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SC Court of Appeals

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

Appellate Case No.: 2018-002229

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.

**APPELLANT'S RETURN TO RESPONDENT ATTORNEY GENERAL'S MOTION TO
BE DISMISSED FROM APPEAL**

Eleven years and a month ago, the Attorney General of South Carolina¹, Tommie Rae Hynie and Respondent “Legacy Trust”² which Hynie and the AG controlled, sued Robert Buchanan, Jr. and Adele Pope in Richland 4900. They sought millions of dollars for Legacy Trust beneficiary-owners, including the AG. The Richland 4900 Plaintiffs’ contract with the private law firm of Kenneth Wingate, Esq.³, and Wingate’s representation to the Honorable Casey Manning was that Hynie would pay 23.75% of the costs of Richland 4900 and get 23.75% of the recovery. The AG’s stake was 47.5%.⁴

Ten years ago, in 2011, the AG, Hynie, Russell Bauknight, trustee of the Legacy Trust, and Wingate began a decade-long effort, which continues today, to conceal public documents owned by the State of S.C. and subject to FOIA under the Wingate Contract and by statute. The concealed public documents show that the Honorable Henry McMaster, now Governor, never authorized Wingate to bring Richland 4900 in the name of the State/AG and never authorized Bauknight to act “on behalf of” the State/AG in Richland 4900; that the claimed \$4.7 million value supporting the false felony claim lodged by the State/AG and Legacy Trust against Buchanan and Pope in Richland 4900 was created by Peter Afterman, music manager since 2013 for Hynie; that Forlando Brown, who worked for and with felon David Cannon until Cannon’s death in 2017, is a Legacy Trust owner; and that when Richland 4900 was filed the Attorney General and every adult Plaintiff

¹ “Attorney General” or “AG”

² Named the “James Brown Legacy Trust,” but actually created to dismember James Brown’s estate plan, the Legacy Trust is 75% managed by the AG and Tommie Rae Hynie, but the AG has effective control over the Legacy Trust with a right to remove and replace trustee Russell Bauknight at will.

³ Sweeney, Wingate & Barrow, P.A., collectively “Wingate”

⁴ With the AG’s 2013 refusal to pay any part of Wingate’s fee, and other events, the stakes in Richland 4900’s costs, being advanced from Brown’s charity, now appear to be approximately 46% for Hynie; 9% for Forlando Brown; 9% for the Estate of Venisha Brown, deceased; 9% for Daryl Brown; 9% for Larry Brown; 9% for Deanna Brown-Thomas; and 9% for Dr. Yamma Brown.

in Richland 4900 had actual knowledge, from James Brown himself, Hynie’s public handwritten admissions which Hynie falsely claimed to be a “diary,” or both, that Hynie was not the spouse of James Brown.

In June 2021, after filing a strong brief in this appeal challenging the credibility of Appellant and endorsing the 11-year fraud of Hynie, the Legacy Trust and some of its other owners, the AG seeks to be dismissed as a party to this appeal. The Attorney General does so while refusing under FOIA in Richland 4900 to release his copies of the unconstitutional Wingate Contract, and refusing to release under FOIA the public, state-owned Afterman \$4.7 million valuation the AG has used for a decade to support his false felony claim against Buchanan and Appellant.

The Attorney General should not be dismissed as a party to this appeal. For every reason set out in Appellant’s briefs, which are incorporated herein; the public James Brown record since May 29, 2013, of which the Court is asked to take judicial notice⁵; and the memorandum which follows, the motion of the AG to be dismissed from this appeal should be denied.

MEMORANDUM IN OPPOSITION TO DISMISSAL OF AG AS A PARTY

The Attorney General is a necessary party to this appeal. He is the public official charged with the enforcement of FOIA and the protection of funds dedicated to charity. He is the state’s highest law enforcement officer. It is the Attorney General who should see that the Court’s decision as to the constitutional and other issues in this appeal not be ignored, as happened upon remand to the trial court after the Supreme Court’s decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

⁵ See Reply Br., App., to Resps, pp. 11 -12.

