management of the trust estate has taken place exclusively at Bauknight's offices at 1517 Gervais Street, Columbia, South Carolina, where all of the trust assets and trust records are maintained. This office is located in Richland County, South Carolina.

#### ANALYSIS

"The distinction between subject matter jurisdiction and venue is an important one in the law. The terms are not synonymous. Subject matter jurisdiction is 'the power to hear and

determine cases of the general class to which the proceedings in question belong.' On the other hand, venue is the place or geographical location of trial." Dove v. Gold Kist, Inc., 314 S.C. 235, 237-238, 442 S.E.2d 598, 600 (1994) (internal citations omitted). In South Carolina, venue refers to the county in which the action should be brought. In re Asbestosis Cases, 276 S.C. 579, 581, 281 S.E.2d 112, 115 (1981) (abrogated on other grounds by Whaley v. CSX Transp., Inc., 362 S.C. 456, 609 S.E.2d 286 (2005)). The Defendants allege that subject matter jurisdiction is improper. They confuse subject matter jurisdiction and venue. Subject matter jurisdiction over this suit is properly laid in the Circuit Court, having been originally filed in Probate Court and then removed from the Probate Court. See Order for Removal of July 19, 2010. Defendants also contend that venue should be in Aiken County. Plaintiffs assert that venue should remain in Richland County.

The South Carolina Trust Code has its own venue statute for proceedings involving trusts:

Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

S.C. Code Ann. § 62-7-204(a) (1976, as amended) (emphasis added). As shown above, James Brown did not have a testamentary trust created under his will, but rather an inter vivos trust, so the last phrase about the county in which the estate is administered is inapplicable. Courts must turn to a separate section of the Trust Code to determine what constitutes a trust's "principal place of administration":

Unless otherwise designated by the terms of a trust, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. . .

S.C. Code Ann. § 62-7-108(a) (1976, as amended) (emphasis added). The statute designates the trustee's place of business, that is, the place where the records are kept, not the county of the trust settlor's residence or the county of residence of the trust beneficiaries, for a very practical reason. It is necessary for the courts in the place where the trust records are kept and the trust assets are held to deal with trust litigation. In the case at bar, the records of the trust are voluminous and occupy hundreds of bankers boxes.

The professional trustee in this matter is Russell L. Bauknight. Mr. Bauknight's usual place of business is at his accounting firm, Bauknight Pietras & Stormer, P.A., located at 1517 Gervais Street, Columbia, South Carolina 29201. The records pertaining to the trust are kept at this location, which is in Richland County, South Carolina. Further, the trust agreement itself does not designate a different principal place of administration.

Based on Sections 108(a) and 204(a) of the Trust Code, venue is proper in Richland County. Even if this Court were to determine that venue might be proper in either Richland or Aiken Counties, which it does not, the commencement of this proceeding in Richland County prior to any filing in Aiken establishes proper venue in Richland County. See S.C. Code Ann. § 62-7-204(c) (1976, as amended). This Court notes that the prior trustees, Pope and Buchanan, also administered the Irrevocable Trust in Richland County, as the August 10, 2007, order of Judge Early directed the trust records to be delivered to 1218 Taylor Street in Columbia, which was Pope's office.


Defendants argue that the matters raised in the complaint relate to an action previously filed in Aiken County. This Court disagrees. The complaint alleges causes of action which are completely distinct from the prior estate litigation among the beneficiaries and the former personal representatives of the estate. Section 62-7-201(b) of the South Carolina Trust Code

provides that "[a] proceeding under this section does not result in continuing supervisory proceedings." This trust litigation against the former trustees is unrelated to the prior litigation involving James Brown's estate or trust.

#### CONCLUSION

Venue is proper in Richland County because it is the principal place of administration for the trusts at issue in this litigation. Even if venue were also proper in Aiken County, the initial commencement of this action in Richland County requires that venue remain in Richland County.

IT IS THEREFORE ORDERED THAT Defendants' Motion to Change Venue is DENIED.

  
The Honorable L. Casey Manning  
Circuit Judge

Signed this 8 day of Nov, 2010  
at Columbia, South Carolina.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS  
FOR THE EIGHTH JUDICIAL CIRCUIT

Adele J. Pope, )  
 )  
Plaintiff, )

C/A No. 11-CP-36-364

vs. )

JAMES BROWN LEGACY TRUST's  
SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF MOTION TO DISMISS  
AND IN OPPOSITION TO SUMMARY  
JUDGMENT

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

Defendant. )  
\_\_\_\_\_ )

Defendant James Brown Legacy Trust, by Russell L. Bauknight, its Trustee ("Legacy Trust"), submits this Supplemental Memorandum in Support of the Motion to Dismiss and in Opposition to Summary Judgment.

**I. The Complaint must be dismissed because the Legacy Trust is not a public body subject to the Freedom of Information Act.**

The Freedom of Information Act only applies to a "public body" which is defined as any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

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S.C.Code Ann. 30-4-20(a).

Under the plain language of the act, trusts are not included as a "public body" under the Act. Furthermore, the Legacy Trust is not: a state board, commission, agency, or authority; a county, municipality, township, school district, or special purpose district; or a committee, subcommittee or advisory committee.<sup>1</sup> This Court does not need to look any further than the language of the statute to find the Legacy Trust is not subject to FOIA. *Miller v. Doe*, 312 S.C. 444, 441 S.E.2d 319 (1994) ("If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing the rules of statutory interpretation. The court has no right to look for or impose another meaning."); See also, 1989 S.C. Op. Att'y Gen. 259 (1989) (Clearly, this Committee is not a department of the State, a state board, commission, agency, governmental body, political subdivision, county, municipality, township, school district, or special purpose district. The fact that the Committee was not created by a provision of the South Carolina Constitution, a statute, ordinance, or resolution supports this conclusion. Additionally, the Committee does not perform exclusive governmental functions or make policy affecting citizens' fundamental rights, factors often considered in terms of the governmental bodies enumerated in the Act.")

The Plaintiff appears to argue that the Legacy Trust is somehow "supported" by the Attorney General, and is thereby rendered a public body. Under the statute, only organizations that are supported "in whole or in part by public funds or expending public funds" are subject to

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<sup>1</sup>Furthermore, not all "committees," which are explicitly included as a public body under FOIA, are subject to FOIA. Only a committee that "in making its recommendations, [is] performing a governmental function" is subject to the Act. 1984 S.C. Op. Att'y Gen. 159 (1984).

FOIA. "Public funds are, generally, funds belonging to a state or county or other political subdivision, more especially taxes or other such moneys raised by the operation of some general law and appropriated by the government for the discharge of its obligations or for some public or governmental purpose." 1989 S.C. Op. Att'y Gen. 259 (1989).<sup>2</sup> The Legacy Trust is not supported by taxes or monies belonging to a political subdivision. The Legacy Trust is funded by assets of James Brown. Likewise, the Legacy Trust is not expending public funds as it will only be in control of and responsible for disbursing the private assets of the trust.<sup>3</sup> Thus, the Legacy Trust is not subject to FOIA.

**II. In the alternative, this case cannot proceed in Newberry County because venue is only proper in Richland County.**

The Freedom of Information Act provides that :

Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

S. C. Code § 30-4-100(a). The Act does not specify the appropriate venue. However, the South Carolina Trust Code contains an explicit venue provision:

Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which the trust's principal place of

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<sup>2</sup>That opinion also stated: we cannot over-emphasize the need for factual determination by a court" in determining whether an organization was supported by public funds. Thus, as already noted in the Legacy Trust's Opposition to Plaintiffs' Motion for Summary Judgment, the motion for summary judgment is premature as there has been no answer by either defendant and no discovery into the facts in this case.

<sup>3</sup>In contrast, see, Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 161-63, 547 S.E.2d 862, 864-65 (2001)(Committee that was formed to help determine the award of a City contract that involving the expenditure of city funds is subject to FOIA).

administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

S.C. Code 62-7-204(a).<sup>4</sup> Thus, any "judicial proceeding involving a trust", including the action here, must be in Richland County, the location of Russell Bauknight, the administrator.

Furthermore, Plaintiff's own allegations support the propriety of venue in Richland County.

Plaintiff seems to claim that the Legacy Trust is a public body and/or extension of the Attorney, General. S.C. Code §15-77-50<sup>5</sup> states that:

The circuit courts of this State are hereby vested with jurisdiction to hear and determine all questions, actions and controversies, other than those involving rates of public service companies for which specific procedures for review are provided in Title 58, affecting boards, commissions and agencies of this State, and officials of the State in their official capacities in the circuit where such question, action or controversy shall arise.

(emphasis added). Therefore, Plaintiff's own arguments require that venue be in Richland County, South Carolina.

In addition, in addressing a case almost identical to this one, *Pope v. Wilson*, 11-CP-36-379, this Court consolidated that matter with the currently pending case in Richland County (*Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010)). Order of the Honorable Frank R. Addy, November 22, 2011. In that order, this Court also stated:

I was subsequently informed that another case in Newberry, 11-CP-436-364, involves apparently identical claims. While that case is not currently before this court and is therefore beyond the scope of this order, the court would strongly encourage all concerned to consolidating that matter in Richland or for Plaintiff to dismiss that case, as it appears duplicative of issues addressed in this order.

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<sup>4</sup>Subsection (b) does not apply here, as it only applies to trusts with no trustee.

<sup>5</sup>Chapter 77 is entitled "Suits Involving State, State Agencies and Officials and United States"

Id. Plaintiff declined to consent to consolidation or dismissal. However, it is only logical and just that this matter also be consolidated in Richland County.

**Conclusion**

For the reasons set forth herein, the Motion to Dismiss should be granted. In the alternative, venue must be moved to Richland County.

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Ariail E. King  
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P.O. Box 11208  
Columbia, South Carolina 29211

By: 

Ariail E. King

Attorneys for Defendant James Brown  
Legacy Trust, by Russell L. Bauknight, its  
Trustee

Columbia, South Carolina

January 11, 2012

000440

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND )

Civil Action No. 2011-CP-40-350

Adele J. Pope, )

Plaintiff, )

PLAINTIFF'S BRIEF IN OPPOSITION  
TO MOTION OF ATTORNEY GENERAL TO  
CONSOLIDATE CASES

v. )

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

Defendants. )

**TO: DEFENDANT ALAN WILSON, IN HIS CAPACITY AS ATTORNEY GENERAL  
OF SOUTH CAROLINA AND/OR HIS COUNSEL**

Plaintiff submits this brief in opposition to the Attorney General's motion, dated February 1, 2012, to consolidate this case ("Case 350") with Richland County Case No. 2010-CP-40-4900 ("Case 4900"). The motion should be denied for the reasons set out below, and this FOIA action should proceed to a final hearing.

- I. **Rule 42 should not ordinarily apply to Freedom of Information Act ("FOIA") cases.**

Rule 42, *South Carolina Rules of Civil Procedure*, provides in part:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in that action; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

In effect, Rule 42 provides for cases to be consolidated for trial where doing so will

promote judicial economy and/or convenience to the parties and where common questions of law or fact exist in more than one case. Because the sole purpose of FOIA is allowing the media and public at large to have immediate access to documents, the process of consolidation itself would serve to delay and defeat the purpose of FOIA. Further, FOIA cases ordinarily would have no discovery and a single *nonjury* hearing, consistent with its purpose to provide public documents at the earliest time.

Consolidation of any FOIA case, including this one, will cause at least substantial delay and some measure of turmoil for the FOIA Plaintiff, the media and the general public who are entitled to the public documents which are the subject of a FOIA action. To deprive FOIA plaintiffs and the public of such documents through substantial delay will only defeat the letter and spirit of FOIA. In this Case, consolidation with Case 4900, a tort case with substantial jury questions, none of which are common to this FOIA case, will deprive Plaintiff, the media and the general public of information which they should have been given before August 1, 2011, before this suit was commenced.

- II. **Consolidation of this FOIA case with a two-year-old tort suit will cause substantial delay, thereby depriving Plaintiff of her rights to equal protection and due process, as well as her rights under FOIA.**

This case, brought under FOIA in Newberry County on August 3, 2011, seeks a small number of significant public documents from Defendants, as well as a confirmation that Defendant Legacy Trust is a public body. The Legacy Trust was created by former Attorney General Henry McMaster to hold assets he, by use of his public authority, directed to be transferred from a private estate and trust. Plaintiff, McMaster's successor Alan Wilson, and the Legacy Trust are the only parties to this action. Plaintiff's summary

judgment motion has been pending for six months. Should it not be granted, the case is ready for a *nonjury* trial on the merits.

The only material question of fact or law is whether the two Defendant public bodies should produce the requested public documents and pay for the delay. It might also be stated as three simple *non-jury* questions of law:

- a. Must the Attorney General of South Carolina, under FOIA, produce the organizational document of an entity created by a former AG?
- b. Must the entity also produce the organizational document under FOIA?
- c. Must the Attorney General produce public documents related to his office's representation to the S.C. Supreme Court that James Brown's music empire was worth less than \$4.7 Million when he died on December 25, 2006?

Judicial economy, the spirit and letter FOIA demand that these questions be answered and the documents produced immediately.

This FOIA case was not commenced in this County, but rather in Newberry County where Plaintiff and others have made – and been denied – FOIA requests for these and other public documents related to Aiken County resident James Brown, who established The James Brown "I Feel Good" Trust in Aiken County in 2000.

Refusing to produce the public documents in August 2011, Defendants instead sought dismissal, asserting – incorrectly – that the James Brown litigation was centered in Richland County. While delaying, Defendants declined to produce the requested documents to Plaintiff and others.

At a hearing held in January 2011 – 5 months after the request should have been honored – Defendants persuaded the Court to transfer venue – a non-appealable action – to Richland County, where only one of the more than 20 James Brown cases has been

filed.

Defendant Attorney General then declined to join in a request for an expedited hearing, and, instead, moved to consolidate this FOIA case with Case 4900, a tort case filed nearly two years ago, on May 19, 2010. It is a jury case with extraordinarily complex questions of fact and law, including some of first impression in the State and nation. They include:

1. May a private law firm, representing a dozen citizens of various states, simultaneously seek tort relief from S.C. Citizens as attorney for the State of South Carolina *without any Attorney General or assistant* serving as counsel in the case?
2. Do persons intentionally excluded by James Brown from his Estate Plan, but given an interest by former AG McMaster have standing to sue those who defended Brown's estate plan as written?
3. Does private plaintiff Russell Bauknight have the right to assert that he speaks on behalf of the S.C. Attorney General?
4. If Bauknight can speak for former AG McMaster, does he maintain the right to speak on behalf of subsequent AGs, or the State?
6. Is the State of South Carolina bound by the default of the private Wingate Law firm as to the Case 4900 Defendants' counterclaims for:
  - a. Abuse of Process;
  - b. Civil Conspiracy;
  - c. Intentional Interference with Contract;
  - d. Violation of § 62-1-106; and
  - e. Attorneys' fees?
7. Is it a violation of separation of powers or other statutes or rules for the Attorney General to seek tort funds for the benefit of non-citizens of SC?
8. Did Bauknight commit a fraud upon the court by asserting in a sworn document filed in Aiken County that James Brown's music empire was worth less than \$4.7 Million when it was actually worth about \$85 Million?
9. Do Bauknight and Terry Brown have an improper relationship with felon David Cannon?

10. Did Bauknight intentionally cause tens of millions of dollars of damage to James Brown's Royalties by failing to acknowledge that Tommie Rae was not the wife of James Brown, and purporting to acknowledge her as an heir without reviewing her own diaries, waivers, lawsuit by James Brown and other Aiken County documents that prove she is not Brown's wife, and is entitled to nothing?

