

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

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

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May 01 2020

SC Court of Appeals

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Appellate Case No.: 2017-001899

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

And

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

v.

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

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**APPELLANT'S REPLY TO RETURN OF ATTORNEY GENERAL OPPOSING MOTION  
TO SUPPLEMENT THE RECORD ON APPEAL AND MEMORANDUM  
IN REPLY AND IN SUPPORT OF MOTION TO SUPPLEMENT**

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On May 19, 2010 the Attorney General of South Carolina ("Attorney General" or "AG")  
sued Robert Buchanan, Jr. and Appellant Pope in Richland 4900 for tens of millions of dollars

for the benefit of the James Brown Legacy Trust (Legacy Trust) and its beneficiary-owners.[Complaint, R., 176 -187 ] Russell Bauknight is the trustee of Plaintiff Legacy Trust, but also sued “on behalf of” the AG and the individual Legacy Trust beneficiary-owners. [ R., pp. 176-178] Sole counsel for the AG and all other Richland 4900 Plaintiffs was the private law firm law firm of Kenneth Wingate, Esq. (collectively, “Wingate”) [Summons, R., p. 176] In ten years there has been no request to amend the Richland 4900 Complaint.

In 2010 Wingate, with a Sr. Assistant AG present as one of Wingate’s many clients, assured the Court that the lawsuit was constitutional, and that the AG’s being a Plaintiff was proper because the AG controlled the Legacy Trust and nearly half of its proceeds were going to charity.

Buchanan and Appellant moved to dismiss on constitutional grounds, and even asked the Court of Appeals for an early review of the constitutionality of Richland 4900. The AG and Legacy Trust, claiming to be nearly half charitable, resisted, and the Court found the constitutional challenge to be premature.

In 2016 a circuit court order found, based on claims by Bauknight, that the Legacy Trust did not exist. But the Legacy Trust, through Bauknight and Wingate, has continued to act in Richland 4900 for four years, including securing summary judgment as to the Buchanan/Pope counterclaims; conducting two additional appeals; and seeking sanctions against Appellant multiple times.

In the spring of 2016 the AG moved under Rule 21 to be dismissed as a party to Richland 4900, At the same time the AG actively pursued discovery and secured an order granting the AG summary judgment as to the Buchanan/Pope counterclaims.

In the summer of 2016 Wingate, for the AG, its Richland 4900 client, secured an oral order allowing it to participate in Aiken 1337 depositions of the AG, his staff and former staff, to protect the Attorney General.

In the fall of 2016 Governor Henry McMaster testified emphatically in Aiken 1337 that he never authorized Wingate to bring Richland 4900 in the name of the State/AG; never authorized Bauknight to speak “on behalf of” the AG; and did not even know he was a Richland 4900 Plaintiff until after he left office as AG in January 2011.

In February 2017 Solicitor General Robert Cook testified in Aiken 1337 that Appellant had warned the AG in 2013 of the millions of dollars damage caused to Brown’s “I Feel Good” charity by the Bauknight/Peter Afterman \$79 million devaluation of Brown’s worldwide music empire to \$4.7 million. The Solicitor General did not know anything about the Legacy Trust. Nor did he know about the decision by Bauknight, the AG and others to withhold information about the Afterman claimed \$4.7 million valuation from the Supreme Court in *Wilson v. Dallas* from September 2010 until May 2011.

In March 2017 AG Alan Wilson appeared at a short and properly conducted deposition in Aiken 1337, even though he was not a party. The AG had tried to consolidate Richland 4900 with Aiken 1337 twice. The AG testified that in January 2011 he had authorized Richland 4900 to continue to maintain the “status quo.” The AG did not disagree that Appellant had warned him of the problems of the Bauknight/Afterman \$79 million devaluation 4 years earlier at the March 2013 meeting. He did not know anything about the Legacy Trust.

This appeal was filed in September 2017, just days after the Aiken 1337 trial began. The AG, Legacy Trust and its beneficiary-owners have gone to extraordinary lengths to

assure that the facts revealed in that trial, which they had touted as another side of the same coin with Richland 4900, be kept from the record before this Court. Since 2013, with Bauknight acting “on behalf of” the AG, Wingate has filed multiple motions to strike and sanctions motions. Respondents, through Wingate, have bitterly resisted two separate attempts to lift the automatic stay imposed by two pre-conclusion-of-discovery appeals in this 10-year-old tort suit. Today the AG and Wingate still refuse to release the Wingate contingency fee contract in discovery or under FOIA even though it says on its face that is a public document subject to FOIA.

In 2019 a Supreme Court affidavit of Peter Afterman recanted the claimed \$4.7 million valuation for Brown’s worldwide music empire that the AG and Bauknight “on behalf of” the AG, had used for 9 years to accuse Buchanan and Appellant of a federal felony. Now claiming to be a copyright law expert, Afterman repeated the same incorrect claims about termination rights under Sections 304 and 203 of the Copyright Act Bauknight had made to the Court at oral argument in *Wilson v. Dallas* in 2011.

In 2020 the Supreme Court’s denial of certiorari in a FOIA case left in place a 2016 circuit court ruling that confirms, at a minimum, that Respondent Legacy Trust does not, and never has, served any public or charitable purpose.

The Attorney General asserts that if this Court reviews the extraordinary testimony of the Governor, Attorney General, Solicitor General, and Afterman it will cause unnecessary delay in this 10-year-old case. It will not. This testimony and these admissions are central to the Court’s arriving at a just decision with respect to the issues before it.

This response is supported by Appellant’s reply to the return of Respondents and the following memorandum.

## **Reply Memorandum to AG and In Support of Supplement to Record on Appeal**

### **Background - the Attorney General, Legacy Trust and Bauknight**

On May 19, 2010 the AG, the Legacy Trust and its owner-beneficiaries sued Buchanan and Appellant for tens of millions of dollars. Wingate was sole counsel to the AG and all beneficiaries. The complaint has never been amended.