The AG's Motion Violates his 2013 Commitment to Monitor Brown's Charity

In March 2013 the Honorable Alan Wilson, Solicitor General Robert Cook, and Chief Deputy AG John McIntosh, through in-person meetings with Appellant and her counsel, gained personal knowledge of the damage done to Brown's "I Feel Good" charity and its now-1100 copyrights by the alliance of Sr. Asst. AG Havird "Sonny" Jones and Hynie, and by the claim by Bauknight and Peter Afterman that Brown's worldwide music empire had been worth only \$4.7 million at Brown's death in 2006, when it was actually worth nearly \$85 million.

On April 24, 2013, as shown on Exhibit A, the Attorney General wrote Wingate confirming that the AG had never engaged Wingate as counsel in Richland 4900. The letter said that if the Supreme Court's decision remained the same as it was in the first opinion on February 27, 2013, Wingate would be required to disgorge the funds Bauknight had advanced to the Legacy Trust owner—beneficiaries in Richland 4900 from funds James Brown devised to his charity. [Exhibit A]

On May 8, 2013 the Supreme Court issued its final *Wilson v. Dallas* decision, noting the AG's commitment both to get out of Richland 4900 and to monitor Brown's "I Feel Good" charity.⁶

On May 29, 2013, three weeks after the final *Wilson v. Dallas* decision, Hynie, through counsel, and Louis Levenson, Esq., announced to the Honorable Doyet A. Early, III, their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement which dismembered Brown's charity, and which the Supreme Court had just voided. Sr. Asst. AG Jones told Judge Early that

⁶ See Footnote 30.

the AG was pleased that Bauknight had been reinstated as Brown's fiduciary.⁷ AG Jones told the circuit court that the Attorney General would assume a monitoring role to protect Brown's "I Feel Good" charity.

In his 2016 deposition Sr. Asst. AG Jones praised Bauknight and claimed that Jones, presumably in his official capacity, continued to share a "common interest" with Bauknight. By then Hynie, advised by music manager Peter Afterman, had siphoned off more than \$1 million in U.S. royalties from funds devised to Brown's charity. Judge Early, who remained deeply committed to the reinstatement of the AG's 2008 settlement until his retirement in February 2019, had declared Hynie to be the spouse of James Brown and awarded about \$700,000.00 in legal and GAL fees to her son. Hynie's son was not a presumed heir of James Brown, and had refused a \$300 paid-for DNA test offered in 2008. By the end of 2016 the AG, Bauknight and Wingate had secured orders dismissing two 2011 FOIA suits, one of which had been consolidated with Richland 4900.

By 2017 one or more of the AG, Bauknight, Wingate and Hynie had secured multiple orders promoting Hynie's false spousal claims, concealing Afterman's fabricated \$4.7 million valuation and the damage it caused; and stopping 2011 and 2012 FOIA requests. Bauknight had misrepresented facts about the Afterman \$4.7 million claimed value to secure a confidentiality order from a federal court, and the AG relied on the ill-gotten order to refuse FOIA release of this state-owned public document. The AG also relied on an unconstitutional 2008 *ex parte* order to refuse to release Hynie's long-public admissions that she was a bigamist. The AG was withholding

⁷ AG Jones, Hynie's attorneys and Levenson had obtained an order appointing Bauknight as Brown's fiduciary just 2 days after the final *Wilson v. Dallas* decision. The same day the AG, through Wingate, asked Judge Manning to stay Richland 4900 and the FOIA cases until Judge Early's work on James Brown matters in Aiken County was complete.

the state-owned, public Afterman \$4.7 million valuation while using it to accuse Buchanan and Appellant of a felony in Richland 4900.

In 2017 the Attorney General was dismissed as a party to the tort portion of Richland 4900, but continues today to defy FOIA compliance and support income tax damage to Brown's charity and loss of nearly 1/3 (31%) of the assets of Brown's charity by the concealed \$4.7 million claimed valuation. The Attorney General continues to refuse FOIA requests, and has filed a brief in this appeal which supports Hynie's announced plan to defy *Wilson v. Dallas* and reinstate the AG's 2008 settlement.