Twenty-two months after Case 4900 was filed, Plaintiffs have not produced a single document beyond a two-page witness list. Every private Plaintiff has refused to appear at deposition.

Further, counsel for the private plaintiffs – whose right to represent them has never been challenged – has refused for almost a year to allow his many private clients to sit for depositions as to the counterclaims. He asserts, with no basis to do so, that he cannot represent his dozen private clients unless he has the State of South Carolina as his client also.

No hearing has been set on this question, and Plaintiffs' counsel has allowed Case 4900 to languish for nearly two years.

The letter and spirit of FOIA require that actions brought under FOIA be allowed to proceed quickly and efficiently, as this case would have but for the Defendants' time-wasting procedural wrangling.

Because this FOIA case is ready to proceed to a final hearing, consolidation with Case 4900, which is mired in discovery and other issues, serves no purpose other than to delay Plaintiff's receipt of the documents sought herein. To subject Plaintiff to needless delay simply because she is involved in other litigation with the State would be to deprive

her of her rights to equal protection<sup>1</sup> and due process<sup>2</sup> under the United States and South Carolina Constitutions. Further, S.C. Code Ann. § 30-4-15 provides that FOIA is intended to provide citizens with documents and information "at a minimum cost or delay."

To consolidate one case which is ready for final hearing with another which is years away from trial would serve no reasonable end.

**III. There is no common question of law or fact in Case 4900.**

As stated above, Case 4900 presents novel, complex questions of fact and law. No such complexity exists in this FOIA case. Nor are the questions common – or even similar.

There is no common question of law between the two cases. The Attorney General asserts the fact that the public documents sought herein are also discoverable in Case 4900 requires Plaintiff's FOIA claims to be joined with the ongoing discovery issues in that case. To do so would fly in the face of FOIA. S.C. Code Ann. § 30-4-100 provides that any citizen who is denied access to public information may bring suit in the Circuit Court for injunctive and declaratory relief. Plaintiff had the right, and, arguably, the *obligation* to bring this suit separately from any pending litigation. Federal caselaw has confirmed that FOIA and discovery proceedings are distinct, even where there are parallel proceedings

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<sup>1</sup> "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." *Grant v. S.C. Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995).

<sup>2</sup> "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. *Sloan v. S.C. Bd. Of Physical Therapy Exam'rs*, 370 S.C. 452, 636 S.E.2d 598 (2006) (internal citations omitted.).

between similar parties. See *North v. Walsh*, 881 F.2d 1088 (D.C. Circuit 1991). The legal questions posed by this FOIA case are entirely different from the myriad issues in Case 4900.

Additionally, the parties to this case are not similar to those of Case 4900. A substantial question exists as to whether the AG/State is even a party to Case 4900. Defendant Pope asserts that he is not because he has never appeared through an authorized representative. No member of his staff has signed any pleading or filed an appearance in Case 4900, even though the Attorney General's own "Standard Litigation Retention Agreement" requires it. The private Plaintiffs' counsel therein brought suit under the Attorney General's name without proper authorization. As Plaintiff argues in Case 4900, that arrangement is illegal. More recently, the Attorney General's office has disclosed that it has no signed agreement with the Case 4900 Plaintiffs' counsel.

**IV. Consolidation will allow interference of private individuals with Plaintiff's FOIA rights.**

As discussed above, it is impossible for these cases to be consolidated for trial. The cases could not be reasonably consolidated for discovery, seeing as this FOIA case is not expected to require any discovery, whereas Case 4900 awaits the sorting out of massive discovery issues and what will likely be a year or more of actual discovery.

The only possible changes to this FOIA case which will result from consolidation are delay and the participation of the numerous additional parties to Case 4900. The private Case 4900 Plaintiffs have already made attempts to intervene in a separate FOIA case filed by Plaintiff (formerly Newberry County Case No. 2011-CP-36-0379, now consolidated with Case 4900), with the express purpose of minimizing or preventing Plaintiff's receipt

of the documents she seeks therein.

Shockingly, the Attorney General has not opposed the unprecedented attempts by these dozen-or-more individuals to intervene in and attempt to control the outcome of a FOIA case. The Attorney General's conduct in that case, and now his attempt to consolidate this FOIA case with Case 4900, raise a number of important questions. Would the Attorney General support the efforts of State officers to individually intervene in FOIA litigation to stifle the public's access to documents which could be personally or professional embarrassing? If journalists seek public documents related to ongoing litigation, will these journalists be forced into tort cases to fight private individual parties, many of whom (like the private Case 4900 Plaintiffs) have no obligations under FOIA?

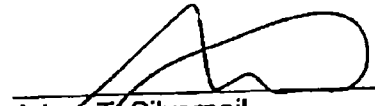
Further, the Case 4900 Plaintiffs have stonewalled all discovery requests, including requests seeking some of the documents sought herein. The Case 4900 Plaintiffs have refused to sit for depositions in their nearly two-year-old action.

It is clear from the actions of the Case 4900 Plaintiffs that they will make every effort to stymie Plaintiff's attempts at obtaining important documents, and it would violate Plaintiff's FOIA and Constitutional rights to allow their involvement in this FOIA case.

#### **Conclusion**

As set out herein, as well as in all of Plaintiff's filings herein, consolidation of this FOIA case with Case 4900 is unwarranted, improper and would violate Plaintiff's rights. For these reasons, Plaintiff asks that the Court deny the Attorney General's motion and proceed to a hearing on Plaintiff's motion for summary judgment and, if necessary, a final hearing on the merits herein.

Respectfully Submitted,



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March 14, 2012

Attorney for Plaintiff

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Adele J. Pope, )  
 )  
Plaintiff, )

C/A No. 12- CP-40-350

vs. )

JAMES BROWN LEGACY TRUST's  
SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF MOTION TO DISMISS

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

Defendant. )

Defendant James Brown Legacy Trust, by Russell L. Bauknight, its Trustee ("Legacy Trust"), submits this Supplemental Memorandum in Support of the Motion to Dismiss.

**I. Under the current South Carolina Supreme Court Opinion, the Legacy Trust does not exist.**

The South Carolina Supreme Court recently issued an opinion in the case of *Wilson, et al. v. Dallas, et al.*, Opinion No. 27227 (filed February 27, 2013). In that opinion, the Court considered a "compromise agreement," approved by the Circuit Court, which had created the James Brown Legacy Trust ("the Legacy Trust"). The Supreme Court held that the compromise agreement was not just and reasonable and reversed the lower court's approval of the compromise. The opinion states that the settlement could not replace James Brown's estate plan and trusts by creating new trusts.

The Legacy Trust was part of the "compromise agreement" and was to be funded with a future interest. Due to Judge Early's Order prohibiting distributions during the appeals process, it was never funded and no distributions have been made. If the status of the Legacy Trust

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continues as presently determined by the South Carolina Supreme Court, the Legacy Trust will not exist after remittitur.<sup>1</sup> Because the Legacy Trust does not exist, it cannot be subject to the Freedom of Information Act.

**II. The Complaint must be dismissed because the Legacy Trust is not a public body subject to the Freedom of Information Act.**

The Freedom of Information Act only applies to a "public body" which is defined as any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

S.C.Code Ann. 30-4-20(a).

Under the plain language of the act, trusts are not included as a "public body" under the Act. Furthermore, the Legacy Trust is not: a state board, commission, agency, or authority; a county, municipality, township, school district, or special purpose district; or a committee,

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<sup>1</sup>There has been no remittitur, yet. On March 14, 2013, four Petitions for rehearing were filed: one on behalf of the Attorney General, one on behalf of Mr. Bauknight, one on behalf of James B., and one on behalf of Mrs. Pope. None of the petitions challenge the Supreme Court's holding as to the Legacy Trust.

subcommittee or advisory committee.<sup>2</sup> This Court does not need to look any further than the language of the statute to find the Legacy Trust is not subject to FOIA. *Miller v. Doe*, 312 S.C. 444, 441 S.E.2d 319 (1994) ("If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing the rules of statutory interpretation. The court has no right to look for or impose another meaning."); See also, 1989 S.C. Op. Att'y Gen. 259 (1989) (Clearly, this Committee is not a department of the State, a state board, commission, agency, governmental body, political subdivision, county, municipality, township, school district, or special purpose district. The fact that the Committee was not created by a provision of the South Carolina Constitution, a statute, ordinance, or resolution supports this conclusion. Additionally, the Committee does not perform exclusive governmental functions or make policy affecting citizens' fundamental rights, factors often considered in terms of the governmental bodies enumerated in the Act.")

The Plaintiff appears to allege that the Legacy Trust is somehow under the "control of" or receives "support" [Cmpt. ¶28] by the Attorney General, and is thereby rendered a public body.<sup>3</sup> Under the statute, only organizations that are supported "in whole or in part by public funds or expending public funds" are subject to FOIA. "Public funds are, generally, funds belonging to a state or county or other political subdivision, more especially taxes or other such moneys raised

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<sup>2</sup>Furthermore, not all "committees," which are explicitly included as a public body under FOIA, are subject to FOIA. Only a committee that "in making its recommendations, [is] performing a governmental function" is subject to the Act. 1984 S.C. Op. Att'y Gen. 159 (1984).

<sup>3</sup>The fact that the Attorney General can remove and replace the trustee has no effect, as the beneficiaries of the Legacy Trust, such as the James Brown children, can also remove and replace the trustee. [Banknight Aff. ¶5].

by the operation of some general law and appropriated by the government for the discharge of its obligations or for some public or governmental purpose." 1989 S.C. Op. Att'y Gen. 259 (1989). The Legacy Trust is not supported by taxes or monies belonging to a political subdivision. The Legacy Trust is to be funded by assets of James Brown.<sup>4</sup> Likewise, the Legacy Trust is not expending public funds as it will only be in control of and responsible for disbursing the private assets of the trust.<sup>5</sup> Thus, the Legacy Trust is not subject to FOIA.

Furthermore, as noted in Mr. Bauknight's affidavit previously filed in this matter (and reattached hereto as Exhibit I for the Court's convenience), Plaintiff herself has admitted in other litigation that trusts such as the one at issue are not public entities. In an appeal of the settlement that created the Legacy Trust, Plaintiff wrote that "[p]rivate foundations such as the 'I Feel Good' foundation/trust are not public charities." [Bauknight Aff. ¶ 7]. Throughout the appeal, Plaintiff referred to the trust as "private." Like the "I Feel Good" Trust which Plaintiff acknowledges is private, the Legacy Trust is funded with private property of James Brown and is thus a private, not public entity.

**II. Plaintiff cannot use the Freedom of Information Act to circumvent the discovery rules in another case pending between the parties.**

The Freedom of Information Act should not be used as a substitute for discovery and was not intended to provide procedures for obtaining information during litigation or to benefit private litigants. *Lominack v. Myers*, 2002- CP -32-1890 (Order of Judge Westbrook, 11<sup>th</sup>

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<sup>4</sup>As noted previously, the Legacy Trust has never been funded and no distributions have been made.

<sup>5</sup>In contrast, see, *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 161-63, 547 S.E.2d 862, 864-65 (2001)(Committee that was formed to help determine the award of a City contract that involving the expenditure of city funds is subject to FOIA).

Circuit, 2002), citing *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 144 (1975) (Freedom of Information act is designed to inform public about agency action and not to benefit private litigants). The United States Supreme Court has clearly stated (with regard to the federal Freedom of Information Act), that "FOIA was not intended to supplement or displace rules of discovery." *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989). The South Carolina Supreme Court has not addressed the issue in a civil context but has held that FOIA is not to be used to circumvent discovery in criminal cases. *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005). Discovery also provides a method of relief if the information requested is not provided; the requesting party must bring a motion to compel. Rule 37, SCRPC.

Plaintiff is a defendant in another case pending before this Court, which was filed by Defendant Bauknight and the Attorney General [*Bauknight v. Pope*, 2010-CP-40 - 4900]. In that case, Plaintiff requested certain documents, including "[t]he James Brown Legacy Trust under which Bauknight asserts status in the complaint" and has filed a motion to compel production of that document. (Ex. 2). Those motions (in case 4900) are pending before this Court. Since the scope and conduct of discovery are with the discretion of the trial court, whether Plaintiff is entitled to those documents should be decided in that matter. It is obvious that Plaintiff is attempting to use FOIA to obtain material for use in the litigation brought by the Attorney General and Mr. Bauknight (2010-CP-40-4900), instead of utilizing the proper discovery techniques in that case.

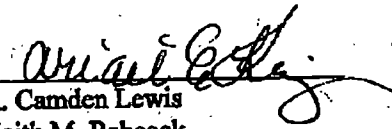
IV. The case is moot because the only documents responsive to the FOIA request to Defendant Bauknight have been produced by the Attorney General.

The FOIA directed to Defendant Bauknight sought "[t]he final and all drafts, signed and unsigned of the James Brown Legacy Trust. The Answer of the Attorney General, filed on March 7, 2013, asserts that "he has no documents that could be considered responsive to the Freedom of Information Act request at issue except for an attached draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas*, Op. No. 27227 (S.C. Sup.Ct., filed February 27, 2013), a case in which Plaintiff was a party." Answer of Attorney General, p. 1 (footnote omitted). The document referenced was an attachment to the Answer.

On March 13, 2013, the Attorney General filed an additional exhibit to the Answer with the clerk of court. This exhibit was another draft of the Legacy Trust, which also had appeared in the Record on Appeal in *Wilson v. Dallas*. As these are the only two documents related to the Legacy Trust, which have been in Plaintiff's possession by way of the Record on Appeal and which have also now been provided as attachments to the Attorney General's Answer, the FOIA as to Defendant Bauknight is now moot and the complaint should be dismissed.

#### Conclusion

For the reasons set forth herein, the Defendant's Motion to Dismiss should be granted.

  
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Keith M. Babcock  
Ariail E. King  
LEWIS, BABCOCK & GRIFFIN, LLP  
P.O. Box 11208  
Columbia, South Carolina 29211

Attorneys for Defendant James Brown  
Legacy Trust, by Russell L. Bauknight, its  
Trustee

Columbia, SC  
March 13 2013

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

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 Henry Dargan McMaster, in  
his capacity as Attorney General of the State  
of South Carolina; Tommie Rae Brown,  
individually and on behalf of her minor child,  
James Brown II; Daryl J. Brown, Individually  
and on behalf of his minor child Janise  
Vanisha Brown; Lindsey Delores Brown;  
Deanna J. Brown Thomas; Jason Brown-  
Lewis; Yamma N. Brown, Individually and  
on behalf of her minor children, Sydney  
Lumar, Carrington Lumar, and Tonya Brown;  
Venisha Brown; Larry Brown; and Terry  
Brown

) MOTION TO COMPEL  
) PRODUCTION OF CONTINGENCY-  
) FEE CONTRACT AND RELATED  
) DOCUMENTS PRIOR TO HEARING  
) ON MOTION FOR INJUNCTION

and

HENRY DARGAN MCMASTER, in his  
capacity as Attorney General of the State of  
South Carolina; TOMMIE RAE BROWN,  
Individually and on behalf of her minor child,  
JAMES BROWN II; DARYL J. BROWN,  
Individually and on behalf of his minor child  
JANISE VANISHA BROWN; LINDSEY  
DELORES BROWN; DEANNA J. BROWN  
THOMAS; JASON BROWN - LEWIS;  
YAMMA N. BROWN, individually and on  
behalf of her minor children, SYDNEY  
LUMAR, CARRINGTON LUMAR, and  
TONYA BROWN; VENISHA BROWN;  
LARRY BROWN; and TERRY BROWN,  
Plaintiffs.

v.