When Buchanan and Appellant moved to dismiss, the AG and Legacy Trust assured the circuit court that Richland 4900 was constitutional and that the AG was properly a party because nearly half of the Legacy Trust was going to charity and the AG was in control of the Legacy Trust to protect the charitable beneficiaries.

In May 2011 Russell Bauknight, based on a claimed “professional appraisal” by Peter Afterman, began claiming that entertainer James Brown’s worldwide music empire was worth only \$4.7 million at his death on Christmas Day 2006. Since then, the AG and Bauknight “on behalf of” of the AG have asserted, based on the Afterman “professional valuation,” that Buchanan and Appellant committed the federal felony of overstating the value of Brown’s assets by \$79 million on sworn IRS estate tax filings to get a \$5 million commission.

In 2011, and since, the AG has supported the above and other known incorrect claims by Bauknight to the Supreme Court and other courts, including that the AG’s 2008 settlement which created the Legacy Trust saved taxes; that Brown’s Estate and 2000 Trust had no corpus to speak of; that nobody was trying to buy Brown’s assets; and that, because of

termination rights under the Copyright Act, there would be nothing in Brown's "I Feel Good" Charity by 2023 if the Supreme Court did not uphold the AG's 2008 settlement.<sup>1</sup>

In 2011 Bauknight sought to intervene in two FOIA cases to prevent release of the public Wingate contract; a 2011 amendment to the Legacy Trust; and the Afterman claimed \$4.7 million appraisal.

On February 27, 2013 the Supreme Court issued its first *Wilson v. Dallas* decision.

In March 2013 Bauknight moved to intervene in a journalist's FOIA case which sought the so-called Hynie "diary," Hynie Brown's handwritten admissions that she was married to her first husband when she conducted a marriage ceremony with Brown. The ruling about her spousal status remains under appeal.

On March 6, 2013 Appellant met with the AG, Chief Deputy AG and Solicitor General to discuss the millions of dollars damage done to James Brown's charity by the Bauknight/Afterman \$79 million devaluation of Brown's music empire to \$4.7 million. Bauknight's shifting of about \$1 million of income a year and nearly 1/3 (31%) of the charity over to a trust for the family by the \$4.7 million valuation was not corrected by *Wilson v. Dallas*.

On May 8, 2013 the *Wilson v. Dallas* decision voided the AG's 2008 settlement and Bauknight's PR/Trustee appointment. Footnote 30 of *Wilson v. Dallas* opinion states:

We note that the AG and/or Bauknight have allegedly entered into contingency-fee agreements with outside counsel, Kenneth Wingate, for Wingate to sue Appellants on behalf of the State, Bauknight and others while also representing private plaintiffs in the suit. We are aware that a suit has been filed in Richland County seeking damages to

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<sup>1</sup> The AG's settlement proposed to give Tommie Rae about \$1 million a year and a quarter of Brown's charity in exchange for half of the termination rights proceeds she put in the Legacy Trust in 2009.

Brown's estate allegedly arising during Appellant's service as fiduciaries. Despite FOIA requests, the AG has refused to publicly release all of the documents pertaining to this reported arrangement. However the AG has recently informed this Court, in petitions filed after this Court's initial opinion, that he is now withdrawing as a party in that lawsuit and his office will maintain a monitoring role.

By May 10, 2013 the AG had helped reinstate Bauknight and, with others, had asked the Richland 4900 Court to stay Richland 4900 and the FOIA cases indefinitely.

On May 29, 2013, most Richland 4900 plaintiffs, through counsel, announced to Judge Early their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement which the Supreme Court had voided. The AG, through Sr. Asst. AG Havird "Sonny" Jones, announced the AG's pleasure that Bauknight had been reinstated.

On June 13, 2013, Buchanan and Appellant, at the request of Bauknight and Will/Trust contestants, were banned from participation in any James Brown hearing except each his own claims case. The clerk of court was directed to return any attempted filings by Buchanan or Pope in any case except their own claims cases.

In August 2013 Bauknight was deposed in Federal Case No. 3:08-cv-00014-WOB. He defended the AG's 2008 settlement; called Appellant dishonest; and claimed that Appellant (and presumably Buchanan) had "raped" James Brown's estate. That month Peter Afterman began helping Hynie Brown and her son file termination notices in the U.S. Copyright Office to siphon off U.S. royalties to about 90 copyrights between 2015 and 2023. The Aiken Court was notified of the action in a letter of copyright lawyer Marc Toberoff, Esq., in September 2013.

In October 2013 the Aiken Court conducted a *Wilson v. Dallas* remand hearing for Buchanan; praised his work, all of which was joint with Appellant; and found no basis for

disgorgement of his full SA fee and partial PR/Trustee payment earned through May 26, 2009.

In 2014 Bauknight claimed Appellant could not be paid for her unpaid 2007 SA fee and earned PR/Trustee fees through May 26, 2009 because of Richland 4900.

In January 2015 Respondent Tommie Rae was declared Brown's spouse in a summary judgment proceeding. The SA/ST selected by Bauknight did not proffer her handwritten admissions. Respondents Deanna Brown-Thomas, Yamma Brown and Venisha Brown appealed. The matter was unresolved as of May 1, 2020.

On May 8, 2015 the Aiken Court filed a status report with the South Carolina Supreme Court but failed to advise the Court of the May 29, 2013 announced plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement. The Aiken Court's status report stated, in part:

The Order requesting this status report inquired whether any proposed settlement agreement has been submitted for Court approval. The answer is an unequivocal no. *No lawyer, party or anyone else has discussed, mentioned, suggested or inquired of me anything about settlement. Neither am I aware of any rumor or "courthouse talk" of any proposed settlement.* Status Report, p. 4[emphasis supplied]<sup>2</sup>

On April 11, 2016 the AG and Legacy Trust moved to consolidate Richland 4900, with Aiken 1337, the case in which Bauknight was refusing to pay Appellant's 2007 SA fee and 2008 and 2009 earned partial commission under the Buchanan/Pope contract with Brown's Estate/2000 Trust.