The Attorney General's brief continues state support for the Richland 4900 effort to punish Buchanan and Pope for challenging and successfully appealing the AG's 2008 settlement which "stipulated" that Hynie was Brown's spouse and put Hynie and the Attorney General in control of Brown's music empire while blaming Buchanan and Appellant for the damage. The AG's actions from 2013 until 2021 are a breach of the Attorney General's 2013 commitment to monitor and protect James Brown's "I Feel Good" Charity. The AG's dismissal from this appeal would continue the AG's breach of his commitment to monitor the "I Feel Good" charity, as well as the AG's statutory duty to protect Brown's charity; his statutory duty to enforce FOIA; and even his duty as the State's chief prosecutor to look into the millions of dollars wasted by Hynie and the Legacy Trust from Brown's charity since April 24, 2013, and funds advanced to them to damage Buchanan and Pope in Richland 4900 which Hynie has never repaid.

The AG's Motion Continues State Support for Hynie's Fraud on Multiple Courts

After the 2017 dismissal order, the State, through its Attorney General, in addition to securing a summary judgment order which is a subject of this appeal, has continued state support for the fraud on multiple courts by Hynie and those aligned with her. The AG has done so despite

undisputed evidence that Hynie has committed fraud on multiple courts for nearly fifteen years and in Richland 4900 and its consolidated FOIA case for 11 years.

After being dismissed as a party in 2017, the Attorney General continued appearing in this case and secured for himself, Hynie, and the claimed-nonexistent Legacy Trust, the troublesome summary judgment order which is the subject of this appeal.⁸ The purpose of this State action was to relieve Hynie and Legacy Trust owners of the multi-million dollar cost of Richland 4900 and the related FOIA noncompliance, leaving the costs for Hynie's damage to be borne by Brown's charity, Buchanan, Pope and the taxpayers of South Carolina.⁹ The AG has taken these steps with knowledge that Hynie was not the spouse of James Brown, and while helping her conceal documents which confirm her bigamy and fraud.

By February 2018 it was public knowledge that Bauknight and Peter Afterman, Hynie's music manager since 2013, had spent tens of millions of dollars, on their efforts to assure that Hynie and the AG were in control of Brown's music empire under the AG's 2008 settlement.

The Attorney General's state support for the fraud and civil conspiracy continues in 2021 with the AG's FOIA noncompliance and motions to cleanse the public record of the history of the State/Attorney General's use of taxpayer dollars to support Hynie's fraud.

⁸ See Brief, App. pp. 36 – 46.

⁹ The complaint, as to Hynie, the Legacy Trust, Tonya Brown, and James Brown II was clearly frivolous and made in bad faith, meriting an award of attorneys' fees, because Buchanan and Pope never owed any of these Richland 4900 Plaintiffs any duty. In addition, Appellant served the AG and numerous Richland 4900 Plaintiffs with generous offers of judgment in 2012 which would have let them out of Richland 4900 at no cost. The AG, through Wingate, filed and rejected these offers, including those to the AG and the Estate/2000 Trust. The Attorney General, not James Brown's charity or Buchanan or Pope, should bear the costs for these rejections. Also, the AG has never paid his 47.5% share of the Legacy Trust's \$500,000.00 payment to Buchanan to secure releases for the AG and other Legacy Trust owner-beneficiaries, as ordered by Judge Manning in July 2012. Brown's charity should not have to pay for this state action. Nor should Buchanan or Appellant.

The Attorney General has had the ability to stop state support for Richland 4900 for 11 years. He was admonished by the Supreme Court to do so in 2013, but has done the opposite. Since the 2017 dismissal, the Attorney General has continued support for state actors Wingate, the Legacy Trust, and Bauknight – all committed to Hynie’s announced May 29, 2013 plan.

The Attorney General is directly involved in each of the three questions presented in this appeal. Claiming to be a dismissed party, the Attorney General had no obligation to file a brief in this appeal. Yet he did so because he is still intimately involved in the outcome of this case and the damage the State seeks to inflict on Buchanan and Appellant. The AG did not file a neutral brief, but one which challenges the integrity of Appellant and continues state support for Hynie as to each of the three questions presented.

The Attorney General should not be dismissed as a party to this appeal. To do so will continue the state-sponsored support for Hynie’s fraud and civil conspiracy in Richland 4900.

