

**RECEIVED**

OCT 15 2020

STATE OF SOUTH CAROLINA  
In the Supreme Court

S.C. SUPREME COURT

---

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

---

Appellate Case No. 2017-001899

---

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

And

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

v.

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

Of whom Adele J. Pope is Petitioner.

---

**MOTION TO SUPPLEMENT THE RECORD BASED ON  
ATTORNEY GENERAL'S OCTOBER 2020 PUBLIC RELEASE OF  
DOCUMENTS BEARING ON CRITICAL ISSUES HEREIN**

---

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES:

This case<sup>1</sup> is an extraordinary lawsuit wherein the South Carolina Attorney General (the “AG”), represented only by private counsel shared with Tommie Rae Hynie a/k/a Tommie Rae Hynie Brown (“Tommie Rae”) and more than a dozen other private individuals, sued two South Carolina citizens for money damages in an effort to strong-arm them into dropping the appeal which would become *Wilson v. Dallas* before this Court. More than a decade after the filing of this action, public documents recently released by the AG shed stunning light on the relationship between the AG and private law firm Sweeny, Wingate and Barrow, P.A. (“SWB”). These documents having been previously withheld by SWB and the AG in the lower courts.

The AG’s bringing of this lawsuit and representation by shared private counsel violates Petitioner’s constitutional rights, and she (along with Robert L. Buchanan, Jr., who was originally a co-Defendant) has repeatedly raised and preserved these issues in the circuit court and the court of appeals. Because these long-withheld documents are extremely relevant to this Court’s analysis in deciding whether to review this case, Petitioner respectfully moves pursuant to Rule 212(b) for an order supplementing the record on appeal (ROA), so that the attached documents may be included in the Appendix herein.

This motion is based on new public information released by Respondent Attorney General under FOIA in October 2020, but which should have been released in discovery in this case and under multiple FOIA requests made by Petitioner and other South Carolina citizens between 2011 and 2014.

---

<sup>1</sup> This motion is filed with a Petition for Writ of Certiorari seeking review of the Court of Appeals’ opinion, which Petition is incorporated herein.

The grounds of this motion are that these public admissions of the Attorney General in the October 2020 documents confirm that in 2012 SWB urged and advised the Attorney General not to comply with valid FOIA requests. Further, the October 2020 documents show that Respondents' counsel, SWB, was never engaged by the State/AG or authorized to bring Richland 4900 in the name of the State/AG.

The AG's October 2020 FOIA documents also show that since 2013 SWB has had actual knowledge of the State/AG's position that SWB has never had authority to act for the State/AG in Richland 4900. Despite this, SWB has continued to use the prestige and power of the Office of the Attorney General in Richland 4900 for the benefit of Respondent Tommie Rae, SWB's principal client, and those aligned with Tommie Rae.

The AG's October 2020 disclosures, when considered with the public record and prior requests to lift the stay, make clear that since at least 2016 SWB has, without authorization, employed the power and prestige of the Office of the Attorney General to help Tommie Rae and those aligned with her render the contested issues in this case moot and deprive the Appellate Court of jurisdiction over both the parties and the property which is the subject of this appeal.

This motion is supported by motions of Petitioner to lift the stay in Richland 4900 appeals; the AG's October 2020 FOIA documents; the actions taken by SWB since April 24, 2013 which purport to be on behalf of the State/Attorney General; and the memorandum which follows.

#### **Summary of Need to Supplement Record on Appeal**

The documents attached hereto disclose startling facts about this extraordinary case, in which the AG has been a named Plaintiff for more than ten (10) years and in which Petitioner and Buchanan raised and preserved constitutional issues related to the AG's participation and

representation by private counsel SWB, which purported to co-represent the AG, Tommie Rae and more than a dozen other private Plaintiffs, for that same span of time.