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<sup>2</sup> The status report contained a number of other inaccuracies which criticized Buchanan and Appellant and praised Bauknight. For example, the status report stated a belief that Appellant's \$47,972 2007 SA claim was for \$2 million for three months. It stated that Bauknight had filed all proper tax returns and had paid off a \$14 million TIAA debt. (It was actually about \$9.3 million.) Buchanan and Pope were not asked to respond to the status report and did not. Others filed responses pointing out additional errors.

On May 2, 2016 Bauknight filed an affidavit in the Legacy Trust FOIA case which stated, in part:

7. The South Carolina Supreme Court's 2013 decision in *Wilson v. Dallas* ... (2013) overturned the court approved settlement agreement and the creation of the Legacy Trust.

...

10. Since the Supreme Court's order in *Wilson v. Dallas*, the Attorney General has had no involvement with the Legacy Trust.

On May 17, 2016 the AG and Legacy Trust moved for partial summary judgment as to the Buchanan/Pope counterclaims for intentional interference with contract; abuse of process and other causes of action in Richland 4900.

In a June 14, 2016 order, the FOIA case seeking the Wingate contract was dismissed. Reconsideration was denied, and the matter was appealed on August 18, 2016 in Case No. 2016-001708. The FOIA case seeking a Legacy Trust 2011 amendment and claimed \$4.7 million Afterman valuation was also dismissed and appealed.

On July 25, 2016 a Richland 4900 scheduling order stated, in part:

...3. The Court will closely monitor the progress of this case and at an appropriate time will convene a status conference at which time a date-certain trial will be set for the trial of Case 4900 either prior to or jointly with Case 1337.

In August 2016 the circuit court heard the motion of the AG and Legacy Trust for summary judgment as to the Buchanan/Pope counterclaims. It also heard the AG's motion to be dropped as a party under Rule 21, and various discovery issues. By oral order Wingate was allowed to attend depositions of the AG and staff in Aiken 1337 to protect the interest of the AG, his Richland 4900 client.

On October 19, 2016 Governor Henry McMaster was deposed in Aiken 1337. Governor McMaster stated emphatically under oath that he did not authorize Wingate to

bring Richland 4900 in the name of the State/AG; never authorized Bauknight to act in the name of the State/AG; and did not even know that as AG he was a party to Richland 4900 until after leaving office in January 2011. The Governor, a former U.S. Attorney, admitted the seriousness of the false felony claim the AG's office and Bauknight "on behalf of" the AG had been making against Buchanan and Appellant since 2011. See, p. 3, Ex. 12, Tax Crimes Handbook, and p. 90.

On February 8, 2017 Solicitor General Robert Cook was deposed. He testified under oath about the March 2013 meeting with Appellant, the AG and the Chief Deputy AG. He stated he believed that Pope was competent and concerned about Brown's charity, not greedy and incompetent as the AG had characterized her to be.

With objections by the Wingate firm and counsel for Bauknight, the Solicitor General testified that he had never seen a case like Richland 4900 in 40 years:

12 **Q. Do you know of any lawsuit ever where a person**

13 **appears as a plaintiff and is not a plaintiff --**

... (objections)

15 **Q. -- other than the Wingate lawsuit?**

... (objections)

21 A. I would say this: That was a very unique case in

22 terms of the charitable beneficiaries. I know --

23 I know of no other where that has been done.

24 **Q. So let me be clear. In your 40 years of practice,**

25 **you've never seen a case where a person or entity**

**1 is named as a plaintiff, but claims not to be a**

**plaintiff?**

... (objections)

8 A. In my 40 years, I have never known of a case like

9 that. So it is unique only because it is not

10 happened before, but that was a major settlement

11 and the settling parties were named as in the

12 caption of the complaint at the twelfth hour. I

13 know of no other like that. I -- I do not.

Solicitor General Cook also testified about the Bauknight/Afterman devaluation of the music empire to \$4.7 million and the AG's claim to the Supreme Court that Buchanan and Pope overstated the value of Brown's assets by \$79 million to get a \$5 million commission:

**Q. Mr. Cook, before we leave the May 6, 2011 Motion  
10 to Supplement the Record in the Wilson versus  
11 Dallas appeal, I just want to talk a little bit  
12 more about what we sometimes call the 4.7 million  
13 valuation of James Brown's music empire. What, if  
14 anything, today do you know about that?**

... (objections)

18 A. Nothing.

**19 Q. And you don't recall anything about this motion to  
20 supplement the record on May 6, 2011?**

21 A. No. I was not involved in the James Brown, Dallas  
22 appeal. I only got involved -- and my name may be  
23 on the pleadings, but I was not directly involved  
24 in the appeal. I got involved in the petition for  
25 rehearing to protect the interest of the Attorney  
1 General.

**2 Q. But you have a pretty extensive experience with  
3 appeals?**

4 A. Fairly.

**5 Q. So if you received in September of 2010,  
6 information necessary to supplement a record,  
7 would it be unusual to delay that motion to  
8 supplement the record until May 6, 2011?**

... (objections)

11 A. I can only speak generally that delay is never a  
12 good idea.

**13 Q. And if a delay is substantial, such as a claim to  
14 \$79 million difference in the value of the assets  
15 which are the subject of the proceeding, would it  
16 be more urgent to advise the court earlier of that  
17 substantial change?**

... (objections)

21 A. Only generally, I say you always want to advise  
22 the court at the earliest possible moment.

...

**9 Q. So if, for example, an appraisal came in in  
10 September of 2010, you, yourself, would not have  
11 participated in delaying notifying the court of  
12 that until after the briefs and record were filed,  
13 would you --**

... (objections)

17 A. I did not participate, no.

18 **Q. Would you think it proper to participate?**

... (objections)

22 A. I'm not sure I understand.

23 **Q. Would you think it appropriate to participate in**  
24 **that kind of delay in the James Brown matter with**  
25 **a matter of that magnitude?**

... (objections)

5 A. Again, it would be my view as a general matter to

6 always advise the court at the earliest possible

7 moment.