The AG’s 2021 Richland 4900 FOIA Noncompliance Supports Denial of the Motion

On May 8, 2013 the Supreme Court’s *Wilson v. Dallas* decision charged the circuit court with inquiry into the costs of that action, and on May 29, 2013 Sr. Asst. AG Jones told the circuit court the Attorney General would monitor the James Brown cases to protect Brown’s charity.

Between May 2009 until May 2013 the Attorney General authorized the Legacy Trust to engage a dozen attorneys, Peter Afterman, and Bauknight himself on a “deferred pay” basis to enforce the AG’s 2008 settlement.

In 2010 Judge Early ordered the Aiken Clerk of Court to release the contracts to show how much the AG and settling parties were paying, but the contracts were missing from the record although they were ordered to be delivered to counsel for Buchanan and Pope.

By 2012 Wingate, the Legacy Trust and the Attorney General had refused multiple FOIA requests for financial information, and have continued to do so. More than 50 media articles filed by the AG show the vitriol with which the AG, Bauknight, and Legacy Trust lawyers, paid \$375 - \$500 an hour, fought to prevent release of public documents owned by the State which they should have produced under FOIA and in discovery.

In 2012 alone, the Legacy Trust spent more than \$3 million from what the AG and Bauknight claimed was Brown's \$4.7 million music empire, mostly on Afterman and attorneys.¹⁰

In March 2013 the Attorney General, Solicitor General and Chief Deputy AG were told, in person, of the damage the \$4.7 million Afterman claimed value was doing to Brown's charity, and how easily it could be corrected in connection with the Court's *Wilson v. Dallas* decision. The AG did nothing.

From the time of the May 29, 2013 announced plan of Hynie and Levenson to reinstate the AG's 2008 settlement, the AG and state actors supported by the AG have used FOIA refusal, noncompliance with discovery, and the hidden \$4.7 million Afterman value as the primary weapons against Buchanan and Pope in Richland 4900.

By the fall of 2013 Bauknight had defended the AG's 2008 settlement under oath; claimed that Pope was dishonest; and claimed that she (and presumably Buchanan) had "raped" Brown's estate. Afterman, working for Hynie's attorneys and Bauknight from 2013 until 2021, had helped Hynie and her son file public termination notices with the U.S. Copyright Office trying (as the

¹⁰ See Accounting, 2012, filed by Bauknight. As of 2021 no accountings have been filed for Brown's estate after 2016. Brad Sharp, the AG's expert in Richland 4900, testified royalties had been \$3.5 to \$4 million per year. Buchanan and Pope brought in \$7.83 million in 18 months as PR/Trustees between November 2007 and May 26, 2009.

spouse) to take U.S. royalties from Brown's "I Feel Good" charity from more than 100 copyrights between 2015 and 2023.

In December 2017 Judge Early directed Bauknight to produce all litigation costs from May 26, 2009 at the trial of Aiken County Case 2013-CP-02-1337 ("Aiken 1337"). Bauknight filed the litigation costs *ex parte* and refused to provide a sealed copy to Appellant. The circuit court reviewed the *ex parte* filing in chambers, discarded the documents, and did not save a copy for appeal.

In 2020, the AG released under FOIA some documents he had been ordered by the Honorable Eugene Griffith to produce under FOIA 5 years earlier. They included:

- a. The Attorney General's April 24, 2013 letter confirming that the Office of the AG never hired Wingate in Richland 4900 [Exhibit A]; and
- b. Bauknight's 2008 compensation sheet [Exhibit B] showing how much he would pay himself and a dozen Legacy Trust attorneys he hired between 2009 and 2013 to help the Attorney General and Hynie defend the AG's 2008 settlement and retain control over James Brown's music empire, through the Legacy Trust.

In 2020, after refusing to produce it for a decade, Wingate produced his copy of the Wingate Contract when ordered to do so by the Honorable Clifton Newman. The AG has still not produced a signed copy, despite a problem with the earlier-produced copies of the Wingate Contract.¹¹

The Attorney General's motion to dismiss himself as a party to this appeal ignores his continued action in Richland 4900. This continued state action, alone, supports denial of the dismissal motion.