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

TO: THE PLAINTIFFS, DEFENDANT ROBERT L. BUCHANAN, JR. AND/OR THEIR  
COUNSEL.



000456

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move for an order compelling the above-named Plaintiffs to produce the following documents before this Court hears Defendant Pope's pending Motion for Injunctions against Plaintiff Russell L. Bauknight and Kenneth B. Wingate and Sweeny Wingate & Barrow, P.A. (collectively, "Wingate") from attempting to act for the Attorney General ("AG") and/or the State of South Carolina (collectively, the "State") while serving all private plaintiffs ("Private Plaintiffs"):

1. The James Brown Legacy Trust under which Bauknight asserts status in the complaint;
2. Any authorization under which Bauknight is authorized to act for the current or former AG;
3. Wingate's contingency-fee contract with Private Plaintiffs and/or the AG/State.

The Grounds of this motion are as follows:

1. That Defendants have sought these and other relevant documents since October 12, 2010.
2. Wingate, Bauknight and Private Plaintiffs have refused to produce these and other documents and 8 Private Plaintiffs have refused to appear at depositions, obstructing Defendant's efforts to obtain these critical documents.
3. Plaintiffs' refusal to produce these critical documents is wholly inconsistent with the policy of the AG as stated in Public Official's Guide to the Freedom of Information Act (FOIA) in which he states that the AG's Office uses and recommends the following FOIA guidelines:

When in doubt, disclose requested information  
...When in doubt, release the document

4. Issues of the use of the name and power of the State in violation of Defendant Pope's constitutional rights are at issue in this case, and Plaintiffs should not be allowed to conceal the authority under which Bauknight and Wingate purport to act for the State

4. On or about May 18, 2011, Defendant Pope moved to enjoin Russell L. Bauknight from attempting to act as agent for the State of South Carolina and to enjoin Wingate from representing the State jointly with the dozen-or-more Private Plaintiffs. Defendant Pope does not challenge, and has never challenged, Wingate's representation of Private Plaintiffs in this action.

5. On or about June 30, 2011, Defendant Pope made a FOIA request for these documents from Bauknight as Trustee of the James Brown Legacy Trust and also of the AG. Counsel for Defendant Pope sent a courtesy copy of the requests to Wingate. The time for the AG to respond has not elapsed, but on or about July 15, 2011, Pope received the response attached as Exhibit A from David Black, who represents Bauknight in other matters.


6. On July 13, 2011 a status conference was held before the Honorable Alison Renee Lee, wherein Judge Lee indicated that she would seek to schedule the motion for Injunctions against Wingate and Bauknight for hearing as soon as possible and, in any event, before other pending motions in this action.

This motion is based on the United States Constitution; the Affidavit of Nathan Crystal on behalf of the Plaintiff in the case of *AstraZeneca vs. Wilson, as Attorney General*, Spartanburg County Case No. 2011-CP-42-1213, and the entire file in that action, of which the Court is asked to take judicial notice; the entire record herein; and

such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

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Post Office Box 7426  
Columbia, South Carolina 29202  
Telephone: (803) 765-0600  
Facsimile: (803) 765-0619  
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July 26, 2011

Attorneys for Defendant Adele J. Pope

EXHIBIT A

NEXSEN|PRUET

J. David Black  
Member  
Admitted in SC

July 15, 2011

VIA US MAIL

Adele J. Pope, Esquire  
1228 Walnut Street  
Newberry, South Carolina 29108

Re: Request for Documents under the South Carolina Freedom of  
Information Act

Dear Ms. Pope,

I am writing you in reference to your June 30, 2011 South Carolina Freedom of Information Act (FOIA) request for "The final and all drafts, signed and unsigned, of the James Brown Legacy Trust" (James Brown Trust).

As you are aware, for FOIA purposes, the James Brown Trust is not a public body as defined in the South Carolina FOIA Statute. See S.C. Code Ann. § 33-40-20(a). Accordingly, your request for public records is improper.

Furthermore, even in the event that such request were proper, the documents that you have requested are exempt from FOIA pursuant to S.C. Code Ann. § 30-4-40(a)(7) as the FOIA request calls for the production of Attorney Work Product and Attorney Client Privileged Materials related to ongoing litigation.

Please be advised that FOIA is not intended as a substitute for discovery and was not intended to provide procedures for obtaining information during litigation or to benefit private litigants. *Lominack v. Myers*, 2002-CP32-1890 (Order of Judge Westbrook, 11th Jud. Cir., 2002) (citing *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 144 n.10 (1975); *U.S. v. Murdock*, 548 F.2d 599, 602 (5th Cir. 1977); *Fruehauf Corp. v. Thornton*, 507 F.2d 1253, 1255 (6th Cir. 1974)).

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 other choice than to file an action against you for abuse of process and sanctions.

1230 Main Street  
Suite 700 (29201)  
PO Drawer 2428  
Columbia, SC 29202  
www.nexsenpruet.com

T 803.540.2072  
F 803.727.1409  
E DBlack@nexsenpruet.com  
Nexsen Pruet, LLC  
Attorneys and Counselors at Law

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Adele I. Pope, Esquire  
July 15, 2011  
Page 2

Very truly yours,



J. David Black

IDB/JGH

cc: James B. Richardson, Jr., Esquire  
Russell L. Bauknight

000461

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE CIRCUIT COURT

) Case No.: 2010-CP-40-4900

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 Henry Dargan McMaster, in  
his capacity as Attorney General of the State  
of South Carolina; and Others,

) Affidavit of Adele J. Pope  
) Supporting Production of Legacy Trust,  
) Fee Contract with State/AG  
) and Related Documents prior to  
) Hearing on Motion for  
) Injunctions

Plaintiffs.

and

HENRY DARGAN MCMASTER, in his  
capacity as Attorney General of the State  
of South Carolina and others

v.

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

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly  
sworn deposes and says:

1. On May 19, 2010 Kenneth B. Wingate and his firm (collectively "Wingate")  
filed this suit against Robert L. Buchanan, Jr. ("Bob") and me seeking tens of millions of  
dollars in tort damages for then-Attorney General Henry D. McMaster ("AG McMaster"  
or the "State") and about 15 private individuals ("Private Plaintiffs").

2. I ask the Court to require Wingate and Plaintiffs, before the hearing on my  
motion to enjoin them from acting for the AG/State, to produce signed copies of the  
originals and any amendments to the following documents:

a. Wingate's Retention Agreement(s) with the AG/Plaintiffs;

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<sup>1</sup> The Firm name is Sweeney, Wingate and Barrow, P.C.

- b. The James Brown Legacy Trust ("Legacy Trust")<sup>2</sup> ;
- c. The AG's authorization for Bauknight to assert he speaks on behalf of the AG.

3. Serving simultaneously as sole counsel for Private Plaintiffs<sup>3</sup> and the AG, Wingate named in the caption of the Complaint as parties:

- a. RUSSELL L. BAUKNIGHT... on behalf of [AG McMaster];
- b. BAUKNIGHT.. as Trustee of the James Brown Legacy Trust; and
- c. AG McMaster.

4. For 9 months Wingate and Bauknight have refused to produce the requested documents either through discovery or, more recently, under the S. C. Freedom of Information Act ("FOIA")

5. I first learned of Wingate's involvement in April 2010 when Plaintiff Tommie Rae Brown's agent advised that if Bob and I did not drop a pending James Brown appeal AG Sonny Jones<sup>4</sup> would to sue us through contingency-fee counsel Wingate.<sup>5</sup>

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<sup>2</sup> The Legacy Trust, although bearing Brown's name, was not created by James Brown or part of his estate plan. It was created by AG McMaster and Bauknight in either late 2008 or 2009.

<sup>3</sup> Private Plaintiffs include:

- a. 5 of the 7 grandchildren/beneficiaries of a \$285,000 education fund
- b. 6 adults Brown gave personal effects under the Will but specifically excluded from his \$85 Million worldwide music empire; and
- c. 3 other persons Brown specifically excluded from both the Will and 2000 Trust.

<sup>4</sup> While we were PR/Trustees C Havird ("Sonny") Jones, acting for AG McMaster, tried to force Bob and me to use AG McMaster's Litigation Retention Agreement in hiring attorneys AG McMaster selected. By Order dated Jan. 8, 2008, the Court declined his request. [See Tr., Hg. 12/21/07, Case 122 ]

<sup>5</sup> The appeal is in Case 2008-CP-02-1647 ("Case 1647"). In that appeal, Bob and I oppose a settlement which will take \$50 Million from Brown's 2000 Trust, dedicated to educate 7 grandchildren and needy and deserving students, and give it to 6 of Brown's more than a dozen claimed heirs, all of whom Brown disinherited from his worldwide music empire.

6. I am informed and believe that a copy of the AG's Retention Agreement will help explain Tommie Rae's threat, and may shed light on whether a \$1,000 contribution to AG McMaster's political campaign by a Wingate firm principal, Scott Barrow just after this suit was filed was improper.

7. Recently the Augusta Chronicle reported about a Litigation Retention Agreement AG Wilson approved which was made public, and discussed a \$1,052 political contribution made long before the engagement – not immediately after, as here. [See "SC Treasurer's Friend Gets up to \$3 million in State Work", 7/24/11]

8. I am informed and believe the Retention Agreement will show whether AG McMaster, who acted under color of state law and in his official capacity, and whose actions should have been consistent with the public interest, was in fact acting to punish Bob and me for conducting a proper appeal; not hiring lawyers he tried to force us to hire; and/or not signing a document preventing us from criticizing AG McMaster's destruction of James Brown's estate plan.<sup>6</sup>

9. The State/AG McMaster sued me for tens of millions of dollars – many times my personal net worth. AG McMaster, through Wingate, has made false allegations against me which, if true, would destroy my career as an attorney and expose me to both civil and criminal charges, including those of the IRS and SCDOR with whom I

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<sup>6</sup> As an attorney advising creators of private foundations, I have a duty to caution clients in S.C., or intending to transfer a private foundation here, that AG Master claims the authority to take over any estate or private foundation involved in a formal testacy case; rewrite the Settlor's estate plan to McMaster's liking; and replace the Settlor's properly-serving trustees with AG McMaster's appointees. What AG McMaster and his staff did to destroy James Brown's estate plan is described in "Private Foundation, Copyright Heirs and Musical Millionaires: Why The James Brown 'I Feel Good' Trust doesn't...", filed in this case [Smith & Pope, Dr., Apr.2011] I believe AG McMaster's suit violates my First Amendment rights.

have worked for more than 30 years on behalf of clients.

10. The requested documents will demonstrate how the AG proposes to share funds he hopes to collect from me and who will pay if Bob and I are successful in the counterclaims (on which Plaintiffs are now in default).

11. The requested documents should also 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 McMaster 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 Million<sup>7</sup> at the same time he knew Brown's Royalties for 2010 were about \$5.4 Million and Brown earned \$4 - \$6 Million each year from 2003 - 2006?

12. I am informed and believe that the requested documents and facts revealed since the filing of the complaint will demonstrate that Wingate's and Bauknight's commitment to Private Plaintiffs prevents them from serving the AG/State in this suit.

13. I am informed and believe that the Retention Agreement should provide what happens when – as here – it becomes clear that Defendants are not at fault and

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<sup>7</sup> Bauknight revealed on May 4, 2011 - 4 years and 4 months after Brown died – that he had used a valuation of \$4.7 Million for Brown's worldwide music empire and \$12 Million claim against former PR/Trustees Dallas and Cannon to obtain an IRS closing letter. Two months earlier, on February 11, 2011 Bauknight reported in a sworn accounting that Brown's Royalty receipts for 2010 were approximately \$5.4 Million. [Acctg. Aiken Cty, 2/11/11]

Brown's \$4-\$6 million annual earnings for 2003 -2006 from his worldwide music empire are fully documented in exhibits and filings in Cases 122 and 322.

the AG's Private Co-Plaintiffs do not represent the public interest and/or are, or may become, subjects of investigations by the AG or other Federal or State Agencies.

14. Just a few of the facts now known are:

- a. 8 or more Private Plaintiffs are not residents of South Carolina.
- b. Plaintiff (Georgia resident) Venisha was jailed in South Carolina on felony charges during the relevant period.
- c. There is substantial evidence that some or all of Private Plaintiffs Bauknight<sup>8</sup>, Yamma<sup>9</sup>, Terry<sup>10</sup> and Tommie Rae<sup>11</sup>, and their agents, are actively involved in the manipulation of the value of James Brown's securities and other assets for improper purposes.
- d. Private Plaintiff (Yamma) has valued James Brown's assets at 30 times (\$200 Million) Private Plaintiff Bauknight's \$6.5 Million value.
- e. Plaintiff Bauknight represented to the IRS that Brown's worldwide music empire and \$12+ Million claim against former PR/Trustees Dallas and Cannon was worth less than \$4.7 Million at his death.
- f. 1 minor Plaintiff is a possible witness (not a suspect) in an

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<sup>8</sup> Bauknight said in January 2009 he didn't know the value, but had heard Brown's assets were worth \$80 Million.

<sup>9</sup> After being part of a prospectus to raise \$200 Million to acquire the James Brown assets, Yamma apparently now joins Bauknight in asserting those same assets were worth only \$6.5 Million. [See Prospectus, Exhibit A] 3 witnesses on Wingate's Witness List [Exhibit B] are also named in the \$200 Million Prospectus (Joel Katz and Alvin & Calvin Waters)

<sup>10</sup> Plaintiff Terry was part of 2 \$90 Million - \$102 Million offers to buy Brown's assets. His son Forlando is a 39% owner of the purchase entity. Terry now apparently claims a right to buy Brown's worldwide music empire at Bauknight's new \$4.7 Million.

<sup>11</sup> In February 2007 Tommie Rae, through an attorney, asserted Brown's "book of music" (Royalties), had a value as high as \$100 Million. [Tr. 2/9/07, Case 122] Royalties are about 1/2 of Brown's worldwide music empire, the other half being his image and persona ("Publicity Rights"). In 2009 Tommie Rae, Terry and Bauknight stopped a 2-year Publicity Rights contract with GreenLight (May 2009 - May 2011) which has earned tens of millions annually for Einstein, Steve McQueen and others. The interference now appears to have been part of a devaluation scheme culminating in Bauknight's May 4 disclosure of the music empire at \$4.7 Million.

unfortunate shooting death and ongoing murder investigation (adult charged) which took place at his 16<sup>th</sup> birthday party this year.

- g. Plaintiff Terry was part of a scheme to sell the James Brown assets for \$100 Million; create an IPO; and pay options or a "kickback" to former PR/Trustees Cannon and Dallas.
- h. Wingate's Witness List names as a witness for AG McMaster Cannon, indicted in 2010 for felonies against Brown for every year from 1999 - 2006 and a 2008 forgery, now awaiting trial.
- i. Wingate's Witness List names as a witness for AG McMaster Albert Dallas, found by the Court to have committed fraud under Probate Code §62-1-106 in James Brown cases, and who is being sued by the Estate/2000 Trust for secretly misappropriating more than \$12 Million from James Brown.
- j. Wingate - 14 months after filing suit has apparently failed to pay disclosed experts Hobbs and Provence. See AG's standard Retention Agreement.
- k. Wingate - lacking experience in the James Brown cases - has made misrepresentations to this Court, including about the status of other cases in a proposed order which the Court in this case signed.<sup>12</sup>

15. I am informed and believe that, like other Retention Agreements, the Wingate Agreement is a public record.

16. In my more than 30 years as an attorney for litigants in trust and estate matters, I have 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.