8 **Q. Did you become aware at some point that the**  
9 **Attorney General's office was joining in the claim**  
10 **that Robert Buchanan and Adele Pope had overstated**  
11 **the value of James Brown's assets by \$79 million**  
12 **to get a big commission?**

... (objections)

17 A. I did not that I recall.

18 **Q. Do you recall that that was a subject of a**  
19 **conversation you and I had in 2013?**

20 A. Yes, you --

... (objections)

24 A. Yes.

25 **Q. And for a lawyer who cares about her reputation,**  
**such a claim is fairly serious, isn't it?**

... (objections)

5 A. Yes.

6 **Q. I'm going to ask you to look -- the documents are**  
7 **out of order, but just look at Cook 11.**

...

16 (The Witness, Mr. Smith, Mr. Newsome and Mr. Gende  
17 exit conference room, then reenter.)

...

19 RESUMING EXAMINATION

20 BY MS. POPE:

21 **Q. And if the allegation had been made that that**  
22 **overstatement was made on a federal estate tax**  
23 **return filing, would that be even more serious?**

... (objections)

3 A. What I'm looking at is a --

...

8 A. What I'm looking at is a copy of 26 U.S. Code 7206  
9 dealing with fraud and false statements. Any time  
10 you got fraud and false statements as a general  
11 matter, that's very serious.

On March 21, 2017 Appellant, *pro se* conducted a short, courteous deposition of Attorney General Alan Wilson in which he reviewed the Wingate contract [Exhibit 6]; testified that he knew nothing about the operation of the Legacy Trust; knew nothing about anything Buchanan and Pope were alleged to have done wrong; and knew nothing about the James Brown assets over which he had had effective control from January 2011 until May 8, 2013. He did testify, however, that he authorized the continuation of Richland 4900 when he took office in January 2011 to maintain the “status quo.” AG Wilson testified that he had not read Governor McMaster’s October 2016 deposition.

On March 1, 2017 the Honorable Jean Toal denied a request of Wingate and his partner Everett Kendall, Esq., to quash their noticed depositions. While both refused to answer most questions, neither knew of any change in clients since Richland 4900 was filed. Wingate disagreed with the AG’s statement that he had not authorized Wingate to sue in Richland 4900, but the Wingate contract which Wingate continues to try to suppress supports the Governor’s version of the facts.

By order dated May 31, 2017, the Attorney General was dropped as a party under Rule 21.

By order dated June 23, 2017 the dismissed AG and claimed nonexistent Legacy Trust were granted summary judgment as to the Buchanan/Pope counterclaims.

This appeal of the Rule 21 dismissal and certain other orders was filed on September 12, 2017.

On October 24, 2017 Appellant filed a motion to lift the automatic stay imposed by Case 2017-001899 and asked for expedited consideration. The motion addressed the October 2018 deposition of the Governor, the AG’s deposition, and Due Process issues

related to the AG's continued control of the Legacy Trust. An affidavit accompanying the motion described the testimony of Solicitor General Cook, the Governor and AG Wilson in Aiken 1337, and the importance of preserving that testimony in Richland 4900.

On November 10, 2017 Respondents filed a memorandum opposing the motion to lift stay. They claimed that Appellant had engaged in "extreme behavior," and that her attorneys "have now descended to similar unprofessional and uncivil behavior." The Memorandum of Law in Opposition to Motion to Lift stay asked that the contents of the motion to lift stay, which reported the depositions of the Governor and AG, be "stricken from the record in this case, and the attorneys sanctioned..." They claimed that "[s]tatements and accusations made in the Motion are patently false, defamatory, inflammatory, and/or wholly irrelevant."

They said Appellant's memorandum, "given its contents and tone, is in violation of the Supreme Court's Order admonishing the Defendant against interference with the administration of the Estate." They asked the Court to consider the "gravity of the situation" and issue an Order:

- (1) Striking Defendants' Answer
- (2) Requiring Defense counsel to personally reimburse Plaintiff for attorney fees and costs required to respond to this Motion
- (3) Striking the Motion and Affidavit from the Record
- (4) Admonishing counsel and Pope from any further attempts to interfere in the administration of the Estate and Trust of James Brown.

A letter of November 13, 2017 from the AG to the Court took no position on lifting the stay, but Bauknight "on behalf of" the AG took the position stated above.

On January 12, 2018 Respondents Tonya Brown, Yamma Brown, Venisha Brown, and Deanna Brown-Thomas sued Respondents Bauknight, Hynie Brown and James Brown II in a

California Federal Court over termination rights proceeds all had put in the Legacy Trust in 2009. Termination rights are totally apart from Brown's estate.

In 2018 Respondents Tommie Rae and James advised the Federal Court that they were residing in London, U.K.

In February 2018 Bauknight admitted to the federal court that tens of millions of dollars had been spent in litigation costs from Brown's charity since his death. Litigation records filed *ex parte* in Aiken 1337 that would show the details of these expenditures were discarded by the circuit court when Appellant's counsel complained of the *ex parte* filing.<sup>3</sup>

On September 19, 2018 Venisha Brown died intestate a resident of Aiken County. She had been incarcerated most of the time since she sued Appellant in 2010, and Wingate, Bauknight and Louis Levenson, Esq., had repeatedly refused requests that she have a GAL. Wingate had also rejected offers to Venisha Brown without presenting them to her, and nobody held a valid POA for her.

On December 18, 2018 Appellant filed Appellate Case No. 2018-002229, appealing the summary judgment granted to the AG, Legacy Trust, Hynie Brown, and others, including the deceased Venisha Brown.