¹¹ One contained the signature of David Bell, Esq., for Terry Brown. The other contained the signature of Terry Brown. There is no explanation to date for the changed page. Governor McMaster, then AG, did not sign either version of the Wingate Contract.

The AG is a Necessary Party to Unravel the Due Process and §1983 Violations

The Attorney General does not dispute that the Richland 4900 complaint, the subject of one of the three questions in this appeal, was an unconstitutional, unauthorized violation of the Due Process rights of Buchanan and Appellant the day it was filed, and has remained so. Nor does the AG deny that the Attorney General has given full state support since his 2017 dismissal for Bauknight and Wingate to continue these Due Process and other violations of civil rights under color of state law, a violation of 42 U.S.C. §1983.

As outlined in *Lugar v. Edmondson Oil Company, Inc. and Ronald Barbour*, 457 U.S. 922, 102 S.Ct. 2744 (1982), the AG is clearly a state actor, as are Wingate, Bauknight and the Legacy Trust. Hynie is also a state actor because, since 2013, the Attorney General has delegated to Hynie the full authority to control both Respondent Legacy Trust and Bauknight in Richland 4900. In addition, Sr. Asst. AG Jones is a state actor under §1983.

These state actors all meet the §1983 definition either because they were state officials, because they acted together with or obtained significant aid from state officials, or because their conduct was otherwise chargeable to the State. *Id.*, n. 2.

Dismissal Should be Denied Because Each of the Three Issues Involves the AG

Question 1 in this appeal involves the unconstitutional commencement of Richland 4900, clearly an act of Sr. Asst. Attorney General Sonny Jones, if not authorized by Governor

McMaster.¹² In 2011 AG Wilson¹³ told this Court that this constitutional issue was not ripe.¹⁴ It is ripe today.

Question 2 is whether it was improper for the circuit court to grant partial summary judgment to the AG after he had been dismissed as a party.¹⁵ The dismissal order of the circuit court, which became final in 2021, was void and the product of fraud and misrepresentations to the court. Relief should be granted under Rule 60.

Question 3 involves whether more than a dozen orders sought and obtained by the Attorney General and state actors he controlled and put in place violate the Due Process and other rights of Appellant and Robert Buchanan.¹⁶

Each of the questions in this appeal directly involves actions and orders secured both by the Attorney General and state actors the AG controls and has enabled. The Attorney General's motion to dismiss himself as a party to this appeal, for this reason alone, should be denied.

Dismissal of the AG as a Party Would Support Forlando Brown's Fraud on the Court

Forlando Brown began making false claims to multiple courts in 2007, shortly after beginning his decade-long alliance with felon David Cannon. He began his secret actions as a Legacy Trust owner-beneficiary in January 2011. He endorsed the Richland 4900 claim that Brown's music empire was worth less than \$4.7 million, as set by Peter Afterman.¹⁷ Yet Forlando

¹² See Testimony, Gov. McMaster, summarized, Brief, Reply to Resps., pp. 3-4.

¹³ See Summary of Testimony of AG Wilson at Brief, Reply, to Resps., p. 4.

¹⁴ In May 2011, AG Wilson and others, through Wingate, obtained dismissal (without prejudice) as premature of the writ of prohibition and appeal asking this Court to determine that the Richland 4900 complaint was unconstitutional so that Buchanan and Pope, as S.C. citizens, would not have to bear the cost and damage in defending this unconstitutional lawsuit. The Court granted the AG's requested dismissal.

¹⁵ Brief, App., pp 36 46.

¹⁶ Brief, App., pp. 47 – 48.

¹⁷ Brief, App., Reply to Respondents, pp. 17, f. 12.

Brown was part owner of TJBL, which tried to buy Brown's music empire for \$100 million in 2007.¹⁸

In 2009 Forlando stated under oath that offers of \$150 million were available for Brown's music empire. Concealing his role in Richland 4900, Forlando Brown later testified that the \$4.7 million value was "bogus." Like Hynie, Forlando Brown said what he needed to say when he needed to say it.