17. Although I have been involved in a number of matters in which the AG was involved, I do not recall any time when - as here - the AG is party to a case but the AG (or an associate) is not counsel of record for the AG only.

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<sup>12</sup> See Order Denying Motion to Dismiss, proposed by Wingate, in which the Court found that four Aiken County cases were no longer pending when all were active.

18. I do not recall in 30 years seeing any private citizen – as Bauknight does here – assert in a case that he acts “on behalf of the Attorney General of the State of South Carolina.”

19. I am informed and believe that AG McMaster's contingency-fee Litigation Agreement with Wingate as Special Counsel should contain significant provisions, as found in other AG Contracts, to allow the AG to end a case without merit and to protect Bob and me from the use of the State's power to support abusive acts of private counsel and Private Plaintiffs. [See AstraZeneca agreement AG McMaster signed on October 20, 2006 (“AZ”), which did not involve Private Co-Plaintiffs.]

20. Portions of the AZ agreement, with emphasis supplied, are:

#### RECITALS

WHEREAS, the Attorney General has concluded it is in the best interest of the State ...to retain Special Counsel specifically for this litigation matter

...  
WHEREAS, Special counsel specifically represents that he has the skill, experience and competence necessary for the meaningful prosecution of this matter.

#### Article II. SERVICES

...  
2. ... Special counsel shall provide legal services to the Attorney General... for the purposes of seeking injunctive relief, monetary relief, and other relief against all entities in this litigation, ...

3. ... All pleadings, motions, briefs, formal documents and agreements must bear the signature of the Attorney General or his designated assistant.

#### Article III. CASE MANAGEMENT

...F. **Public Records**  
Any material, data, files, discs, or documents created, produced or

gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation. . . shall be considered the exclusive property of . . . South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-4010 et seq.,... This agreement shall be considered a public document.

...

#### Article IV. COMPENSATION

. . . Special Counsel shall receive no compensation unless the State of South Carolina receives a settlement or damage award. . .

...  
∴ the Attorney General shall retain 10% of Special Counsel's fees. . .

C. ...Special Counsel shall not be entitled to and shall not accept compensation or reimbursement from any other source.

#### Article V. EXPENSES AND COSTS

##### A. Advancement of Expenses and Costs

Special Counsel shall advance all costs ... including expert witness fees ... Special Counsel's agreement to advance ... costs has been taken into consideration in establishing the fee schedule...

...

#### Article VI. TERMINATION

##### A. Termination by the Parties

The Attorney General reserves the right to terminate this Agreement at any time, in his sole discretion, and without cause or duty or explanation.

21. My FOIA request for the Legacy Trust was met with a threat on behalf of Bauknight to file an abuse of process suit against me.<sup>13</sup>

22. Particularly troublesome in light of Private Plaintiffs' devaluation scheme is

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<sup>13</sup> See Exhibit C. The FOIA response came from one of Bauknight's 10 (according to Bauknight) attorneys at Nexsen Pruet (NP). NP serves as counsel to Plaintiff AstraZeneca Pharmaceuticals, LP in the Spartanburg County, S.C. case entitled AstraZeneca, LP, Plaintiff v. Alan Wilson, in his capacity as Attorney General of the State of South Carolina, Civil Action No. 2011-CP-42-1213 which is referenced herein.

the AG's false allegation, through Wingate, and Bauknight, purportedly speaking on behalf of the AG, that Bob and I overvalued Brown's assets to the IRS under oath by nearly \$80 Million for the improper purpose of getting a big commission.<sup>14</sup>

23. 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 Bob and me, and we are entitled to know if AG McMaster authorized them and AG Wilson condoned them.

24. On July 21, 2011, defending the AG's use of private counsel in a filing in the AZ case, AG Wilson stated:

On occasion, the Attorney General, in carrying out his responsibility, has found that it is necessary to hire outside counsel on a contingency-fee basis. These attorneys. . . take on substantial risks, litigating these matters against multi-billion dollar entities, which employ scores of national law firms. <sup>16</sup> [Footnote 1 in text] ... Private counsel undertake this representation under the direction and control of the Attorney General. . . . [Reply, p.3] [Emphasis supplied.]

25. In support of his AZ Retention Agreement, AG Wilson stated:

Because the Attorney General is in control of the litigation, and possesses final authority over the case, there is no risk of bias or improper enforcement.

26. AG Wilson – deploring the imbalance of power when a financial giant is

---

<sup>14</sup> In an Order dated January 8, 2008 in Case No. 122, Judge Early awarded us \$317,000 and unpaid costs for our service as Special Administrators of Brown's Estate from March 7, 2007 - November 20, 2007. Acknowledging our increased commitment as PR/Trustees, the Court also awarded Bob and me ongoing "time plus costs" payments, with interest at the legal rate on unpaid amounts. Neither AG McMaster nor any Interested Person objected to the January 8 Order. As of September 1, 2009, as reflected in the Aiken County records, Bob and I were entitled to approximately \$2.1 Million, plus future interest. [See Order dtd. 1/8/08, Case 122.]

<sup>15</sup> 1 For example, in contrast to the figures cited by Defendants... Astra Zeneca reported in mid-2009: . . . that it had already spent \$593 million defending Seroquel matters.

pitted against the AG's office with its \$7 Million annual budget -- stated:

**AstraZeneca seeks to ensure that itself, or any other major corporation engaging in widespread unfair and deceptive conduct, maintains such a massive advantage in resources that this [AG Wilson's] Attorney General's Office -- and others around the country -- are simply without resources to effectively enforce their state statutes.**

27. I attended a hearing in July 2011 on the AG's motion to dismiss AZ's case challenging private counsel and heard AG Jones speak of the unfairness of giant entities such as AZ attempting to intimidate relatively small ones like the AG's office.

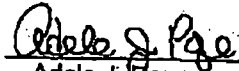
28. In this case against Bob and me, AG McMaster's office is the giant.

29. I am informed and believe that if the Court requires the Wingate Retention Agreement(s) and other requested documents to be delivered before the injunction hearing, it will help the parties and Court address the following essential questions related to the injunction request:


1. Is Bauknight's assertion that he speaks on behalf of AG McMaster legal?
2. Did all Private Plaintiffs sign the Retention Agreement (as is required for a contingent fee), and did they cede control to the AG so that the State would not trample on our Constitutional rights as citizens?
2. Is any public policy articulated for the State/AG joining Private Plaintiffs in this tort suit for money damages against us?
3. Is any Public Policy violated or served by AG McMaster's sharing a single private law firm and attorney-client privilege with Private Plaintiffs?
4. Did AG McMaster violate his own policy and/or the Retention Agreement by not maintaining control over the litigation and signing the complaint?
5. What does the Retention Agreement provide if Private Plaintiffs/Bauknight become targets of securities, tax or fraud investigations and their witnesses are under indictment or investigation in South Carolina?
6. How are the funds recovered from Bob and me, if any, shared?

7. How is our judgment against Plaintiffs, if any, to be paid?
8. May Wingate properly assert the State's privileges and immunities to attempt to relieve Private Plaintiffs from default?
9. Did AG McMaster approve seeking money damages against us for not signing an agreement not to criticize AG McMaster?
10. Does the Retention Agreement designate Bauknight to speak on behalf of, or bind, the AG and State?
11. What action, if any, has AG Wilson taken to amend the Retention Agreement or Bauknight authorization to act on behalf of the AG?

FURTHER DEPONENT SAYETH NOT.

  
Adele J. Pope

SWORN TO BEFORE ME this  
1<sup>st</sup> day of August, 2011

 (L.S.)  
Notary Public for South Carolina  
My commission expires: 7/13/2016

<b>STATE OF SOUTH CAROLINA</b>	)	<b>IN THE COURT OF COMMON PLEAS</b>
	)	
<b>COUNTY OF RICHLAND</b>	)	<b>Civil Action No. 2011-CP-40-350</b>
	)	
<b>Adele J. Pope,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>PLAINTIFF'S STATUS REPORT AND</b>
	)	<b>MEMORANDUM OF LAW</b>
<b>v.</b>	)	
	)	
<b>Alan Wilson, in his capacity as</b>	)	
<b>Attorney General of South</b>	)	
<b>Carolina and James Brown</b>	)	
<b>Legacy Trust, by Russell L. Bauknight,</b>	)	
<b>its Trustee</b>	)	
	)	
<b>Defendants.</b>	)	

By direction of the Honorable L. Casey Manning on March 18, 2013 Plaintiff Adele J. Pope submits this report of the Status of this case in light of S. C. Supreme Court decision No. 27227, issued February 27, 2013 and subsequent events.

**Summary of Status and Relief Requested**

The following summarizes the status of this case ["Case 350"]:

1. This case, brought under the South Carolina Freedom of Information Act ("FOIA"), has been pending for nearly 18 months and is ready to be heard and finally decided at the Court's earliest convenience.
2. Pursuant to the Supreme Court's suggestion (in footnote 29 of the opinion), the FOIA cases "should be considered by the circuit court in the first instance."
3. The Defendant James Brown Legacy Trust (the "Legacy Trust")'s argument that it will not exist if the Supreme Court's opinion stands is baseless, and the Legacy Trust is unquestionably a public body created by the South Carolina Attorney General.
4. All documents held by the Legacy Trust and/or its counsel are under the control of the Attorney General and subject to the provisions of FOIA.
5. The motion to consolidate this case with Case 4900 is now moot in light of the AG's indication that he will seek to withdraw from Case 4900.

These matters are discussed in detail below.

## History of Case

Pope made proper requests under the FOIA for the public documents sought herein in June 2011. Those documents include:

The Final and all drafts, signed and unsigned, of the James Brown Legacy Trust (requested from both Defendants) and

All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust (requested from Defendant AG only)

Counsel for the Legacy Trust refused to release any documents and threatened to seek sanctions or other relief against Pope if she made further requests to the Legacy Trust under the FOIA. (See Ex. C to Ex. D of the Complaint herein.) The Attorney General failed to timely respond to Pope's FOIA request.

This case was filed on August 3, 2011 in Newberry County. Pursuant to the FOIA, Plaintiff sought a declaration that the requested documents are public; an Order directing their production; and her attorneys' fees incurred in prosecuting this matter. All such relief is provided for by statute. (See S. C. Code Ann. § 30-4-10, et seq.)

At the request of Defendant AG, this case was transferred to Richland County and given its current case number. Subsequently, both Defendants moved separately to consolidate this case with Case No. 2010-CP-40-4900 ("Case 4900"), which is a complex tort case.

Despite continuing requests by Plaintiff for a hearing, no motions have been decided since the case was transferred to Richland County more than a year ago.

On March 15, 2013, the Legacy Trust moved for a stay, based on its assertion that it no longer exists as a result of the Supreme Court's February 27 decision in another case.

Plaintiff opposes this request as set out below and asks again that this matter be heard at the Court's earliest convenience.

**The Legacy Trust has Existed for Years, and No Stay Should be Granted.**

The Legacy Trust was created by then-Attorney General Henry McMaster prior to May of 2010. Since its creation, the Legacy Trust has prosecuted a Richland County tort action against Pope for more than 2 years; engaged counsel and defended this action for nearly 18 months; sought, for more than a year, to intervene in another FOIA action brought by Pope; and been actively managed by Russell L. Bauknight for more than 3 years (See Affidavit of Bauknight, dtd. 1/10/12). Not once prior to March 15, 2012 had the Legacy Trust questioned its continued existence, despite being directly and continuously involved in litigation.

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 a *settlement agreement*. Although the decision may have some effect on the management and funding of the Legacy Trust, nothing in the opinion suggests that 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 multimillion-dollar claim against Plaintiff for alleged breaches of fiduciary duty and trust. Indeed, the Legacy Trust is still one of the lead Plaintiffs in Case 4900, wherein it has indicated no doubt as to its existence.

Its 18-month participation in this case also shows that the Legacy Trust has been funded in some manner. It has been and continues to be represented by a well-respected firm which, ostensibly, has been or expects to be paid for its work.

In short, the Legacy Trust exists, despite any current question of the manner or

amount of its funding.

### **The Legacy Trust is a Public Body and Must Produce the Requested Documents**

The Legacy Trust was created by former Attorney General Henry D. McMaster in his official capacity, as is demonstrated by both known drafts of the document. These drafts show "the Attorney General of South Carolina" as one of the Settlers of the Trust. It is absurd to suggest that an entity created by the Attorney General of South Carolina could be considered anything other than a public body.

Our Supreme Court held in *Weston v. Carolina Research and Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991), that indirect public support of an organization could cause that organization to be treated as a public body. In *Associated Press v. Sebelius*, 31 Kan.2d 1107, 78 P.3d 486 (2003), the Kansas Court held 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. This is particularly instructive, since many attorneys within the AG's office have, in their capacities as state employees, expended considerable time in defending the Legacy Trust's existence and pursuing its continued funding under the August 2008 settlement agreement.


In 2006, Attorney General McMaster - citing both of the above cases - opined that "'indirect' or 'in kind' public funding, such as by virtue of an entity's use of public employees or governmental resources, is sufficient to invoke FOIA." (See Opinion dtd. 5/19/06) Following the case law and the Attorney General's own opinion, the vast state resources dedicated to the Legacy Trust give rise to its status as a public body.

Further, in January 2011, Attorney General McMaster - without the Trustee of the Legacy Trust - signed an amendment indicating that the settlement "created an entity (the 'Settlement Entity') to hold all of the assets related to James Brown . . . ." See Exhibit A,

attached. This "Confirmation and Amendment" confirms by its own language that the Legacy Trust (which is the "Settlement Entity") had been in existence since the settlement was executed.

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 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.