On June 19, 2019 the Court of Appeals reversed the Aiken Court's 2016 Dismissal of Appellant's 2011 FOIA case seeking the Wingate contract in *Pope v. Wilson*, 427 S.C. 377, 831 S.E.2d 442 (2019), reh. Denied (August 27, 2019). [Exhibits G, H, I]

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<sup>3</sup> At the Aiken 1337 trial, Bauknight was directed by the Court to file all of the Estate/2000 Trust's litigation records from May 26, 2009. After resisting the filing, and being told he could redact portions if he wished, Bauknight filed them *ex parte* with the circuit court. After review of the records, when Appellant's counsel objected to the *ex parte* filing, the circuit court discarded the records and rescinded the oral order. No sealed copy was retained for appeal, but the court's action is an issue in Appellate Case 2019-000362.

On October 27, 2019 Peter Afterman filed an affidavit with the Supreme Court stating:  
“I am an expert in music copyright law.” He made the following known incorrect statements  
to the Supreme Court:

3...Other than these copyright royalties, the Estate does not own significant other  
assets.

...

6. I agree with the projection in the Settlement Agreement that the termination  
rights for James Brown are worth tens of millions of dollars.

And:

7... the Charitable Trust will substantially lose its funding over the next six years  
if Mrs. Brown is not the surviving spouse.

On November 13, 2019 the Richland 4900 FOIA case was remitted to the circuit court.  
The AG has since moved to strike affidavits from the public record and has not produced the  
Wingate contract. Wingate, speaking for Bauknight “on behalf of” the AG claims the Wingate  
contract is private.

In January 2020 the AG filed a brief in this Case 2018-002229 which adopted the brief  
of the Legacy Trust and its beneficiary-owners, and virtually overlooked the critical sworn  
testimony of the Solicitor General, the Governor and the AG himself.

In April 2020 the Supreme Court denied Appellant’s request for certiorari in the  
Legacy Trust FOIA case, confirming that the Legacy Trust does not now, and never has, had  
any charitable purpose. This is the exact opposite of the position taken by Wingate and  
Bauknight for the AG since 2010 in this case and since 2017 in this appeal. The AG is now  
using his high office to support a tort claim against a South Carolina citizen for tens of  
millions of dollars, not a dime of which will ever serve any public or charitable purpose.

### **The New Matter is Material to the Issues on Appeal**

The issues in this appeal are directly affected by the new matter. Each issue on appeal, and some of the impact of the Legacy Trust final order and sworn testimony, is discussed below.

**Issue I: Should the AG and Other Respondents be Relieved from Default?**

Before 2016 Respondent Legacy Trust, for whom tens of millions of dollars are being sought, claimed that half of the damage would go to charity. They claimed that Buchanan's and Appellant's liability rested on the damage they were doing to Brown's charity. Since 2013 that claim has been false, but no effort was made to amend the complaint. It is undisputed that Buchanan and Appellant never owed a duty to the Legacy Trust and its beneficiaries. Now the thread that some of the damage proceeds might go to charity has disappeared. The Legacy Trust has no meritorious defense to the claims for abuse of process, civil conspiracy; intentional interference with contract; or violations of §62-1-106. Nor do its beneficiary-owners.

The emphatic sworn testimony of the Governor that he did not authorize Wingate to sue Buchanan and Pope; did not authorize Bauknight to act on behalf of the AG; and did not even know he was a Plaintiff until after leaving office in 2011, Exhibit A, provides unmistakable proof that Richland 4900 is, and always has been unconstitutional. That testimony, likewise, confirms that there is no meritorious defense to any of the counterclaims. The AG's own admission that he authorized Richland 4900 to continue, but knew nothing about what it, or the Legacy Trust, has done since 2011 strengthens Appellant's position.

## **II. The Lower Court Should Disqualify Wingate and Enjoin Bauknight'**

After telling the Supreme Court in *Wilson v. Dallas* that he could change directions and defend the estate plan, Bauknight began immediately to implement the May 29, 2013 announced plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement. By August 2013 he had called Appellant untruthful in a sworn deposition and claimed that Appellant (and presumably Buchanan) had "raped" James Brown's estate. That month Peter Afterman, paid by Bauknight from funds devised to Brown's charity, began helping Respondents Hynie Brown and James Brown II siphon off royalties belonging to both the Legacy Trust and James Brown's charity.

By 2018 Bauknight admitted that tens of millions of dollars had been spent in litigation costs since Brown's death but was still clinging to the claim that Brown's worldwide music empire was worth only \$4.7 million when he died in 2006.

By 2020 Tommie Rae and Peter Afterman were making the same false claims about the Copyright Act to the Supreme Court that Bauknight had made on November 1, 2011 in oral argument in *Wilson v. Dallas*. Afterman, who valued Brown's worldwide music empire at \$4.7 million, was claiming that the termination rights were worth tens of millions of dollars, even though they will never affect the royalties from the non-U.S. half of Brown's royalties, his right of publicity, or other assets.

Recycling Bauknight's incorrect claims to the Supreme Court in 2011, Afterman asserted there would be nothing in the "I Feel Good" Charity in 6 years if Tommie Rae were not found to be Brown's spouse.

As in 2011, nobody told the Supreme Court that termination rights would never apply to the non-U.S., worldwide half of the \$4+ million a year Brown's royalties were

bringing in when the AG and Bauknight took over in 2009. Nobody told the Supreme Court that Afterman's zero valuation of Brown's publicity rights was wholly without merit, as was his zero valuation of Brown's iconic tangible personal property.

Wingate recognized his conflict within the Plaintiffs group in 2013, but continued to claim to speak for the Attorney General and the warring Respondents for seven additional years, repeatedly accusing Appellant and Appellant's counsel of improper behavior. Wingate and Bauknight, the 2020 record shows, continue to try to suppress the contract and testimony of the Governor and Solicitor General that show Wingate was never properly authorized to act for the State/AG and Bauknight has never had any authority to act "on behalf of" the State/AG. Even more troublesome, Wingate's deposition testimony is in direct conflict with that of the Governor, his purported client.

While Appellant has no role in the second dismembering of Brown's estate plan, she has clear standing to show that Buchanan and Appellant are not responsible or liable for its damage.