After 2013 Wingate was hired by Bauknight to assure that Forlando Brown's exponentially increased 2000 Trust share not bear any of the cost of his 4-year effort to reinstate felon David Cannon as James Brown's trustee.¹⁹ The Attorney General, Bauknight and Wingate have all concealed Forlando Brown's Legacy Trust ownership and Richland 4900 stake.

Because it will continue state support for the fraud of Forlando Brown, and allow Hynie and Forlando Brown, under color of state law, to control Bauknight and Richland 4900 through Respondent Legacy Trust, the Attorney General's motion to be dismissed as a party to this appeal should be denied.

Sworn Testimony of Governor McMaster Supports Retention of the AG as a Party

In October 2016 Governor McMaster testified emphatically that he never authorized Wingate to bring Richland 4900 in the name of the State/Attorney General; never authorized Bauknight to act on behalf of the AG in Richland 4900; and did not even know he was named as a Richland 4900 Plaintiff until after leaving office as AG in January 2011.²⁰

Governor McMaster's testimony should have ended the State/AG's role in Richland 4900. Bauknight, a state actor, should have stopped advancing Richland 4900 costs to Wingate from

¹⁸ See Brief, App., p. 22, for discussion of some of Forlando Brown's actions.

¹⁹ See Brief, App., p. 20 ff for discussion of damages.

²⁰ Brief, App., Reply, Resps., p. 3

Brown's charity. Instead, Governor McMaster's testimony was concealed by the AG and others until the briefs were filed in this appeal.

Between 2016 and 2021 the State/Attorney General has continued its overwhelming support for the Richland 4900 complaint, whose goal is to dismember the "I Feel Good" charity under the AG's 2008 settlement and blame the damage on Buchanan and Pope. The AG's motion to be dismissed as a party to this appeal, for this reason alone, should be denied.

The AG's False Felony Claim Supports Denial of the Dismissal Motion

Since 2010 the Attorney General and state actors in Richland 4900 have, among other false claims, asserted that Buchanan and Pope committed the federal felony of overstating the value of James Brown's assets by \$79 million in IRS estate filings to get a \$5 million commission. This career-threatening claim is not only false, but also an accusation that they have committed a federal felony. Governor McMaster, a former U.S. Attorney, agreed under oath to the seriousness of this false allegation by the Attorney General, the State's highest legal officer. So did AG Wilson and Solicitor General Cook in their sworn depositions.

The Attorney General has withheld for 10 years the fabricated Bauknight/Peter Afterman \$4.7 million claimed valuation which shows the felony claim to be false. The Attorney General has known that a music empire that earns \$7.83 million in 18 months cannot be worth what the AG claims, but the State/Attorney General and state actors have knowingly and oppressively continued the false, career-threatening felony claim for a decade.²¹

The State/AG and state actors have known since 2010 that Afterman simultaneously valued the sampling rights to James Brown's now 1100+ copyrights at more than \$10 million and Brown's

²¹ Brief, App., Reply to Resps., p. 4. Also see text of AG's expert Roger Miller, summarized on pp. 8, 9.

entire worldwide music empire at only \$4.7 million. They also know that Bauknight had to withdraw Afterman as a claimed “expert.”

The Attorney General’s brief in this appeal, by endorsing the brief of Hynie and those aligned with her, supports the false \$4.7 million valuation and continues the AG’s false felony claim. That alone supports denial of the dismissal motion.

Sworn Testimony of AG Wilson Supports Denial of the Dismissal Motion

In 2011 the Honorable Alan Wilson (“AG Wilson”), as confirmed by his 2017 sworn testimony²², authorized Richland 4900 to continue, but knew of nothing Buchanan or Pope had done wrong; did not know what the Legacy Trust was; and made no effort to oversee Richland 4900 despite its damage to Brown’s charity and to the careers and reputations of Buchanan and Pope, and violation of FOIA rights of S.C. citizens seeking documents under FOIA.

In April 2013, after personally learning of the devastation Wingate, Bauknight and Peter Afterman proposed for Brown’s charity, and the damage already caused by the \$79 million devaluation of Brown’s “I Feel Good” charity, AG Wilson informed Wingate that the OAG had never hired Wingate – a fact obvious from the public Wingate Contract which all had concealed for 3 years. [Exhibit A]

The Attorney General is a necessary party to act when the Court rules on whether the actions of the State/Attorney General, Legacy Trust and circuit court which are the subject of this appeal were unconstitutional state action. The Attorney General must address the state actions of rogue state actors which violate § 1983. The Attorney General’s motion to be dismissed as a party to this appeal, for that reason alone, should be denied.