Respectfully submitted,

  
\_\_\_\_\_  
Adam T. Silvernail  
Law Office of Adam T. Silvernail, LLC  
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Post Office Box 1898  
Columbia, South Carolina 29202-1898  
Telephone: (803) 779-1770 m  
Facsimile: (803) 403-8092  
[adam@silvernailfirm](mailto:adam@silvernailfirm)

March 27, 2013

Attorney for Plaintiff

# EXHIBIT A

## Confirmation and Amendment

Certain parties entered into an Addendum to Private Agreement of August 10, 2008 to include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "agreement"), that created an entity (the "Settlement Entity") to hold all of the assets related to James Brown, as described in paragraph 1 of the agreement. Capitalized terms not defined herein have the meanings set forth in the agreement. Those parties hereby confirm and amend certain provisions of the agreement, as follows:

1. Under the agreement, Terry Brown ("Terry") has a Right of First Refusal ("ROFR"). This agreement confirms that Terry's ROFR in all respects under the agreement applies only to "the sale of all or substantially all" of the "James Brown Assets" (as the term James Brown Assets is defined in paragraph 1 of the agreement). The term "the sale of all or substantially all" includes only (a) the sale of the entirety (that is, one hundred percent) of the James Brown Assets in one or a series of related transactions, or (b) the sale of at least 65% of the estimated value of the entirety of the James Brown Assets as of such time in one or a series of related transactions. Terry's ROFR does not apply to any other transfer of any of the James Brown Assets or an interest therein. For example, and notwithstanding anything to the contrary in the agreement or in the foregoing, the ROFR does not apply to the granting of one or more clearances or licenses of any duration, scope, or description for the use of any or all of the James Brown Assets, including but not limited to such purposes as movies, documentaries, video games, commercials or other advertisements, product brands, books or other publications, or theatrical productions.
2. Under the agreement, Terry has the exclusive right to conduct a due diligence review ("due diligence right") of all of the James Brown Assets as provided in Paragraph 5 of the agreement. With respect to the due diligence right, the agreement is hereby amended to the extent and only to the extent as follows: (a) Terry may commence the due diligence review immediately upon the execution of this confirmation and amendment; (b) the due diligence period will be for a period of twelve months from the execution of this confirmation and amendment; (c) there is no prohibition against the Settlement Entity, and/or Russell Banknight as fiduciary or any agent or consultant employed by or on behalf of the Estate or Settlement Entity, soliciting, encouraging, entertaining, discussing, or accepting offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets (including any offer generated by a beneficiary of the Estate or such other agents or representatives as the Estate or Settlement Entity may from time to time authorize), subject in all cases to the Terry's exclusive solicitation rights clarified in paragraph 3 below; and (d) Terry Brown or his designee shall have the exclusive right to use any work product or other materials in any medium prepared by or on behalf of Terry in the course of the exercise of the due diligence right for purposes of soliciting, encouraging, entertaining or discussing offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets.
3. Under paragraphs 6, 7 and 8 of the agreement, Terry has the exclusive right to solicit offers for a period of six months ("right to solicit"). With respect to the right to solicit, the agreement is hereby amended to the extent and only to the extent as follows: the six-month period of the right

to solicit (which was formerly contemporaneous with the Exclusivity Period of the due diligence right) shall commence three months after notice from Terry (at any time after the later of the expiration of the due diligence review period or the funding of the Settlement Entity). The three-month period is to allow the Estate/Settlement Entity a reasonable time to wind down or complete any then-ongoing discussions, but the Estate and Settlement Entity will not use such period for any purpose that is intended to defeat Terry's enjoyment of the right to solicit; provided however, that Terry's right to solicit will prohibit neither the continued granting of music clearances nor the continued performance of licenses and clearances permitted by paragraph 1 above.

4. Terry and the other parties to the agreement shall agree that, during the periods in which Terry is exercising the due diligence right and the right to solicit under paragraphs 2 and 3 above, they shall cooperate with respect to providing Terry and his representatives full access to any and all records, documents, things and information within the parties' control concerning the James Brown Assets and the value thereof, including but not limited to contracts, documents and things pertaining to or reflecting James Brown's songwriting or recording activities, royalty statements, bank records, audits, valuations, tax documents, audio master tapes, video master tapes, government filings (including but not limited to trademark and copyright filings), personal effects, artwork, writings, journals, photographs, press clippings, promotional materials, whether or not constituting "Confidential Information" for purposes of the agreement (collectively, the "Documents"), subject to an obligation to safeguard such items. Terry shall have the right to make the Documents or information therein available to third parties as he reasonably deems necessary in connection with the exercise of the due diligence right and the right to solicit, provided that such third parties first enter into confidentiality agreements in favor of the Estate and/or the Settlement Entity, as applicable, that are at least as protective of such information as the provisions of paragraph 9 of the agreement.

5. Except as confirmed and amended by this confirmation and amendment, the agreement remains in full force and effect.

---

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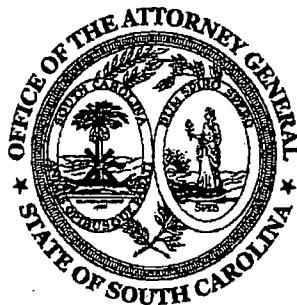
*Attorney for Larry Brown, Daryl J. Brown, Janise Vanisha B., Lindsey Deloris Brown, Vanisha Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yantina N. Brown-Lunar, Sydney L. Carrington L., and Tanya Brown*

*[Handwritten Signature]*  
Terry Brown

REF ID: A109-0000 0441-0004

000483





ALAN WILSON  
ATTORNEY GENERAL

March 28, 2013

The Honorable L. Casey Manning  
Judge, Fifth Judicial Circuit  
P.O. Box 192  
Columbia, SC 29202

Re: Pope v. Wilson, Attorney General and Bauknight 2012-CP-40-350 (Pope FOIA I)  
Pope v. Wilson 2010-CP-40-4900 (Pope FOIA II consolidated with *Bauknight*)


Dear Judge Manning:

Enclosed for your information is a copy of the Reply of the Defendant to the Return to his Motion for Judgment on the Pleadings in Pope case II (Case 4900), *supra*. I also enclose, for your convenience, a copy of my letter to you of March 7, 2013 which provides a brief summary of our position in these cases including that, subject to all defenses and defense motions as to this litigation, we believe that we have responded to the FOIA's at issue.

The Defendant Wilson is prepared to argue pending motions in these cases when scheduled by this Court. Respectfully, I request protection from scheduling on the following dates over the next six weeks: April 8, 11, 12, 19, 23, 26, May 3, May 13, May 14, and May 17. I will be available on all other dates during that period. We take no position as to the Legacy Trust's Motion for Stay but believe that hearing of motions involving the Attorney General should not be stayed and should be heard.

Thank you for your consideration of these matters. If you have questions, please let me know.

Respectfully submitted,

  
J. Emory Smith, Jr.  
Assistant Deputy Attorney General

cc: Adam T. Silvernail, Esquire  
Keith M. Babcock, Esquire  
Ariail E. King, Esquire  
J. Calhoun Watson, Esquire  
The Honorable Jeanette W. McBride  
Daryl L. Williams, Esquire  
Robin A. Braithwaite, Esquire  
Kenneth B. Wingate, Esquire  
Mark V. Gende, Esquire

000484

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Adele J. Pope, )

Plaintiff, )

vs. )

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

Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 12- CP-40-350

**JAMES BROWN LEGACY TRUST'S  
SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF MOTION TO DISMISS  
& IN OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT.**

RICHLAND COUNTY  
FILED  
MAY - 2 PM 4:11  
KATHLEEN A. MORRIS  
CLERK, S.C.S.

Defendant James Brown Legacy Trust, by Russell L. Bauknight, its Trustee ("Legacy Trust"), submits this Supplemental Memorandum in Support of its Motion to Dismiss and in Opposition to Plaintiff's Motion for Summary Judgment.

Plaintiff's action against the Legacy Trust should be dismissed as moot following the South Carolina Supreme Court's ruling in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), and by virtue of the fact that all documents sought from the Legacy Trust pursuant to the Freedom of Information Act (FOIA) are in Plaintiff's possession. Alternatively, to the extent this Court finds that an actual live controversy still exists, the Legacy Trust should be dismissed from this action because it is not a public body subject to the FOIA, and because Plaintiff is attempting to use the FOIA to circumvent discovery procedures in a related case.

**I. Plaintiff's Action Against the Legacy Trust Should Be Dismissed as Moot for Lack of a Live Controversy.**

In order for Plaintiff to maintain this action against the Legacy Trust, there must be a justiciable controversy. *Wilson v. Dallas*, 403 S.C. 411, 423, 743 S.E.2d 746, 753 (2013). Here, Plaintiff's action against the Legacy Trust has been rendered moot because: (1) the South Carolina

Supreme Court's ruling in *Wilson v. Dallas* rendered the Legacy Trust a null entity; (2) *Wilson v. Dallas* terminated any involvement of the South Carolina Attorney General in Legacy Trust before the Legacy Trust ever took effect; and, (3) all documents sought from the Legacy Trust are in Plaintiff's possession. Therefore, no ruling from this Court will change or impact Plaintiff's receipt of the requested FOIA materials from the Legacy Trust. As such, Plaintiff's case against the Legacy Trust is moot and should be dismissed. *Seabrook v. Knox*, 369 S.C. 191, 197, 631 S.E.2d 907, 910 (2006) ("A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because of an intervening event renders any grant of effectual relief impossible for the reviewing court.").

**a. Under the South Carolina Supreme Court's opinion in *Wilson v. Dallas*, the Legacy Trust as Challenged by Plaintiff No Longer Exists.**

The essence of Plaintiff's contention in this action against the Legacy Trust is that the Legacy Trust is subject to the FOIA because of the South Carolina Attorney General's involvement in Legacy Trust's creation and anticipated continuing oversight. (Compl. ¶¶ 3, 4, 18, 28, 33; Pl.'s Mot. Summ. J. ¶ 2.) This precise issue, whether the Attorney General's involvement in the Legacy Trust subjects the Legacy Trust to FOIA, was rendered moot by the South Carolina Supreme Court's 2013 decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), when the court invalidated the "compromise agreement," effectively terminating any potential involvement of the South Carolina Attorney General's Office in the newly created Legacy Trust. *Id.* at 450, 743 S.E.2d at 767-78. This intervening event moots Plaintiff's argument that the Legacy Trust is subject to the FOIA because of the Attorney General's potential oversight. *See Seabrook*, 369 S.C. at 197, 631 S.E.2d at 910; Russell Bauknight May 2, 2016 Affidavit, attached as Exhibit 1, ¶ 9 ("It is my understanding that *Wilson v. Dallas* effectively terminated any potential involvement of the South Carolina Attorney General's Office in the Legacy Trust."), ¶ 10 ("Since

the Supreme Court's order in *Wilson v. Dallas*, the Attorney General has had no involvement in the Legacy Trust.").

In *Wilson v. Dallas*, the South Carolina Supreme Court reviewed the "compromise agreement" approved by the Circuit Court to settle the James Brown trust dispute. One aspect of the compromise agreement was the creation of the Legacy Trust to manage James Brown's assets for the beneficiaries, which included a new charitable trust, Tommie Rae Brown, and the Brown Family. The plan was to fund the Legacy Trust with a future interest. Prior to the Legacy Trust ever being funded and the compromise agreement taking effect, this Court issued an order prohibiting distributions during the appeals process, and, thus, the Legacy Trust was never funded and no distributions were ever made. (See *Bauknight Aff.* ¶ 20.)

In the South Carolina Supreme Court's review of the compromise agreement, it held that the agreement was not just and reasonable and it reversed the lower court's approval of the compromise. The court ruled that the settlement agreement could not replace James Brown's estate plan and existing trusts by creating new trusts. *Wilson v. Dallas*, 403 S.C. at 446, 743 S.E.2d at 765. In so holding, the court explicitly invalidated the existence of the Legacy Trust. *Id.* at 450, 743 S.E.2d at 767-68; *Bauknight Aff.* ¶ 7.

It follows that Plaintiff's argument that the Attorney General's control and influence make the Legacy Trust subject to the FOIA fails. The Legacy Trust was never funded and the Attorney General's potential involvement in the Legacy Trust never materialized because it was invalidated by the Supreme Court. (*Bauknight Aff.* ¶¶ 7, 9, 10, 11.) The South Carolina Supreme Court's intervening opinion in *Wilson v. Dallas* during the pendency of this action effectively terminated the Attorney General's potential oversight of any of James Brown's assets that were planned to be placed in the Legacy Trust, and thus, Plaintiff's entire argument underpinning its FOIA case

against the Legacy Trust is now moot and should be dismissed.

**b. Plaintiff Is in Possession of All Responsive FOIA Documents, Mooting Its FOIA Action Against Legacy Trust.**

The FOIA directed to Defendant Bauknight sought "The Final and all drafts, signed and unsigned, of the James Brown Legacy Trust." (Compl. ¶ 18.) The Answer of the Attorney General, filed on March 7, 2013, asserts that "he has no documents that could be considered responsive to the Freedom of Information Act request at issue except for an attached draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas*, Op. No. 27227 (S.C. Sup.Ct., filed February 27, 2013), a case in which Plaintiff was a party." (Answer of Attorney General, p. 1, 8 ¶ 36 (footnote omitted).) The document referenced was an attachment to the Answer.

On March 13, 2013, the Attorney General filed an additional exhibit to the Answer with the clerk of court. This exhibit was another draft of the Legacy Trust, which had also appeared in the Record on Appeal in *Wilson v. Dallas*. As these are the only two documents related to the FOIA request to the Legacy Trust and they have been in Plaintiff's possession by way of the Record on Appeal and now also provided as attachments to the Attorney General's Answer, the FOIA as to Defendant Legacy Trust is now moot and the complaint should be dismissed. See *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006) (justiciable controversy no longer exists once documents subject to FOIA are produced).

**II. Even Before the Supreme Court Eliminated the Legacy Trust, It Was Not a Public Body Subject to the Freedom of Information Act.**

In order for the Legacy Trust to be subject to the FOIA, it must fall within the definition of a "public body" under the act. *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 400, 401 S.E.2d 161, 163 (1991). The South Carolina Freedom of Information Act defines "public body" as:

[A]ny department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority.

S.C. Code Ann. § 30-4-20(a).

This Court does not need to look any further than the language of the statute to find that the Legacy Trust is not subject to FOIA. *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994) ("If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing the rules of statutory interpretation. The court has no right to look for or impose another meaning.").<sup>1</sup> It is without contention that under the plain language of the FOIA, trusts are not included in the definition of a "public body" and the Legacy Trust is not: a state board, commission, agency, or authority; a county, municipality, township, school district, or special purpose district; or a committee, subcommittee or advisory committee.<sup>2</sup> (Bauknight Aff. ¶¶ 14-15.)

<sup>1</sup> See also 1989 S.C. Op. Att'y Gen. 259 (1989) ("Clearly, this Committee is not a department of the State, a state board, commission, agency, governmental body, political subdivision, county, municipality, township, school district, or special purpose district. The fact that the Committee was not created by a provision of the South Carolina Constitution, a statute, ordinance, or resolution supports this conclusion. Additionally, the Committee does not perform exclusive governmental functions or make policy affecting citizens' fundamental rights, factors often considered in terms of the governmental bodies enumerated in the Act.").

<sup>2</sup> Furthermore, not all "committees," which are explicitly included as a public body under FOIA, are subject to FOIA. Only a committee that "in making its recommendations, [is] performing a governmental function" is subject to the Act. 1984 S.C. Op. Att'y Gen. 159 (1984).

Plaintiff appears to allege that the Legacy Trust is somehow under the "control of" or receives "support" from the Attorney General, and is thereby rendered a public body for the FOIA.<sup>3</sup> (Compl. ¶ 28.) Under the statute, only organizations that are supported "in whole or in part by public funds or expending public funds" are subject to FOIA. S.C. Code Ann. § 30-4-20(a); *Disabato v. S.C. Ass'n of School Adm'rs*, 404 S.C. 433, 454-55, 746 S.E.2d 329, 340 (2013) ("[T]he application of the FOIA beyond traditional governmental entities is limited to statutorily defined public bodies, which are only those entities supported by public funds." (citing *Weston*, 303 S.C. at 403, 401 S.E.2d at 164)).

"Public funds are, generally, funds belonging to a state or county or other political subdivision, more especially taxes or other such moneys raised by the operation of some general law and appropriated by the government for the discharge of its obligations or for some public or governmental purpose." 1989 S.C. Op. Att'y Gen. 259 (1989). The Legacy Trust is not supported by taxes or monies belonging to a political subdivision. (*Bauknight Aff.* ¶¶ 17, 19.) The Legacy Trust was to be funded by the assets of James Brown before it was functionally struck down by the court in *Wilson v. Dallas*.<sup>4</sup> (*Bauknight Aff.* ¶ 20.)