The newly released documents include:

1. January 20, 2012 letter from SWB attorney Mark V. Gende, Esq., to AG Wilson (“As [the AG’s] attorney in this matter, [Gende is] writing to advise [the AG] against releasing” any portion of the fee contract between SWB and the AG, which Petitioner had requested under the FOIA). Attached as **Exhibit A**.
2. March 25, 2013 letter from SWB attorney Everett A. Kendall, II, Esq., to AG Wilson, Chief Deputy AG John W. McIntosh, Deputy Attorney General Robert D. Cook and Asst. Deputy AG C. Havird Jones. (requesting “formal meeting” “to discuss the termination of [SWB’s] representation of the Office of the Attorney General”). Attached as **Exhibit B**.
3. April 12, 2013 letter of Mr. Kendall, to AG Wilson, Mr. McIntosh, Mr. Cook and Mr. Jones. (Transmitting “Termination Agreement to end Sweeny, Wingate and Barrow, P.A.’s representation of the Attorney General.”) Attached as **Exhibit C**.
4. Unsigned April 2013 “Termination of Legal Representation,” noting that the Contract for Legal Services which has been the subject of multiple discovery motions and FOIA requests created “a direct attorney-client relationship” between SWB and the AG; indicating that the AG would pay some portion of SWB’s fees; and proposing that all communications between SWB and the AG, as well as communications between the AG and others and the Termination document itself “are, and shall remain, confidential and protected by the Attorney-Client Privilege.” Attached as **Exhibit D**.
5. April 23, 2013 letter of Mr. Kendall, to Mr. McIntosh. (Seeking signature on Termination agreement; noting that the AG had “drawn a line in the sand with respect to [SWB’s] attorney fees and expenses;” and saying that SWB would “act accordingly.”) Attached as **Exhibit E**.
6. April 24, 2013 letter of Mr. McIntosh to Mr. Kendall. (Noting that the AG would not pay SWB’s fees because it “did not employ [SWB’s] services” and advising that “the Office of the Attorney General has never been a client of [SWB].”) Attached as **Exhibit F**.
7. A January 5, 2011 letter from Mr. Kendall to Russell Bauknight, regarding this case, with the entire 3 ½ page body of the letter and attachment redacted, but showing copies sent to two members of the AG’s office, as well as several lawyers representing private Plaintiffs in other matters. Attached as **Exhibit G**.

These documents show that SWB never represented the AG in Richland 4900, despite its 2010 filing of this case on the AG's behalf, and SWB never advised the lower court or the court of appeals that it did not represent the AG.<sup>2</sup> They further show that the AG, from April 2013 until October 2020, failed to disclose to the lower courts that it was never a client of SWB.<sup>3</sup> The Record on Appeal includes confusing and inconsistent evidence and positions, because these documents which bear directly on issues in controversy were never released or produced until October 2020.

When examined in March 2017 about Richland 4900, SWB attorney Kenneth B. Wingate, Esq., testified that his representation of all Plaintiffs in this action continued (as of March 2017); that his firm *did* represent the AG; and that there had been no change in his representation since 2010. The relevant pages of Mr. Wingate's deposition, along with the Order of the Honorable Jean H. Toal, Acting Circuit Judge, which directed that Mr. Wingate and Mr. Kendall testify on matters related to the authorization to file and continue Richland 4900, are attached as **Exhibit H**.

Petitioner seeks this Court's review of five lower court orders which, without SWB or the AG acknowledging the 2012 and 2013 correspondence just released:

1. Dropped the AG as a party to this action under Rule 21 [R. 2; 19-24];
2. Denied Petitioner's right to take the deposition of AG Alan Wilson, who was in office during the time the attached documents were generated, based in large part on a finding

---

<sup>2</sup> At the first hearing in August 2010, Wingate introduced C. Havird Jones, Esq., who is a member of the AG's office, as "an attorney with the South Carolina Attorney General's office, one of our clients." [R. 1122] In 2013, SWB did file a motion to be relieved as counsel [R. 810], alleging generally that the AG no longer required its services, but never sought to have it heard; continued to make filings and act on behalf of all Plaintiffs; and, in fact, withdrew the motion to be relieved in 2016, prior to the lower court's hearing it.