²² *Id.*

The AG is a Necessary Party Because he Never Hired Wingate for Richland 4900

On April 24, 2013 the AG made perfectly clear to Wingate that Wingate had never been hired by the OAG. [Exhibit A] But neither the AG nor Wingate disclosed this critical, public information until the AG released it under FOIA in 2020 even though Wingate's filings and representations, including under oath, made it appear that Wingate was counsel to Hynie, the Attorney General, and those aligned with Hynie.

In the fall of 2020 the AG revealed this information after not producing it under FOIA requests made and FOIA orders issued between 2012 and 2014.²³

The Attorney General is a necessary party to sort out, under direction of the Court, the consequences of Wingate's 12-year unauthorized and unconstitutional state action in Richland 4900, and the AG's delayed public release of this information. The motion of the AG to be dismissed as a party, for this reason alone, should be denied.

The AG's Dismissal Would Support the Legacy Trust's Fraud and Disappearance

In 2010 Wingate told Judge Manning that the Legacy Trust was the "Charitable Settlement Entity" which held all of Brown's assets and all of the termination rights proceeds of Hynie and the settling parties, but in 2012 the AG, Wingate and Bauknight all began concealing the Legacy Trust/Settlement Entity amendment and transfer which resulted in Forlando Brown's ownership of Terry Brown's share.²⁴

²³ Another document withheld by the AG until 2020 despite multiple earlier FOIA requests was the January 2012 letter of a Wingate attorney to the AG directing the AG, purportedly as the AG's attorney, not to produce the public Wingate Contract under FOIA even though the Wingate Contract states on its face that it is a public document subject to release under FOIA. [Exhibit C] Both Wingate and the AG should have produced Exhibits A and C under FOIA and in Richland 4900 discovery years earlier.

²⁴ See Chart presented to Judge Manning by the AG, through Wingate, for the August 2010 hearing in which Buchanan and Pope sought dismissal of the complaint. At the hearing, Sr. Asst. AG Jones

In May 2016 the Legacy Trust (Bauknight), with the blessing of the AG, claimed under oath that it could not comply with FOIA because it never existed. [Reply Brief, to AG, p. 10] The sworn claim that the Legacy Trust never existed was made 6 years after Bauknight contracted for the Legacy Trust to bring Richland 4900; after the Legacy Trust had paid a dozen attorneys between \$375- \$500 an hour for 3 years to enforce the AG's 2008 settlement and conceal evidence Hynie was not Brown's spouse; and after the AG/Legacy Trust had paid \$500,000 from Brown's charity's funds to secure a release from Buchanan in Richland 4900 for the AG, the Legacy Trust, Hynie and others.²⁵

The Attorney General has supported 13 years of fraud perpetrated by the Legacy Trust to put him back in charge of Brown's music empire and punish Buchanan and Pope for successfully challenging the AG's 2008 settlement. He should not be dismissed as a party to this appeal.²⁶

The Supreme Court's Dismissal of Certiorari Suggests the AG is Needed

The Attorney General's 2017 dismissal was sought or supported by the AG, through Sr. Asst. AG Jones, Hynie, and Bauknight as trustee at a hearing in August 2016. At the time of the 2016 hearing, Sr. Asst. AG Jones, Hynie and Bauknight were at the apex of their success in

allowed himself to be introduced by Wingate as a representative of the Attorney General, one of Wingate's many clients. [See Appellant's Reply Brief to Brief of AG, pp. 8-9]

²⁵ A motion to void the 2012 settlement as a breach of the AG's statutory duty because the AG forced Buchanan, as a condition of payment to him of \$500,000 he was already owed, not to file a petition for rehearing in *Wilson v. Dallas* when the decision was reached. In 2013 the Legacy Trust owners suggested incorrectly to the Supreme Court that Buchanan had abandoned his support for James Brown's estate plan in the settlement. The AG and state actors have delayed a hearing on this 2012 motion for almost 9 years. The AG, Hynie and Legacy Trust have not repaid Brown's charity for the settlement funds. Nor have they paid their costs, as directed by Judge Manning in 2012.