### **III. The Lower Court Erred in Ruling that the AG Could Not be Deposed.**

After securing an order that he could not be deposed in Richland 4900, the Attorney General allowed himself to be deposed in Aiken 1337. None of the projected parade of horrors happened. The deposition was courteously conducted and brief. The AG testified that in January 2011 he authorized Richland 4900 to continue to maintain the *status quo*. He knows nothing about the Legacy Trust and delegated everything to staff. He had not even been told about Governor McMaster's October 2016 deposition. The issue on appeal is directly and critically affected by this sworn testimony. It is new, and necessary for a just decision in this appeal.

The AG asserts that Appellant knew about these depositions. So did the Attorney General when he continued to pursue Richland 4900 for the benefit of the private Legacy Trust owner-beneficiaries. Judicial estoppel compels consideration of the AG's sworn testimony, as well as that of the Governor, Solicitor General and Afterman.

#### **IV. The Lower Court Erred in Dismissing the AG as a Party Under Rule 21**

The 2020 denial of certiorari by the Supreme Court highlights that the AG, through Wingate and Bauknight, has remained in Richland 4900 for at least six years to benefit private successors to the Legacy Trust and Bauknight as their agent. The AG has done so in this appeal, advancing their position by his most recent effort to prevent this new sworn testimony of the Governor, Solicitor General and AG from being considered. He has done so by continued FOIA noncompliance; by supporting Wingate's multiple requests for contempt sanctions and other sanctions against Appellant and her counsel; and by supporting the known incorrect Bauknight/Afterman devaluation to \$4.7 million. He has done so with knowledge that, with the \$4.7 million claimed "appraisal," Bauknight shifted about \$1 million a year and nearly 1/3 (31%) of Brown's charity from the charity and over to a trust for family members. These aggressive actions to retaliate against Appellant are inconsistent with the AG's claimed right to be dismissed under Rule 21 as a misjoined party. They are also contrary to the AG's public duty and the AG's assurances to the Supreme Court in *Wilson v. Dallas* in March 2013 that he was seeking to be dropped from Richland 4900.

#### **Rule 212 SCACR Govern Supplements to the Record**

The Attorney General, like Respondents generally, spends much of his return addressing issues related to the initial brief and designation under Rule 209 and 210. Rule

212 provides the standard for supplementing the ROA and is applicable here. This important new information meets the rule 212 requirements.

**Both Richland 4900 and this Appeal are Unique**

The AG's return references this Court's April 26, 2018 order which was related to the initial brief. That order dealt with the original record, while Appellant's motion deals with new matter.

The 2019 admissions of Respondents to the Supreme Court and 2020 ruling related to the Legacy Trust have completely changed the purpose of Richland 4900. Now, in addition to the Governor's confirming that he never authorized Wingate to file Richland 4900 in the name of the State/AG and never authorized Bauknight to act for the AG, it has been confirmed that not one penny of the tens of millions of dollars sought in the name of the AG for the Legacy Trust will be applied to any charitable or public purpose.

The AG "most strongly opposes" the motion; calls it a "last minute motion;" and asserts that it "serves only to delay." That is not the case. But for the AG's designation and the sanctions claim of Wingate, this pretrial appeal, with the modest supplement, is ready for consideration. The consideration should, however, be just.

Judicial estoppel is appropriate here and should be applied to the sworn testimony of the Governor, the AG and the Solicitor General. The same is true of the sworn affidavit of Bauknight's agent, Peter Afterman.

Rule 212(b) provides that "the other party(s) shall designate any supplemental materials which that party desires to add if the Court grants the motion. The AG and other Respondents should be deemed to have waived any supplemental designations.

### **Exhibits A, B and C are in Aiken 1337 Which the AG Sought to Consolidate**

The AG states on page 2 that documents from cases other than Richland 4900 should not be included. This overlooks that it is the AG himself who sought to consolidate three FOIA cases with Richland 4900, and was successful as to one. The AG also sought to consolidate Aiken 1337, stating that Richland 4900 and Aiken 1337 were “two sides of the same coin.” Further Wingate lawyers were allowed to attend the Aiken 1337 depositions of the AG, his staff and former staff as Richland 4900 representatives.

At the time this appeal was taken in 2017 there was a scheduling order which stated that Richland 4900 would be tried with, or before, Aiken 1337. This plan was adopted at the request of the AG and other Respondents. There is no suggestion that the testimony of the Governor, the Attorney General or the Solicitor General would be any different in Richland 4900 than it was in Aiken 1337, In fact, Governor McMaster was deposed in both cases, and testified in both that he did not authorize Richland 4900 to be brought in the name of the State/AG. His testimony in Aiken 1337, however, was clearer; more comprehensive; and more emphatic.

### **Exhibits F, J and O Directly Relate to Actions Taken for the AG**

The Attorney General states that Exhibits F, J and O should not be part of the Supplemental ROA because the AG is not a party. Each exhibit, however, relates directly to the actions taken by the AG in Richland 4900.

### **The Afterman Affidavit Relates to Disqualification of Wingate and Bauknight**

Exhibit F, the October 27, 2019 affidavit of Peter Afterman is critical to this appeal. It is Peter Afterman on whom the Attorney General has relied since 2011 to accuse Buchanan and Appellant of the federal felony of overstating the value of Brown’s assets by \$79 million

to secure a \$5 million commission on a \$5 million estate. The Governor, a former prosecutor, and the Solicitor General, both acknowledge the seriousness of making this claim.

In 2019 Afterman now claims to be “an expert in music copyright law” as well as the “expert” who gave the \$4.7 million “professional appraisal” of Brown’s worldwide music empire. His latest claims about the Copyright Act are as inaccurate as his claims about the value of the music empire. Afterman says that the royalty stream is the primary asset of Brown’s Estate, where the Governor, Solicitor General and all have knowledge that Brown’s publicity rights are of great value. The law and facts have been clear for years that half of Brown’s royalties and his publicity rights will never be subject to Termination rights. Afterman fails to tell the Supreme Court that termination rights will never apply to the non-U.S. half of James Brown’s royalty stream. That royalty stream was bringing in \$5 million a year when Afterman valued it at only \$4.7 million.