Likewise, the Legacy Trust was not designed to expend public funds, it was only set up to be in control of and responsible for disbursing the private assets of the trust.<sup>5</sup> (*Bauknight Aff.* ¶¶ 5, 17.) A private entity is only subject to the FOIA where it "receive[s] government funds *en*

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<sup>3</sup> The Attorney General has no involvement in the Legacy Trust. (*Bauknight Aff.* ¶¶ 9-11).

<sup>4</sup> As noted previously, the Legacy Trust has never been funded and no distributions have been made.

<sup>5</sup> In contrast, see, *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 161-63, 547 S.E.2d 862, 864-65 (2001) (Committee that was formed to help determine the award of a City contract that involving the expenditure of city funds is subject to FOIA).

*masse*” or it is “generally supported by public funds.” *Disabato*, 404 S.C. at 456, 746 S.E.2d at 341. (clarifying its holding in *Weston*, 303 S.C. 398, 401 S.E.2d 161, concerning when private organizations are subject to the FOIA); *see also Woods v. Boeing Co.*, 841 F. Supp. 2d 925, 929-30 (D.S.C. 2012) (finding that although Boeing received a “massive amount of public money” it is not subject to a FOIA-like disclosures where it was not acting as state’s agent or expending the funds for the public benefit).

*Weston v. Carolina Research & Development Foundation* is the only South Carolina case cited by Plaintiff to support its argument that the Legacy Trust is a public body. The South Carolina Supreme Court’s 2013 *Disabato* decision clarified *Weston*’s application to private entities, holding that the FOIA only applies where the private entity is supported *en masse* or is generally supported by public funds. *Disabato*, 404 S.C. at 456, 746 S.E.2d at 341. *Disabato* clearly places the Legacy Trust outside of the FOIA’s reach. The Legacy Trust did not receive any public funds and was not set up to manage state assets or for the public benefit, and thus, the Legacy Trust is not subject to FOIA and should be dismissed from this action.<sup>6</sup>

Furthermore, as noted in Mr. Bauknight’s affidavit, Plaintiff herself has admitted in other litigation that trusts such as the one at issue are not public entities. (Bauknight Aff. ¶ 16.) In an

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<sup>6</sup> To the extent Plaintiff argues that the Attorney General’s, or Attorney General’s staff, involvement in the creation and ongoing oversight of the legacy trust somehow can be quantified and then count as support from public funds to be attributed to the Legacy Trust, the South Carolina Supreme Court has made clear that a negligible amount of government funds provided to a private entity for a specific purpose does not subject the private entity to the FOIA. *Disabato*, 404 S.C. at 456, 746 S.E.2d at 341. Moreover, the court’s ruling in *Dallas*, that the Attorney General’s involvement in the compromise agreement and Legacy Trust overreached his statutory authority, moots Plaintiff’s concern on this point. Further, Plaintiff’s reliance on *Associated Press v. Sebelius*, 78 P.3d 486 (Kan. Ct. App. 2003), is not persuasive, as that case was concerned with state employees serving in a group organized by the governor-elect to evaluating efficiencies and savings in state government, clearly a public purpose and with meeting times that could be directly traced to specific state employees.

appeal of the settlement that created the Legacy Trust, Plaintiff wrote that “[p]rivate foundations such as the ‘I Feel Good’ foundation/trust are not public charities.” (Bauknight Aff. ¶ 16). Throughout the appeal, Plaintiff referred to the trust as “private.” Like the “I Feel Good” Trust which Plaintiff acknowledges is private, the Legacy Trust is funded with private property of James Brown and is thus a private, not public entity.

**II. Plaintiff Cannot Use the Freedom of Information Act to Circumvent the Discovery Rules in Another Case Pending Between the Parties.**

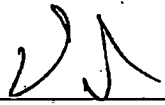
The Freedom of Information Act should not be used as a substitute for discovery and was not intended to provide procedures for obtaining information during litigation or to benefit private litigants. *Lominack v. Myers*, 2002- CP -32-1890 (Order of Judge Westbrook, 11<sup>th</sup> Circuit, 2002), citing *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 144 (1975) (Freedom of Information act is designed to inform public about agency action and not to benefit private litigants). The United States Supreme Court has clearly stated (with regard to the federal Freedom of Information Act), that “FOIA was not intended to supplement or displace rules of discovery.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989). The South Carolina Supreme Court has not addressed the issue in a civil context but has held that FOIA is not to be used to circumvent discovery in criminal cases. *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005). Discovery also provides a method of relief if the information requested is not provided; the requesting party must bring a motion to compel. Rule 37, SCRC.P.

Plaintiff is a defendant in another case pending before this Court, which was filed by Defendant Bauknight and the Attorney General [*Bauknight v. Pope*, 2010-CP-40 - 4900]. In that case, Plaintiff requested certain documents, including “[t]he James Brown Legacy Trust under which Bauknight asserts status in the complaint” and has filed a motion to compel production of that document. Those motions (in case 4900) are pending before this Court. Since the scope and

conduct of discovery are with the discretion of the trial court, whether Plaintiff is entitled to those documents should be decided in that matter. It is obvious that Plaintiff is attempting to use FOIA to obtain material for use in the litigation brought by the Attorney General and Mr. Bauknight (2010-CP-40-4900), instead of utilizing the proper discovery techniques in that case.

**Conclusion**

Plaintiff's action against the Legacy Trust is moot following the South Carolina Supreme Court's ruling in *Wilson v. Dallas* and by virtue of the fact that all FOIA documents sought from the Legacy Trust are in Plaintiff's possession. Alternatively, to the extent this Court finds that a live controversy exists, the Legacy Trust should be dismissed from this action because it is not a public body subject to the FOIA, and because Plaintiff is attempting to use the FOIA to circumvent discovery procedures in a related case. For these reasons, the Defendant's Motion to Dismiss should be granted.

  
\_\_\_\_\_  
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Attorneys for Defendant James Brown  
Legacy Trust, by Russell L. Bauknight, its  
Trustee

Columbia, SC  
May 2, 2016

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Adele J. Pope, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Alan Wilson, in his capacity as )  
 Attorney General of South Carolina, )  
 and James Brown Legacy Trust, by )  
 Russell L. Banknight, its Trustee, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 12-CP-40-350

**SUPPLEMENTAL AFFIDAVIT OF  
 RUSSELL L. BAUKNIGHT**

PERSONALLY APPEARED BEFORE ME, the affiant, Russell L. Bauknight, who,  
 being sworn, deposes and states the following:

1. I am a resident of Richland County, South Carolina;
2. The principal place of administration and usual place of business for the below mentioned Trust is located at 1517 Gervais Street, City of Columbia, Richland County, South Carolina 29201;
3. Since 2009, I have served continuously as the court-appointed Personal Representative and Trustee of the James Brown Estate and August 1, 2000 Irrevocable Trust Agreement (Trust);
4. Also in 2009, the parties to the Will and Trust contest entered into a court approved settlement agreement forming what is often referred to as the court approved Legacy Trust (Legacy Trust). The Legacy Trust was created pursuant to a court approved settlement agreement that ended years of litigation surrounding the validity of James Brown's Will and Trust;
5. The Legacy Trust was to be funded with the private property of James Brown pursuant to the terms of the settlement agreement;
6. The validity of the settlement agreement creating the Legacy Trust and the court order approving the settlement was appealed to the South Carolina Supreme Court;



A handwritten signature in black ink, appearing to be "J.A." or similar, located in the bottom right corner of the page.


7. The South Carolina Supreme Court's 2013 decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), overturned the court approved settlement agreement and the creation of the Legacy Trust;
8. The South Carolina Attorney General is not the agent or principal of the Legacy Trust. The settlor, a cotrustee, or a beneficiary may also request the court to remove a trustee, or a trustee may be removed by the court on its own initiative. See S.C. Code Ann. § 62-7-706;
9. It is my understanding that *Wilson v. Dallas* effectively terminated any potential involvement of the South Carolina Attorney General's Office in the Legacy Trust;
10. Since the Supreme Court's order in *Wilson v. Dallas*, the Attorney General has had no involvement in the Legacy Trust;
11. Because of the Supreme Court's order overturning the settlement agreement and creation of the Legacy Trust, the Legacy Trust has ceased to function as a court approved trust;
12. I understand that a Freedom of Information Act (FOIA) request has been filed seeking documents establishing the Legacy Trust;
13. It is my understanding that the Attorney General has provided all documents that would respond to this request, though I do not believe the Legacy Trust is properly subject to the FOIA;
14. It is my understanding that FOIA exists to allow a citizen to request documents and information related to public bodies and public documents. Accordingly, I do not believe that the Legacy Trust—a private trust—is the proper entity for a FOIA request;
15. Even if the Settlement Agreement creating the Legacy Trust had not been overturned, the Legacy Trust is not a public body as defined in the South Carolina FOIA statute. See S.C. Code Ann. § 30-4-20(a) (Attached as Exhibit A);
16. Of particular importance, at the briefing stage of the appeal of the settlement agreement, Ms. Adele Pope affirmatively stated that “[p]rivate foundations such as the ‘I Feel Good’ foundation/trust are not public charities.” (Appellants’ Brief, p. 5, attached as Exhibit B). Her position that the Trust is private can be found throughout her briefs. (E.g., *id.* at pp. 3, 4, 5, 6, 7; Appellants’ Reply Brief, pp. 2, 5);
17. The private property of James Brown was to fund the Legacy Trust. Consequently, Ms. Adele Pope correctly referred to and admitted that the Trust is not subject to FOIA as it is “private” by her own admission;

18. Because the Legacy Trust is not a public body, it does not possess public records as defined in the South Carolina FOIA statute. See S.C. Code Ann. § 30-40-20(c);
19. The Legacy Trust is not supported in whole or in part by public funds, nor does the Legacy Trust expend public funds. Accordingly, it is my understanding that the Legacy Trust documents are private trust documents;
20. The only funds that the Legacy Trust was ever designed to hold were the private funds of James Brown, and this functioning of the court approved Legacy Trust was overturned and struck down in *Wilson v. Dallas*. Therefore, the court approved Legacy Trust under the settlement agreement does not exist.

FURTHER AFFLIANT SAYETH NAUGHT,

  
\_\_\_\_\_  
Russell L. Bauknight

Sworn and subscribed before me  
this 2nd day of May, 2016

 L.S.  
Notary Public for the State of South Carolina  
My commission expires: 3-21-18

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Civil Action No. 2012-CP-40-350

Adele J. Pope,

Plaintiff,

v.

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

Defendants.

PLAINTIFF'S BRIEF IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT  
AND IN OPPOSITION TO MOTIONS  
TO CONSOLIDATE AND FOR JUDGMENT  
ON THE PLEADINGS

This case was brought under the South Carolina Freedom of Information Act ("FOIA") on August 3, 2011. Plaintiff submits this Brief in Support of Summary Judgment. She also opposes motions of one or both Defendants to consolidate this case with Richland County Case No. 2010-CP-40-4900 ("Case 4900"); to dismiss it; to strike affidavits; and for judgment on the pleadings.

**Summary of Status and Relief Requested**

The following summarizes the status of this case ["Case 350"]:

1. This FOIA case has been pending for four years and nine months. It relates to a FOIA request made in June 2011 of the Attorney General of South Carolina ("AG") and a trust which was is controlled by the AG in his official capacity.
2. All documents held by Defendant James Brown Legacy Trust and/or its counsel are under the control of the AG and are subject to the provisions of FOIA. This is confirmed by the Litigation Retention Agreement in Case 4900, in which the James Brown Legacy Trust is a Plaintiff.
3. The James Brown Legacy Trust is a public body because it was created, and is controlled, by the South Carolina AG.
4. Motions filed by the AG and the James Brown Legacy Trust have served only to delay FOIA compliance and increase Plaintiff's legal fees. They should be denied.

5. Plaintiff is entitled to summary judgment for declaratory judgment and injunctive relief as requested.

6. Plaintiff is entitled to an award of reasonable attorneys' fees and costs against both Defendants.

These matters are discussed in detail below.

#### **History of Case**

Pope made proper requests under the FOIA for the public documents sought herein on June 30, 2011. Those documents include:

The Final and all drafts, signed and unsigned, of the James Brown Legacy Trust (requested from both Defendants) and

All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust (requested from Defendant AG only).

Shortly thereafter, counsel for Defendant Legacy Trust refused to release any documents and threatened to seek sanctions or other relief against Plaintiff if she made further requests to the Legacy Trust under the FOIA. (See Ex. C to Ex. D of the Complaint herein.) The AG failed to timely respond to Plaintiff's FOIA request.

This case was filed on August 3, 2011 in Newberry County. Pursuant to the FOIA, Plaintiff sought a declaration that the Legacy Trust is a public body and the requested documents are public; an Order directing their production; and her attorneys' fees and costs incurred in prosecuting this matter. All such relief is provided for by statute. (See S. C. Code Ann. § 30-4-10, et seq.)

At the request of Defendant AG, this case was transferred to Richland County and given its current case number. Subsequently, both Defendants moved separately to consolidate this case with Case No. 2010-CP-40-4900 ("Case 4900"), which is a complex

tort case in which the Legacy Trust and AG, with others, are suing Plaintiff.

On March 15, 2013, the Legacy Trust moved be dismissed from this action, based on its assertion that it no longer exists as a result of the Supreme Court's initial decision in *Wilson v. Dallas* on February 27, 2013. On May 8, 2013, the Supreme Court issued its final opinion in *Wilson*. Neither the Legacy Trust nor the AG provided any documentation supporting the alleged dissolution or explanation of the distribution of Legacy Trust assets. [The Legacy Trust has continued its active participation in Case 4900.]

Since the issuance of the Supreme Court's final opinion, the AG has asserted that it has no documents which have not been produced to Plaintiff, despite the AG's having opposed Plaintiff's FOIA request for more than four years.

**The Attorney General Must Produce all Responsive Public Documents, Including those within the Files of Sweeny Wingate & Barrow, PA**

The AG has made the bald assertion in letters and emails that all responsive documents have been produced. These informal representations are neither a basis for further delay nor for the summary dismissal the AG seems to seek. Because of this, the Court should deny the AG's motion for judgment on the pleadings and grant Plaintiff's motion for summary judgment.

In addition, the AG has used a valuation obtained in late 2010 to support various filing in the South Carolina Appellate Courts. The AG advised the Appellate Court on August 23, 2010 that he expected an appraisal to arrive shortly thereafter showing that the value of James Brown's Estate and Trust would "not exceed Twelve Million (\$12,000,000) Dollars." On May 6, 2011, the AG filed a Motion to Supplement the Record in *Wilson v. Dallas*, which motion relied on the appraisal obtained in late 2010. The AG asked the Supreme Court to accept Bauknight's Inventory and Appraisement, based on the appraisal, which shows the value of James Brown's music empire to be less than \$4.7 million.

After the decision in *Wilson*, the AG's Case 4900 co-Plaintiff James B. filed a Petition for Rehearing which set out in detail the methodology used in the 2010 valuation. James B. is represented by Sweeney, Wingate & Barrow, PA, the AG's Case 4900 counsel.

The AG appears as a lead Plaintiff in Case 4900, and the files of the Wingate firm, insofar as they serve as counsel for the State, are subject to the FOIA. Despite the AG's assertions that it has no further documents, the *Court* has not yet passed on the question of whether further production will be required.

Plaintiff notes that the FOIA requires a public body to release all responsive public documents "prepared, owned, used, in the possession of, or retained by a public body." S.C. Code Ann. §30-4-20(c). Although the AG has taken the position that his office does not possess any further responsive documents, he has refused to provide responsive documents which are in the files of his counsel in Case 4900.

