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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. 2020-001383

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.

**REPLY TO RETURN OF ATTORNEY GENERAL TO MOTION TO SUPPLEMENT
THE RECORD ON APPEAL**

Petitioner submits the following reply to the return filed by the South Carolina Attorney General to Petitioner's Motion to Supplement the Record herein. Petitioner files this reply

contemporaneously with her reply to the Return filed by Sweeny, Wingate and Barrow, P.A. herein, and she incorporates that reply in its entirety.

The AG Fails to Cite or Identify any Credible Support for its Assertion that Petitioner Previously Knew that the AG *Never* Engaged or Authorized Counsel in this Case

The AG quotes and cites several documents which it asserts show that Petitioner was long-aware that the AG was not represented by Sweeny, Wingate and Barrow, P.A. (“SWB”). Even the quoted passages in the AG’s return show that its argument is specious.

Specifically, the AG quotes a passage from its own Brief wherein it argued that the AG *unquestionably had the right to engage private counsel [SWB] in this case*. [AG Return at 4]. This argument, in fact, supports Petitioner’s assertion that the October 2020 documents presented a stunning revelation that the AG, according to its own correspondence, had *never been a client of private law firm SWB*, despite having litigated for years the issue of whether it could be represented by and/or share private counsel with private individuals in this tort suit for money damages. [See R. 477-480]. Indeed, SWB has made multiple filings in this case aggressively arguing that it could represent the AG (See, e.g., R. 1673-1687), and both the AG and SWB briefed the issue in this appeal.¹

It is disingenuous for either the AG or SWB to now argue that Petitioner has known since 2013 that SWB was *never* engaged or authorized by the AG to bring this lawsuit in the name of the State of South Carolina for the benefit of the private Richland 4900 Plaintiffs.

¹ See Court of Appeals Case Tracking No. 2011186406, ended March 16, 2011 on motion of SWB.

The Wingate Contract, Sought in Discovery in this Case and under the Freedom of Information Act from the AG, has Been Withheld by SWB and the AG

On May 18, 2010 SWB, Russell L. Bauknight, Alan Medlin, Esq., Louis Levenson, Esq., and David Bell, Esq., signed the “Wingate Contract” to sue Buchanan and Pope in what would become Richland 4900. [R. 1235-1251]

The Wingate Contract has been sought from the AG under FOIA since 2011, and in Richland 4900 discovery since 2010. [R. 552-555; 568-574] As of November 2020 the AG has not produced his copy under FOIA.² SWB produced the Wingate Contract in discovery in 2020, but only when it was ordered to do so.

From 2011 until 2020 SWB asserted that the Wingate Contract was the “epitome” of a private document [R. 558-567], although the Wingate Contract says on its face that it is a public document subject to FOIA and that all documents held by SWB in connection with Richland 4900 are also subject to FOIA. [R. 1242, Article F]

The Wingate Contract was released by Bauknight in the fall of 2013 when a federal judge in S.C. Dist. Court Case 03-cv-00014-WOB ordered him to produce it.

In their 2017 depositions ordered by Judge Toal, SWB attorneys Kendall and Wingate identified the 2013 document as the Wingate Contract.³ See Exhibit H to the Motion to Supplement the Record herein.

No version of the Wingate Contract known by Petitioner contains then-AG McMaster’s signature, although the document as produced by Bauknight and SWB does include then-AG

² In Spring 2020, the AG produced a portion of an unsigned contract, which differs from any other version of that document produced by any party to this case.

³ Nonetheless, the version of the document SWB produced when ordered to do so in 2020 was signed by Terry Brown, rather than David Bell, Esq.

McMaster's May 18, 2010 letter requiring that the terms of the AG's Litigation Retention Agreement be incorporated in any contract related to the charity. [R. 1250]

The Wingate Contract, in addition to stating that it is a public document subject to FOIA and that all documents held by SWB are also subject to FOIA, contains the following terms relevant to this appeal and the October 2020 Documents.

- a. The "charitable portion" pays a contingency fee of 23% or less, with 10% payable to the Office of the AG. [R. 1236]
- b. The noncharitable Respondents, none of whom signed the Wingate Contract, pay a contingency fee of 40% to SWB. [*Id.*]
- c. James Brown's estate advances the costs of Richland 4900 to SWB, to be repaid from any settlement by the Plaintiffs in proportion to their ownership of the Legacy Trust. [*Id.*]
- d. The Wingate Contract provides that if the May 26, 2008 settlement is overturned the parties for whom Bauknight is acting will become the Plaintiffs. [R. 1235]
- e. The Wingate Contract provides that it is a public document subject to FOIA, as are all documents held by SWB. [R. 1242]
- f. The Wingate Contract provides that the AG will review all pleadings and have additional control over Richland 4900. [R. 1239]