Now, in 2019, Afterman tells the Supreme Court that “termination rights for James Brown are worth tens of millions of dollars.” Yet the AG’s own experts in Richland 4900 testified in 2018 that the termination rights of all heirs were worth only worth \$8.8 million

This appeal is about whether Bauknight and Wingate should continue to speak for the AG in a complaint seeking to benefit Hynie Brown and other private citizens to whom Buchanan and Appellant owed no duty. This new information is essential to this issue.

### **Wingate Uses the AG’s Office to Seek Contempt Sanctions for the Legacy Trust**

Exhibit J relates directly to the AG because Wingate, for the AG, is joining Brown-Thomas in 2020 in an effort to hold Appellant in contempt of the South Carolina Supreme Court. Wingate did this by appearing and speaking for the AG and Bauknight on behalf of the AG in asking the circuit court to impose contempt sanctions. In short, the AG is working

today with Wingate, Levenson, and Brown-Thomas to obtain contempt sanctions against Appellant in Aiken County Case 2019-CP-02-00320. They are doing so even though Appellant properly responded to a summons and petition served on her by Brown-Thomas and asked the circuit court to protect Appellant's interest as a potential creditor of Venisha's estate because Venisha Brown sued her in Richland 4900.

### **Bauknight's Failure to Properly Account While Acting on Behalf of the AG**

Exhibit O: In 2020 Bauknight filed documents in connection with his expenditures in the years 2016 and 2017. While suing Buchanan and Appellant "on behalf of" the AG for ten years, Bauknight has never properly accounted. His 2020 filing confirms that he spent \$3.1 million in 2016 and spent \$3.55 million in 2017. Counsel admitted to the Supreme Court at oral argument in 2019 that not a penny of Brown's assets or income has ever gone for a scholarship for a needy student. Bauknight filings and failure to account while he speaks for the AG in a tort suit accusing Buchanan and Appellant of not properly accounting is relevant.

### **The AG's 9-Year FOIA Noncompliance is Directly Related to this Appeal**

The Attorney General asserts that Exhibits D, E, G, H, I, K, L, M, Q and R should not be considered because they are FOIA cases, "both of which were decided last year." The AG states that the Legacy Trust FOIA case was never consolidated with Richland 4900. The only reason it was not consolidated, at the request of the AG, was that it was dismissed in 2016. At the time, the AG's consolidation motion was pending.

The 2016 ruling related to the Legacy Trust is both new and essential to this appeal. It shows that Wingate, Bauknight "on behalf of" the AG, and the AG himself, are still seeking tens of millions of dollars from Appellant that will go to a Legacy Trust that has no charitable or public purpose, and to which she never owed a duty.

This could not have been known until the Supreme Court did not accept certiorari to review the 2019 decision of the Court of Appeals, making the circuit court's 2016 decision final.

FOIA remains relevant, and with new issues, because the AG; Wingate, acting for the AG; and Bauknight "on behalf of" the AG all still continue to refuse to release the public Wingate contract sought in Appellant's 2011 FOIA case even though it states on its face that it is subject to FOIA and public.

### **Exhibit N Confirms the AG's Continued Refusal to Release the Wingate Contract**

Exhibit N is a March 9, 2020 filing by Wingate for the Attorney General, the Legacy Trust and Bauknight "on behalf of" the Legacy Trust showing that the AG has, in fact, continued for 9 years to prevent release of the public Wingate contract under both FOIA and discovery. This is relevant to the sworn testimony of the Governor that he never authorized Wingate to bring Richland 4900 in the name of the State/AG. The fact that the Governor, then-AG, did not sign the Wingate contract supports the AG's position. It is noteworthy that the AG's sworn statement conflicts directly with the sworn testimony of Wingate.

This conflict between Wingate and the sworn testimony of the Governor and contract which he did not sign is important to the issue of whether the Richland 4900 Plaintiffs should have been relieved from default and whether Wingate and Bauknight should still speak for the State/AG.

### **The December 10, 2018 Order Related to a FOIA Case, Not 2018-002229**

On page 4 the Attorney General states that the order of this Court dated December 10, 2018 denied consolidation of this appeal with Appellate Case No. 2018-002229. That is not the Case. The motion to consolidate asked to consolidate this case with Appellate Case No.

2016-001708, not with Appellate Case 2018-002229. Case No. 2016-001708 is one of the 2011 FOIA cases brought in Newberry County.

Even if consolidation of 2018-002229 had been sought and denied, that would be no basis for the Court to decline to supplement the ROA or take judicial notice. 2018-002229 is also a pretrial appeal from Richland 4900.

### **Judicial Notice is Appropriate as to All Documents**

On page 4 the Court objects to judicial notice being taken of matters in which the AG is not a party and of Aiken 2018-002229. Neither Rule 201 SCRE nor the case law applicable to judicial notice suggests such a narrow scope for judicial notice.

Rule 201(b) states that judicially noticed facts must be those not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned.

The fact that the Governor gave the testimony under oath that is set out in Exhibit A on October 19, 2016, and that this sworn testimony was made a part of the public record at the trial of Aiken 1337 by 2018, is capable of accurate and ready determination, as is the fact that Attorney General Wilson gave the sworn testimony contained in Exhibit B; that of Solicitor General Cook in Exhibit C; and that they, too, became part of the public record in Aiken 1337 by 2018. Each document which Appellant seeks to include in the supplement to the ROA can be similarly documented. Each is new, and each is related to actions of one or more Respondents in this case or their agents.