The documents sought herein are of public importance, as the IRS materials the AG sought to have included in the *Wilson* record show James Brown's "I Feel Good" Foundation being funded with between \$2.6 million and \$2.8 million, rather than about \$80 million. Although it is not necessary for the Court to find a compelling public need for the documents sought under the FOIA, such a need exists in this case. Plaintiff has presented affidavits from various citizens to this effect.

#### **The Legacy Trust Continues to Act**

The Legacy Trust was created by then-AG Henry McMaster prior to May of 2010. Since its creation, the Legacy Trust has prosecuted a Richland County tort action against Plaintiff for 6 years; engaged counsel; and defended this action for over 55 months; sought, for more than four years, to intervene in another FOIA action brought by Pope; and been actively managed by Russell L. Bauknight (See Affidavit of Bauknight, dtd. 1/10/12). Not

once prior to March 15, 2013 had the Legacy Trust questioned its continued existence, despite being directly and continuously involved in litigation. In the three years since the Supreme Court issued its opinion in *Wilson v. Dallas*, the McMaster Legacy Trust has continued to actively litigate against Plaintiff in Case 4900. To date, the McMaster Legacy Trust has never made a filing in Case 4900 which takes the position that it does not exist, a position it seeks to take in this FOIA matter.

The Supreme Court's opinion reversed the approval of a *settlement agreement*. Although the decision may have some effect on the management and funding of the Legacy Trust, nothing in the opinion suggests that the Supreme Court dissolved the Legacy Trust.

Furthermore, The Legacy Trust's argument that it has no assets is incorrect. Since May 19, 2010 the Legacy Trust has pursued a multimillion-dollar claim against Plaintiff for alleged breaches of fiduciary duty and trust which the Legacy Trust claims Plaintiff owes it. Today, the Legacy Trust remains one of the lead Plaintiffs in Case 4900, wherein it has indicated no doubt as to its existence.

Its 55-month participation in this case also shows that the Legacy Trust has been funded in some manner. It has been, and continues to be, represented by a well-respected firm which, ostensibly, has been or expects to be paid for its work.

In short, there is no evidence that the Legacy Trust has been dissolved.

#### **The Legacy Trust is a Public Body Subject to the FOIA**

The Legacy Trust was created by former AG Henry D. McMaster in his official capacity, as is demonstrated by both known drafts of the document. These drafts show "the Attorney General of South Carolina" as one of the Settlers of the Trust. It defies reason to suggest that an entity created and controlled by the AG of South Carolina could be considered anything other than a public body.

Our Supreme Court held in *Weston v. Carolina Research and Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991), that indirect public support of an organization could cause that organization to be treated as a public body. In *Associated Press v. Sebelius*, 31 Kan.2d 1107, 78 P.3d 486 (2003), the Kansas Court held 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. This is particularly instructive, since many attorneys within the AG's office have, in their capacities as state employees, expended considerable time in defending the Legacy Trust's existence and pursuing its continued funding under the August 2008 settlement agreement.

In 2006, AG McMaster – citing both of the above cases – opined that “‘indirect’ or ‘in kind’ public funding, such as by virtue of an entity’s use of public employees or governmental resources, is sufficient to invoke FOIA.” (See Opinion dtd. 5/19/06) Following the case law and the AG’s own opinion, the vast state resources dedicated to the Legacy Trust give rise to its status as a public body.

Further, in January 2011, AG McMaster – without the Trustee of the Legacy Trust – signed an amendment indicating that the settlement “created an entity (the ‘Settlement Entity’) to hold all of the assets related to James Brown . . . .” This “Confirmation and Amendment” confirms by its own language that the Legacy Trust (which is the “Settlement Entity”) had been in existence since the settlement was executed.

The Legacy Trust asks this Court to find that the AG can create an entity which does not have to produce its own public documents if the Supreme Court later finds the AG’s actions were improper. The Court should decline to do so, and find that the McMaster Legacy Trust is a public body subject to the FOIA.

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**The Court Should Award Plaintiff the Attorneys' Fees and Costs Incurred Herein**

Plaintiff's final cause of action is a request for the attorneys' fees and costs incurred in filing and pursuing this action. S.C. Code Ann. §30-4-100 authorizes this Court to award reasonable attorneys' fees and costs to a plaintiff who prevails in whole or in part. See *Sloan v. Friends of the Hunley, Inc.*, 393 S.C. 152, 157, 711 S.E.2d 895, 897 (2011) ("When a public body frustrates a citizen's FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed." (Internal citations omitted)).

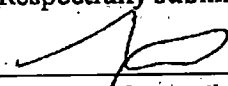
Plaintiff properly requested public documents from two public bodies in June 2011. The AG took the position that Plaintiff's FOIA rights were suspended as a result of the AG having sued her in Case 4900. The McMaster Legacy Trust took the position that it was not a public body subject to the FOIA. The AG's successful motion to transfer venue and pending motion to consolidate this matter with Case 4900, along with the McMaster Legacy Trust's efforts to be dismissed as a result of the alleged end of its existence in 2013, have caused the intervening four years' delay.

To date, Plaintiff's attorneys' fees (at the rate of \$250 per hour) are \$30,950, with an additional \$1,128.10 in costs. These fees and costs are reasonable in light of both Defendants' efforts to extend this simple action into multi-year litigation which further stifled Plaintiff's FOIA rights. Plaintiff asks that this Court grant judgment against the Defendants, jointly and severally, in the amount of \$32,078.10, plus any additional fees and costs incurred through the May 17, 2106 hearing in this action.

**Conclusion**

For the reasons set out above, Plaintiff asks that this Court grant her summary judgment on her causes of action for declaratory judgment, injunctive relief and attorneys' fees and, additionally, deny the Defendants' pending motions to dismiss, strike and for judgment on the pleadings.

Respectfully submitted,



---

Adam T. Silvernail  
Moses & Brackett, PC  
1333 Main Street, Suite 260  
Post Office Box 100261  
Columbia, South Carolina 29202  
803/461-2328  
[asilvernail@mkb-law.com](mailto:asilvernail@mkb-law.com)

May 2, 2016

Attorney for Plaintiff

000504



Adam Silvermail &lt;adam@silvermailfirm.com&gt;

---

**Request for Hearing in James Brown Matters -- Bauknight, et al vs. Pope AND Pope vs. Wilson, Case No. 2010-CP-40-4900 AND Pope vs. Wilson, et al, Case No. 2011-CP-40-0350**

---

Emory Smith &lt;ESmith@scag.gov&gt;

Wed, May 8, 2013 at 12:27 PM

To: "Mark V. Gende" <MVG@swblaw.com>, Adam Silvermail <adam@silvermailfirm.com>, "Manning, L. Casey Law Clerk (Joy E. Middleton)" <CManningLC@sccourts.org>, "cmanningj@sccourts.org" <cmanningj@sccourts.org>  
Cc: "Ken B. Wingate" <KBW@swblaw.com>, "Aaron J. Hayes" <AJH@swblaw.com>, John McIntosh <JMcIntosh@scag.gov>, Bob Cook <BCook@scag.gov>, Sonny Jones <SJones@scag.gov>, Daryl Williams <dwilliams@jeterandwilliams.com>, "kmb@lbglegal.com" <kmb@lbglegal.com>, "Ariail E. King" <aek@lbglegal.com>

Our position is that the FOIA cases should NOT be held in abeyance and that they should be scheduled as soon as is convenient for the Court, but we certainly have no objection to the Court's review of Mr. Gende's letter.

Respectfully,

Emory Smith

Counsel for Defendant Wilson

---

**From:** Mark V. Gende [mailto:MVG@swblaw.com]

**Sent:** Wednesday, May 08, 2013 11:59 AM

**To:** Emory Smith; Adam Silvermail; Manning, L. Casey Law Clerk (Joy E. Middleton); cmanningj@sccourts.org

**Cc:** Ken B. Wingate; Aaron J. Hayes; John McIntosh; Bob Cook; Sonny Jones; Daryl Williams; kmb@lbglegal.com; Ariail E. King

**Subject:** RE: Request for Hearing in James Brown Matters -- Bauknight, et al vs. Pope AND Pope vs. Wilson, Case No. 2010-CP-40-4900 AND Pope vs. Wilson, et al, Case No. 2011-CP-40-0350

Dear Judge Manning:

In response to the email string below, I note that Mr. Silvermail neglects to inform the court that today the Supreme Court not only denied all motions for rehearing, but also issued a new, lengthy opinion in the James Brown Estate matter (45 pages including concurrence). The Supreme Court substitutes this new opinion for its prior opinion.

000505

Case 4900 plaintiffs/proposed FOIA intervenors believe that your decision following the recent status conference that matters in case 4900, including the related FOIA matters, should be held in abeyance at this time is still correct, an potentially even more appropriate in light of the new Supreme Court opinion issued today. I plan to provide to you by the end of the week a more detailed discussion of this position in light of the Supreme Court's new opinion. I respectfully request the court allow time to receive and consider this forthcoming letter before making any decision regarding scheduling any motions.

Respectfully,

Mark Gende

Attorney for Case 4900 Plaintiffs/Proposed FOIA Intervenors

Mark V. Gende, Esq.

Sweeny, Wingate, & Barrow, PA

1515 Lady Street

Columbia, South Carolina 29201

803.256.2233 – Phone

803.256.9177 – Facsimilie

---

**From:** Emory Smith [mailto:ESmith@scag.gov]

**Sent:** Wednesday, May 08, 2013 10:40 AM

**To:** Adam Silvernail; Manning, L. Casey Law Clerk (Joy E. Middleton); cmanningj@sccourts.org

**Cc:** Mark V. Gende; Ken B. Wingate; Aaron J. Hayes; John McIntosh; Bob Cook; Sonny Jones; Daryl Williams; kmb@lblegal.com; Ariail E. King

**Subject:** RE: Request for Hearing in James Brown Matters -- Bauknight, et al vs. Pope AND Pope vs. Wilson, Case No. 2010-CP-40-4900 AND Pope vs. Wilson, et al, Case No. 2011-CP-40-0350

Your Honor, I am prepared and available for a hearing in the FOIA cases at most any time, but note the following conflicts through the end of June and would appreciate protection as to them:

May 13 and 14 – oral argument in Richmond

May 16 – motion hearing in Chas. I should be back by 3 pm

May 22 am – Dr’s appt.

June 6 am – oral argument, Sup. Ct.

June 11 – Trial, Chas. Co.

June 24-28 - family travel

Respectfully,

Emory Smith

Counsel for Defendant Wilson

J. Emory Smith, Jr.

Assistant Deputy Attorney General

Office of the Attorney General

P.O. Box 11549

Columbia, SC 29211

Phone: 803-734-3680

**From:** Adam Silvernail [mailto:adam@silvernaillawfirm.com]

**Sent:** Wednesday, May 08, 2013 10:28 AM

**To:** Manning, L. Casey Law Clerk (Joy E. Middleton); cmanningj@sccourts.org

**Cc:** Emory Smith; Mark V. Gende; Ken B. Wingate; Aaron J. Hayes; John McIntosh; Bob Cook; Sonny Jones; Daryl Williams; kmb@lbglegal.com; Ariail E. King

**Subject:** Request for Hearing in James Brown Matters – Bauknight, et al vs. Pope AND Pope vs. Wilson, Case No. 2010-CP-40-4900 AND Pope vs. Wilson, et al, Case No. 2011-CP-40-0350

Dear Judge Manning:

We have this morning received notice of the Supreme Court's denial of all Petitions for Rehearing of the Court's February 27th opinion in Aiken County Case No. 2008-CP-02-1647.

000507

We understood from your law clerk that you were awaiting a decision on these petitions to set hearings in these matters. Because of the importance of speedy disposition of FOIA matters and the fact that my client's 2 FOIA cases have now been pending for more than 20 months, we would appreciate your scheduling the FOIA matters for hearing at the Court's earliest convenience.

At the same time, we request that you hear all motions which are delaying the appearance by 5 of the Plaintiffs in Case 4900 at depositions noticed for several months ago. Thank you for your consideration.

Sincerely,

Adam Silvernail

--

Adam T. Silvernail

Law Office of Adam T. Silvernail, LLC

Post Office Box 1898

1901 Hampton Street

Columbia, South Carolina 29202-1898

tel: 803/779-1770

fax: 803/403-8092

000503



SWEENEY WINGATE & BARROW P.A.

May 10, 2013

Reply to: Main Office

Mark V. Gende  
(803) 256-2233 x121  
mvg@swblaw.com

VIA EMAIL AND U.S. MAIL

Honorable L. Casey Manning, Jr.  
Circuit Court Judge  
Richland Judicial Center  
1701 Main Street, Room 214 (2nd Floor)  
Post Office Box 192  
Columbia, SC 29202-0192

RE: Russell L. Bauknight, et al. v. Adele J. Pope  
Civil Action No.: 2010-CP-40-04900  
Our File: 4077-7389

Dear Judge Manning:

Please accept this letter as Richland County Case 4900 Plaintiffs' and Proposed FOIA Interveners' assessment why all matters in Case 4900 should be held in abeyance pending the outcome of all James Brown Estate matters that the Supreme Court has now unequivocally remanded to Aiken County.

On Wednesday, May 8, 2013 the South Carolina Supreme Court denied all petitions for rehearing and took a significant additional step. The Court substituted a new and revised opinion for its prior decision in the James Brown Estate matter. This new opinion is lengthy and makes certain additions and deletions to the prior, replaced opinion. This new opinion has significant bearing on the continued progress of Case 4900.

First, the new Supreme Court opinion creates significant uncertainty as to what persons or entities constitute the plaintiffs group. The new opinion voids the Section 1102 settlement agreement that had bound the plaintiff's group together. The new opinion also voids the appointment of Russell Bauknight as personal representative and trustee of the James Brown Trust and Estate, but expressly allows Mr. Bauknight the right to reapply and, potentially, be

reappointed as a fiduciary of the Trust and Estate. Therefore, until the individual family members' position with reference to the Trust and Estate is finally determined by the Aiken Court and until fiduciaries are installed for the Trust and Estate, my firm has substantial uncertainty on what basis each named plaintiff will continue in Case 4900. We believe these matters can and will be resolved as each Aiken County matter is resolved.

Furthermore, the Attorney General, for whom Sweeny, Wingate & Barrow, PA is counsel of record in Richland Case 4900, has independently filed a motion to withdraw from the case and made various other representations and filings in related matters. Consequently, Sweeny, Wingate & Barrow, PA today is filing a motion to be relieved as counsel for the Attorney General.

Second, the new Supreme Court opinion upholds the for-cause removal of the Case 4900 Defendant, Mrs. Adele Pope, as a fiduciary of the James Brown Estate. In upholding her for-cause removal, the court relies on some of the very same allegations made by the Case 4900 Plaintiffs against Mrs. Pope. Mrs. Pope is afforded no opportunity to reapply for any fiduciary position with the Trust or Estate. Because of her for-cause removal, she can have no further part in the Estate and Trust.

Third, the 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 a 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.

In summary, all of the uncertainty that your honor recognized at the last status conference still exists, and possibly a bit more. With the Supreme Court now having said all it is going to say on the matters that were before it, it is now abundantly clear that all matters related to the James Brown Estate cases must now be heard and decided by the Aiken Court. How the Aiken Court rules on a number of issues across a number of cases will then determine the posture of the group of plaintiffs or individual plaintiffs who will continue on with Case 4900.