<sup>3</sup> At the 2016 hearing on the AG's motion to be dropped as a party, Mr. Jones said of SWB, "they're our lawyers in effect." [R. 1224] The AG at times tried to nuance its position on whether it was represented by SWB, but *never* took the position in filings or argument that it had never been represented by SWB in Richland 4900. For example, later in that same 2016 hearing, Mr. Jones said, "Mr. Bauknight has hired the Wingate firm, we're satisfied with them, they're our lawyers. . . ." [R. 1227]

that any testimony AG Wilson might give would be protected by the attorney-client privilege [R. 33-38];

3. Relieved all Plaintiffs from default on Petitioner and Buchanan's counterclaims, based in part on a finding that the AG could not be held in default [R. 51-53]; and
4. Declined to disqualify SWB as the AG's counsel or enjoin SWB or Bauknight from purporting to speak "on behalf of" the AG in this case [R. 59-60].

"Few appeals involve the need for a supplemental record." Toal, Walker, Baker, *Appellate Practice in SC*, 3d ed., p. 417. This case, with the just-disclosed documents which bear directly on the constitutional appellate issues which were before the Court of Appeals and which Petitioner asks this Court to hear, is one of those few cases where a supplement should be allowed. Although presentation of evidence for the first time on appeal is unusual, appellate courts have the discretion "to make limited exceptions to this rule when 'injustice might otherwise result.'" *In re AOV Indus. Inc.*, 797 F.2d 1004, 1012 (D.C. Cir. 1986) (quoting *Singleton v. Wulff*, 428 U.S. 106, 121 (1976)). Appellate courts have "the inherent equitable power to allow supplementation of the appellate record if it is in the interests of justice." *CSX Transp. Inc. v. City of Garden City*, 235 F.3d 1325, 1330 (11<sup>th</sup> Cir. 2000).

The attached documents show that the AG had, by 2013, taken the position that SWB did not represent the State/AG in Richland 4900, and had never represented it. Nonetheless, even in the 2019 Briefs filed in this case in the Court of Appeals, SWB argued that it "speaks for the Plaintiffs, both governmental and individual, in this litigation." (Respondents' Brief at 29) In its own Brief, the AG likewise argues that representation of the AG by private counsel is appropriate, but again makes confusing statements regarding whether SWB actually represents or has represented the AG. (See Respondent AG's Brief at 23-24). Neither SWB nor the AG suggested in their Briefs that the AG had *never* been represented by SWB.

Because the new documents show not only that the court of appeals' opinion was erroneous (as argued in the Petition for Certiorari), but also that neither the Court of Appeals nor the circuit court had the benefit of compelling evidence in possession of both the AG and SWB which sheds light on the constitutional and other issues flowing from the AG's bringing of this 2010 lawsuit and SWB's decade-long insistence that it represented the AG and did so appropriately.

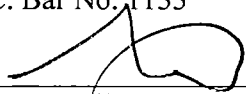
### CONCLUSION

Based on the foregoing, this Court should allow the documents attached hereto to be added to the Record on Appeal and Appendix herein for consideration by this Court along with the Petition for Writ of Certiorari.

Respectfully submitted,

Charles E. Carpenter, Jr.  
Carpenter Appeals & Trial Support, LLC  
4825 Portobello Road  
Columbia, SC 29206  
Telephone: (803) 758-2886  
charlie@carpenterappeals.com  
S.C. Bar No. 1133

William Jeffrey Smith  
1216 Crenshaw Street  
Newberry, SC 29108  
Telephone: (803) 597-0209  
wjstv@mindspring.com  
SC Bar No. 0005225

  
Adam T. Silvernail  
Law Office of Adam T. Silvernail, LLC  
Post Office Box 7995  
Columbia, South Carolina 29202  
Telephone (803) 799-1770  
[adam@silvernailfirm.com](mailto:adam@silvernailfirm.com)  
S.C. Bar No. 80219

Daryl L. Williams  
Gertz & Moore, LLP  
1416 Laurel Street (29201)  
Post Office Box 456  
Columbia, SC 29202  
SC Bar No. 6121

October 14, 2019

*Counsel for Appellant*

**RECEIVED**

**OCT 15 2020**

**S.C. SUPREME COURT**