The Attorney General cites *Williamsburg Rural Water and sewer Co., inc. v. Williamsburg Cnty Water and Sewer Autho.*, 367 S.C. 566, 627 S.C. ed 690 (2006) and *Norris*

*v. Ferre*, 315 S.C. 179, 183, 432 S.E.2d 491, 493 (Ct. App.1993) as authority for its position that all exhibits other than Exhibit A were not presented to the lower court, and cannot be made a part of this pretrial record under Rule 212. The circumstances of the two cases bear no relation to the facts here.

Buchanan and Appellant began trying to take the deposition of Governor McMaster in 2011, and of AG Wilson and the Solicitor General in 2016 – after the 3-year stay imposed at the request of Respondents. While claiming he was never a party in Richland 4900, the AG was simultaneously pursuing, and making difficult, discovery in Richland 4900. He was also trying to consolidate that discovery with FOIA cases, making Richland 4900 a FOIA graveyard.

Respondents secured in Richland 4900 an order that the AG could not be deposed, but also an oral order that the AG, through his private Richland 4900 counsel (Wingate), could participate in the depositions of the AG, staff and former staff being taken in Aiken 1337. The delay in getting the depositions from Aiken 1337 to Richland 4900 was directly caused by acts of the AG and other Respondents.

This appeal was filed on September 12, 2017. The depositions were not in the record, But the circuit court had reviewed the Governor’s deposition and that of the Solicitor General, with other AG staff depositions, over withheld documents and directions not to respond to questions. The Attorney General knew what he had said. He knew what the Solicitor General said.

The Aiken 1337 trial started as this appeal was being filed. The following spring all of the depositions here, and others, were proffered as rebuttal testimony at the Aiken 1337 trial. The circuit court overlooked them, along with depositions of Wallace Lightsey, Esq.,

James Hardin III, Judge (Retired) Walter Williams and numerous others, in its January 2019 order. They are now all within the public record. The testimony cannot be disputed. They are essential to this record.

*Ferre* involved a post-trial attempt to introduce a deposition from another case which had not been presented at trial. It bears no relation to this case, where the AG continued to pursue discovery while an appeal of a Rule 21 order saying he was never a party was pending. The same lack of relationship is true of *Williamsburg*.

The sworn testimony of the Governor, the AG, the Solicitor General, the filings of Wingate, and the Affidavit of Peter Afterman are not “after-created evidence”. They are the sworn (or Rule 11) filings of Respondents or their agents which contradict the positions they are taking in this appeal.

### **Attorney General’s Failure to Designate Supplemental Materials**

Rule 212(b) is clear that:

In response to that motion [to supplement] the other party(s) shall designate any supplemental materials which that party desires to add if the Court grants the motion.

This requirement is not discretionary. While asserting that Appellant is seeking to delay consideration of this appeal, the AG fails to meet this simple requirement. This should not delay this appeal. The right of the AG and other Respondents to designate additional documents should be considered waived.

### **Incorporation of Response to Wingate Return and Request for Sanctions**

Appellant incorporates her motion and response to the return and motion for sanctions filed by Respondents herein as additional support for her position that the ROA should be supplemented and this appeal concluded.

## CONCLUSION

The Attorney General does not deny that the sworn testimony of the Governor, the Attorney General and Solicitor General are directly contrary to the positions taken by the AG in this appeal. He does not deny that Afterman's sworn Supreme Court filing recants the \$4.7 million claimed value used by the AG and Bauknight "on behalf of" the AG to accuse Buchanan and Pope of a federal felony. He does not deny that the AG has still not complied with 2011 FOIA requests he told the Supreme Court in 2013 that he hoped to conclude shortly. He does not deny that these documents are needed for a just decision in this appeal. The AG's technical arguments should be disregarded. Judicial economy and justice require that the Governor and others be heard. There will be no unnecessary delay. The supplement should be accepted by the Court. Respondents should be deemed to have waived the right to counter-designate.

Respectfully submitted,

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*Counsel for Appellant Adele J. Pope*

May 1, 2020

**STATE OF SOUTH CAROLINA**

**In the Court of Appeals**

**RECEIVED**

**May 01 2020**

**SC Court of Appeals**

**APPEAL FROM RICHLAND COUNTY**

**Court of Common Pleas**

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

**The Honorable L. Casey Manning, Circuit Court Judge**

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**Appellate Case No.: 2017-001899**

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

And

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

v.

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

Of whom Adele J. Pope is Appellant.

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**Proof of Service**

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The undersigned counsel for Appellant certifies that he has served a copy of the the following:

1. Reply to Return of Attorney General to Motion to Supplement the Record and
2. Reply to Return of Sweeny, Wingate & Barrow, P.A., to Motion to Supplement the Record and Return to Request for Sanctions

on all Respondents on the date shown below, by emailing the same to their counsel, addressed as follows:

Kenneth B. Wingate  
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*Counsel for Respondents*

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*Counsel for Respondent Attorney General*

s/Adam T. Silvernail  
*Counsel for Appellant*

May 1, 2020



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**Bauknight, et al v. Pope, Appellate Case No. 2017-1899**

1 message

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**Adam Silvernail** <adam@silvernailfirm.com>

Fri, May 1, 2020 at 1:56 PM

To: "Mark V. Gende" <MVG@swblaw.com>, "Ken B. Wingate" <kbw@swblaw.com>, Emory Smith <ESmith@scag.gov>

Cc: Adele Pope <adele@popelawfirm.com>, Charles Carpenter <charlie@carpenterappeals.com>, Daryl Williams <dwilliams@gertzandmoore.com>, Jeff Smith <wjstv@mindspring.com>

Counsel:

Attached and served on you are our Replies to the Returns of Sweeny, Wingate & Barrow, P.A.'s and the Attorney General's returns to the motion to supplement the record, along with a Proof of Service.

A copy of this email will be filed with the Proof of Service.

Best,  
Adam

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**RECEIVED**

**May 01 2020**

**SC Court of Appeals**

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**3 attachments**

 **Pope 1899 Appeal POS.pdf**  
40K

 **Pope 4900 Reply to Wingate .pdf**  
110K

 **Pope 4900 Reply Return AG.pdf**  
258K