000510

May 10, 2013

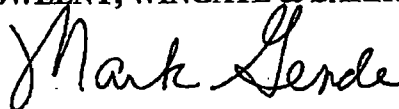
Page 3 of 3

Therefore, Case 4900 Plaintiffs and Proposed FOIA Intervenors respectfully request that Case 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 for stay, I would be pleased to do so.

As always, I am available to provide the court any further information it requires in order to fully consider this matter.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Mark V. Gende

MVG/lda

cc: Adam T. Silvernail, Esquire  
Daryl L. Williams, Esquire  
J. Emory Smith, Jr., Esquire

000511



Adam Silvernail <adam@silvernaillawfirm.com>

---

**Pope vs. Wilson, et al, Case No. 2012-CP-40-0350; Pope v. Wilson 10-CP-40-4900**

---

Manning, L. Casey Law Clerk (Eve Goodstein) <CManningLC@sccourts.org>

Mon, Oct 13, 2014 at 4:46 PM

To: Adam Silvernail <adam@silvernaillawfirm.com>

Cc: "Ariail E. King" <aek@lbglegal.com>, "kmb@lbglegal.com" <kmb@lbglegal.com>, Emory Smith <ESmith@scag.gov>, "mvg@swblaw.com" <mvg@swblaw.com>

Dear Counsel:

Judge Manning has reviewed Mr. Silvernail's letter of October 8, 2014 and would like to schedule a hearing on all outstanding motions as soon as possible. Judge Manning is available to hear all outstanding motions this Wednesday, Thursday, or Friday. Please let me know if you are available this week to have all outstanding motions heard in the above-referenced matter.

Please do not hesitate to contact me if I may be of assistance.

Thank you,

Eve

*Eve S. Goodstein*

*Law Clerk to The Honorable L. Casey Manning*

*Fifth Judicial Circuit*

*Richland County Judicial Center*

*1701 Main Street, Room 214*

*Columbia, SC 29201*

*Office: (803) 576-1774*

*Fax: (803) 576-1744*

000512

---

**From:** Emory Smith [mailto:ESmith@scag.gov]  
**Sent:** Wednesday, May 07, 2014 4:26 PM  
**To:** Adam Silvernail; Manning, L. Casey; Manning, L. Casey Law Clerk (Eve Goodstein)  
**Cc:** Ariail E. King; kmb@lbglegal.com; Adele Pope  
**Subject:** RE: Pope vs. Wilson, et al, Case No. 2012-CP-40-0350

Your Honor, I am responding to Mr. Silvernail's emailed letter today in which he requested a hearing as to the FOIA matters pending in this case. We have no objection to a hearing at your Honor's convenience although, as stated in previous correspondence and filings, we believe that Plaintiff has all documents that could be considered responsive to her FOIA request at issue in this proceeding. We reserve our positions in filings with this Court.

I do plan to file a response to his supplemental memorandum and Ms. Pope's affidavit.

Respectfully,

Emory Smith  
Counsel for the Attorney General

**From:** Adam Silvernail [mailto:adam@silvernaillawfirm.com]  
**Sent:** Wednesday, May 07, 2014 4:08 PM  
**To:** cmanningj@sccourts.org; Manning, L. Casey Law Clerk (Joy E. Middleton)  
**Cc:** Emory Smith; Ariail E. King; kmb@lbglegal.com; Adele Pope  
**Subject:** Pope vs. Wilson; et al, Case No. 2012-CP-40-0350

Dear Judge Manning:

Please see attached letter and enclosures. Thank you for your consideration.

Sincerely,  
Adam Silvernail

Adam T. Silvernail

Law Office of Adam T. Silvernail, LLC

Post Office Box 1898

1901 Hampton Street

Columbia, South Carolina 29202-1898

tel: 803/779-1770

fax: 803/403-8092

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000514

**Subject:** RE: Pope vs. Wilson, Case 2012-CP-40-0350 and Pope vs. Wilson, Case 2010-CP-40-4900

**Date:** Thursday, November 13, 2014 at 6:14:04 PM Eastern Standard Time

**From:** Emory Smith

**To:** Adam T. Silvernail, 'cmanninglc@sccourts.org', 'cmanningj@sccourts.org'

**CC:** Ken B. Wingate, Mark V. Gende, 'Ariail E. King', 'Keith Babcock'

Your Honor, I will be generally unavailable next week due to other important meetings scheduled and other deadlines. I am the attorney in this Office who has handled the FOIA cases and I need to be present for any hearing in this matter.

Therefore, I respectfully request that you not schedule a hearing before November 24. I am generally available on that date and afterward except for the pm of 11/26 and a few dates in Dec. when I have Court or other appointments. I have noted my availability on earlier dates so this request is not made for purposes of delay.

Thank you for your consideration of this request.

Respectfully,

Emory Smith

J. Emory Smith, Jr.  
Deputy Solicitor General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
803-734-3642 Direct

-----Original Message-----

**From:** Adam T. Silvernail [<mailto:asilvernail@mkb-law.com>]

**Sent:** Thursday, November 13, 2014 5:53 PM

**To:** 'cmanninglc@sccourts.org'; 'cmanningj@sccourts.org'

**Cc:** Emory Smith; Ken B. Wingate; Mark V. Gende; 'Ariail E. King'; 'Keith Babcock'

**Subject:** Pope vs. Wilson, Case 2012-CP-40-0350 and Pope vs. Wilson, Case 2010-CP-40-4900

Please see attached correspondence, which is also being mailed to Judge Manning today.

Sincerely,  
Adam Silvernail

---

Adam T. Silvernail  
Moses & Brackett, PC  
1333 Main St., Suite 260  
Post Office Box 100261  
Columbia, SC 29202-3261  
803-461-2328 (direct dial)  
803-461-2309 (fax)

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000515

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-----Original Message-----

From: [ricoh@mkb-law.com](mailto:ricoh@mkb-law.com) [mailto:[ricoh@mkb-law.com](mailto:ricoh@mkb-law.com)]

Sent: Thursday, November 13, 2014 4:56 PM

To: Adam T. Silvernail

Subject:

This E-mail was sent from "RNP00AB77" (Aficio MP C5000).

Scan Date: 11.13.2014 16:56:28 (-0500)

Queries to: [ricoh@mkb-law.com](mailto:ricoh@mkb-law.com)

000516

Tuesday, March 7, 2017 at 4:17:46 PM Eastern Standard Time

**Subject:** RE: Pope vs. Wilson, et al, Case No. 2012-CP-40-0350 and Pope vs. Wilson, Case No. 2010-CP-40-4900  
**Date:** Thursday, January 29, 2015 at 2:54:54 PM Eastern Standard Time  
**From:** Emory Smith  
**To:** 'cmanninglc@sccourts.org'  
**CC:** Mark V. Gende, cmanningj@sccourts.org, Adele Pope (adele@popelawfirm.com), Adam T. Silvernail  
**Attachments:** image001.gif

We have no objection to either a status conference or a hearing on any of these days except that I do have conflicts 1:30-3:30 on the 11<sup>th</sup> and possibly the morning of the 12<sup>th</sup>; however, I do not see the value of a conference on the same date as the hearing. If the Court prefers to have a conference before the hearing, I suggest that it be scheduled at least a few days before the hearing.

Thank you.

Emory Smith

---

**From:** Adam T. Silvernail [mailto:asilvernail@mkb-law.com]  
**Sent:** Thursday, January 29, 2015 1:55 PM  
**To:** 'cmanninglc@sccourts.org'  
**Cc:** Mark V. Gende; Emory Smith; cmanningj@sccourts.org; Adele Pope (adele@popelawfirm.com)  
**Subject:** Pope vs. Wilson, et al, Case No. 2012-CP-40-0350 and Pope vs. Wilson, Case No. 2010-CP-40-4900

Dear Ms. Goodstein:

I am available anytime on February 4, 5, 10, 11 or 12<sup>th</sup>, and it appears that Emory is available on those dates (with the exception of the afternoon of the 11<sup>th</sup> and the morning of the 12<sup>th</sup>). My January 22, 2015 letter requested a hearing, rather than a status conference, and I ask that we proceed with hearing these cases immediately after the status conference. The pending motions are all now over a year old and many are over three years old. I would thus suggest that the status conference and motions hearing be set together on one of these dates when the Court has time to hear arguments on the motions.

Best,  
Adam Silvernail

---

Adam T. Silvernail  
Moses & Brackett, PC  
1333 Main St., Suite 260

000517

Post Office Box 100261  
Columbia, SC 29202-3261  
803-461-2328 (direct dial)  
803-461-2309 (fax)

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---

**From:** Emory Smith [<mailto:ESmith@scag.gov>]  
**Sent:** Tuesday, January 27, 2015 10:30 AM  
**To:** Mark V. Gende; Adam T. Silvernail; 'cmanninglc@sccourts.org'  
**Cc:** [cmanningj@sccourts.org](mailto:cmanningj@sccourts.org)  
**Subject:** RE: Case 4900 Issues (re-send to corrected email addresses)

I am available for a status conference any day through Feb. 12 except for early pm on the 11<sup>th</sup> and possibly the am of the 12<sup>th</sup>.

Emory Smith  
Counsel for the Attorney General

---

**From:** Mark V. Gende [<mailto:MVG@swblaw.com>]  
**Sent:** Tuesday, January 27, 2015 9:46 AM  
**To:** [asilvernail@mkb-law.com](mailto:asilvernail@mkb-law.com); Emory Smith; 'cmanninglc@sccourts.org'  
**Cc:** [cmanningj@sccourts.org](mailto:cmanningj@sccourts.org)  
**Subject:** Case 4900 Issues (re-send to corrected email addresses)

Dear Adam, Emory, and Eve:

To follow up my telephone conversation with Adam and Emory, Judge Manning has asked: (1) that we work together to schedule a status conference on the FOIA matters referenced in Adam's January 22, 2015 letter and (2) that Adam and I submit proposed orders on plaintiffs' motion to set aside any default heard December 17, 2012. Adam and I agreed that these proposed orders be submitted within 7 days from today.

I am copying Judge Manning's clerk on this string in order to facilitate scheduling the status conference. I am available Thursday and Friday of this week for the status conference.

Eve, would you please let us know if Judge Manning has any preferred dates and times for the status conference.

Mark Gende

Mark V. Gende | *Member*  
Sweeny, Wingate & Barrow, P.A.

000518

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
Adele J. Pope, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Alan Wilson, in his capacity as )  
Attorney General of South Carolina, )  
and James Brown Legacy Trust, by )  
Russell L. Bauknight, its Trustee, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 12- CP-40-350

**JAMES BROWN LEGACY TRUST'S  
MEMORANDUM IN REPLY TO  
PLAINTIFF'S BRIEF FOR  
SUMMARY JUDGMENT**

2016 MAY 16 PM 3:14  
JEANETTE W. MORRIS  
C.C.P. & G.  
RICHLAND COUNTY  
FILED

Defendant James Brown Legacy Trust, by Russell L. Bauknight, its Trustee ("Legacy Trust"), submits this Memorandum in Reply to Plaintiff's Brief for Summary Judgment, dated May 2, 2016.

The Legacy Trust has addressed Plaintiff's arguments in its own Memorandum, submitted on May 2, 2016, which it reasserts and incorporates herein. However, it must be noted that Plaintiff continues to misconstrue the case law on public bodies.

In *Weston v. Carolina Research and Development Foundation*, an eleemosynary corporation that received millions of dollars from the sale of public real estate, grants from the city, a conveyance of real estate from the City, and other funds, was found to be subject to FOIA.<sup>1</sup> As that court noted:

---

<sup>1</sup>Plaintiff also claims that the Legacy Trust is a party in case 4900 and also that the Legacy Trust has continued to litigate in that case even though it no longer exists. Plaintiff fails to recognize that: 1) that litigation began prior to the Supreme Court's decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013); and 2) there has been a counterclaim asserted against the Legacy Trust in that matter that has required the trust's continued presence.

Funds from the public coffer were given to the Foundation which managed the expenditure of the funds and the development of the real estate. By these actions, the Foundation received support from and expended public funds.

*Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 402, 401 S.E.2d 161, 164 (1991).

Furthermore, our Supreme Court has noted the limits of extending FOIA to entities beyond traditional governmental entities, stating that “the application of the FOIA beyond traditional governmental entities is limited to statutorily defined public bodies, which are only those entities supported by public funds” and that FOIA should apply when such an entity “receives public funds *en masse* or manages the expenditure of public funds[.]” *Disabato v. S. Carolina Ass'n of Sch. Adm'rs*, 404 S.C. 433, 454-55, 746 S.E.2d 329, 340 (2013). Here, of course, the Legacy Trust was to be funded by the property of James Brown. Unlike the foundation in *Weston*, the Legacy Trust was never going to receive money from the sale of public real estate or from government coffers. In other words, there are no “public funds *en masse*” that would ever have been deposited with the Legacy Trust, and thus, the Legacy Trust would never be subject to FOIA.<sup>2</sup>

In addition, Plaintiff's reliance on *Associated Press v. Sebelius*, is misplaced, as that case has no application here. The *Associated Press* case concerned the Kansas Open Meetings Act, rather than a state FOIA, as Plaintiff claims. That case analyzed whether an entity was a “state agency” under various Kansas statutes that have absolutely no relevance to this case.

Finally, Plaintiff's request for attorney's fees should be denied. First, as already argued extensively, the Legacy Trust was not a public body subject to FOIA,<sup>3</sup> and thus, is not subject to

---


<sup>2</sup>Plaintiff has offered no evidence of any public funds or support received by the Legacy Trust other than a vague statement that “many attorneys within the AG's office” have supposedly spent considerable time in defending the trust's existence. This unsupported statement of argument does not convert a private trust into a publicly supported entity.

<sup>3</sup>And of course, as noted in its May 2 memorandum, the Legacy Trust does not exist and

the attorney's fee provision in FOIA. Moreover, Plaintiff has failed to submit a current attorney's fee affidavit or provide any bills or supporting documentation for the alleged fees incurred.<sup>4</sup> In addition, there is no claim that Plaintiff has actually paid or incurred these fees, and thus, the Court cannot award them. *See Williamson v. Middleton*, 681 S.E.2d 867, 870-71 (S.C. 2009) (holding that where there is no competent evidence that attorneys' fees and costs were actually incurred, they cannot be awarded).

#### CONCLUSION

As set forth in the memorandum submitted May 2, 2016, and herein, the Legacy Trust asserts that it has no legal existence; was never a public body subject to FOIA; and that all responsive documents have been produced by the Attorney General, thereby rendering this matter moot. The Legacy Trust respectfully requests that this Court deny Plaintiff's Motion for Summary Judgment (and attorney's fees) and grant the Legacy Trust's Motion to Dismiss.

  
\_\_\_\_\_  
A. Camden Lewis  
Keith M. Babcock  
Ariail E. King  
David L. Paavola

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therefore has no funds with which to pay any attorney's fee award.

<sup>4</sup>It appears that the only affidavit regarding attorney's fees was submitted on or around January 9, 2012, prior to the change of venue from Newberry to Richland. In addition, the affidavit was double captioned and included *Pope v. Wilson*, C/A 11-CP-36-379 (later consolidated into 2010-CP-40-4900 after transfer to Richland), a case in which the Legacy Trust was not a party.

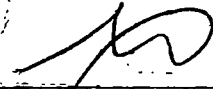
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Legacy Trust

Columbia, SC  
May 16, 2016

**CERTIFICATE OF COUNSEL**

The undersigned counsel for Appellant hereby certifies that the foregoing Record on Appeal contains all matter designated by parties to this appeal and no other material.



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Adam T. Silvernail

March 22, 2017

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