The Richland 4900 Complaint

The day after the Wingate Contract was signed, SWB filed suit in the Richland County Probate Court against Petitioner and Robert L. Buchanan, Jr. After removal to the circuit court, that case became Richland 4900. The Richland 4900 complaint seeks tens of millions of dollars for the Legacy Trust and its "beneficiary plaintiffs." [R. 179] The AG is designated as a beneficiary plaintiff, as are Tommie Rae, Terry and the Levenson clients. [R. 179-180]

The Richland 4900 complaint, which has never been amended, alleges Buchanan and Pope breached their fiduciary duty to the Legacy Trust owner-beneficiaries by challenging and appealing the AG's 2008 settlement which became the subject of *Wilson v. Dallas*, 403 S.C. 411,

441, 743 S.E.2d 746 (2013). [R. 185-186] The AG's 2008 settlement stipulated that Tommie Rae was James Brown's spouse and gave her about \$1 million income a year and a quarter of Brown's "I Feel Good" charity in exchange for half of her termination rights and those of her son. The same amount was given to five Levenson clients.⁴

The significant claims of breach of duty to the Legacy Trust owner-beneficiaries are:

- a. Buchanan and Petitioner contested and appealed the AG's 2008 settlement. [R. 185-6]
- b. Buchanan and Petitioner did not sell Brown's music empire in 2007, and by 2010 it was alleged to be worth tens of millions of dollars less. [R. 183]
- c. Buchanan and Petitioner overstated the value of the music empire in IRS filings to obtain a large commission. [If true, this would be a federal felony.] [*Id.*]
- d. Other claims time-barred and approved by unappealed court orders. [R. 182-8]

The Motion to Dismiss, Answer and Counterclaim and Default

Buchanan and Petitioner moved to dismiss on 10 grounds, including that it was unconstitutional for SWB to be sole counsel for the AG and private plaintiffs, including minors and nonresidents seeking to dismember James Brown's estate plan, in a tort suit primarily for the benefit of the SWB's private clients. [R. 193-203]

Subject to the motion to the motion to dismiss, Buchanan and Petitioner counterclaimed for abuse of process, civil conspiracy, intentional interference with their contract to be paid, and violations of S.C. Code Ann. §62-1-106. [R. 337-370]

SWB failed to timely respond to the counterclaims. The circuit court excused all Richland 4900 Plaintiffs from default, noting specifically that the AG "was never in default" pursuant to Rule 55(e). [R. 51-53]

⁴ Terry Brown joined the settlement in 2009 and was given a right of first refusal ("ROFR") to acquire the music empire and a child's share, causing a small adjustment in the ownership of the Legacy Trust.

From the time Petitioner's and Buchanan's Motion to Dismiss herein was filed, they (and later Petitioner) have continuously raised and preserved the serious constitutional issues implicated by the AG's involvement in this case and representation by private counsel shared with private Plaintiffs.

The October 2020 Documents Give Additional Support to Petitioner's Longstanding and Important Constitutional Arguments

As Petitioner has argued in her Petition for Certiorari, this Court's review and reversal of the court of appeals' opinion is warranted without the AG's October 2020 documents added to the record. It nonetheless serves both justice and judicial economy to accept the documents now, as they shed further light on the constitutional problems presented by the AG's and SWB's conduct in this case.

Due process is violated when a party is denied fundamental fairness. *City of Spartanburg v. Parris*, 251 S.C. 187, 191, 161 S.E.2d 228, 230 (1968). Due process is flexible and calls for such procedural protections as the particular situation demands. *Sloan v. S.C. Bd. Of Physical Therapy Exam'rs*, 370 S.C. 452, 636 S.E.2d 598 (2006). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *S.C. Dep't. of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997).

Here, the AG's presence as a Richland 4900 Plaintiff put the power and prestige of the State of South Carolina behind baseless and improper allegations made by and on behalf of private individuals – to many of whom, like Tommie Rae Hynie, Petitioner unequivocally never had a duty. To allow the AG to improperly bring this suit; maintain it for years; and then walk away under a Rule of Civil Procedure intended to address misalignment or unintentional joining of parties is fundamentally unfair.

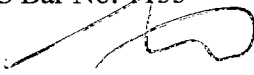
Conclusion

The Attorney General's strenuous objection to Court's consideration of the AG's October 2020 Documents itself lends credibility to Petitioner's position that they bring new, undisputed and material evidence to this appeal. SWB and the AG should have produced the documents long ago under discovery in Richland 4900; in the related FOIA cases; and in response to other FOIA requests and orders. The positions of the AG and Respondents, through SWB, in the AG's 2020 Documents are irrefutable; have been verified by the AG himself; and cannot be disputed. They should be considered.

[SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE]

Respectfully Submitted,

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