²⁶ The extent of Bauknight's damage to S.C. citizens and Brown's charity is not fully known because Judge Early, after ordering Bauknight to produce his litigation, expense and expert fee records from May 26, 2009 until early 2018, reviewed them; discarded them; rescinded the order for production; and did not save a copy under seal for appellate review.

bringing about Hynie's plan, announced to Judge Early on May 29, 2013, to defy *Wilson v. Dallas*; reinstate the AG's 2008 settlement which dismembered James Brown's charity; and put the Attorney General, through Sr. Asst. AG Jones, back in control of James Brown's \$100 million music empire, with most going to Hynie and family members, and not to needy students as Brown directed. Hynie, Sr. Asst. AG Jones and Bauknight had been fully supported in their efforts to persuade Judge Early to dismember the charity, reinstate the AG's 2008 settlement, and blame the damage on Buchanan and Appellant.

By 2015 the circuit court had declared Hynie to be Brown's spouse, while all concealed her public admissions of bigamy. Hynie had moved to London, UK with \$1 million of termination rights proceeds she put in the Legacy Trust in 2009. Bauknight's music manager, Peter Afterman, was helping Hynie siphon off the "I Feel Good" Trust's royalties, and Sr. Asst. AG Jones was supporting and praising Bauknight²⁷. The circuit court, based on Bauknight's changed sworn testimony, had found that Respondent Legacy Trust never existed. In addition, the circuit court had dismissed two 2011 FOIA cases, delaying the release under FOIA of the public Wingate Contract and scores of public state-owned documents used in Richland 4900 for another 5 years. In addition, the circuit court had awarded \$700,000.00 in legal and GAL fees to Hynie's son.

After dismissing the AG as a party to Richland 4900, Judge Early continued his commitment to Hynie's announced plan by granting summary judgment to Hynie herself, never a beneficiary of any James Brown Will, to the dismissed AG, and to the claimed-nonexistent Legacy Trust. His commitment to help Hynie, Bauknight and AG Jones blame their second dismembering of Brown's charity on Buchanan and Pope continued until Judge Early's retirement in February 2019.

²⁷ Brief, App., Reply to AG, p. 11.

Part of the circuit court's commitment to the Hynie plan was the refusal to hear any motion in Richland 4900 or the FOIA cases which the AG, Bauknight or Wingate did not ask to hear. Among the matters the circuit court refused to hear was a 2012 motion to declare the AG's "settlement" with Buchanan, paid for by Bauknight's charity, void, and reinstate Buchanan as a party. Another was the motion to vacate a 2012 order that found Wingate and Bauknight should not be enjoined from speaking for the State/Attorney General in Richland 4900 while acting for the primary benefit of Hynie, Terry Brown and those aligned with them.

The 2012 order, and underlying 2011 motion, in addition, sought to add as parties Sr. Asst. AG Jones, possibly former AG McMaster (based on his deposition testimony), and possibly other state actors who had violated Buchanan's and Pope's constitutional rights under color of state law.

This Court's ruling in 2017-001899 is unpublished and has no impact on these issues except as provided in 268(d)(2). The Supreme Court's April 21, 2021 denial of Appellant's petition for certiorari, however, states in part:

The motions currently pending before the Honorable Clifton Newman in the circuit court may now be resolved so that the extensive litigation in this matter may be promptly concluded.²⁸

²⁸ See Status Report of Appellate Counsel for Pope, filed June 10, 2021, by the undersigned counsel in Richland 4900. Counsel sought to hear the 2011 motions to disqualify Wingate and Bauknight from acting on behalf of the State/Attorney General while serving the interests of Hynie and Terry Brown, who had a right of first refusal to purchase James Brown's music empire (the "ROFR") at what the AG assured the Judge Early, would be fair market value. The disqualification motions came just after the AG, Bauknight, Hynie and others began claiming that the "fair market value" of Brown's music empire at Brown's death was less than \$4.7 million. It is now known that the \$4.7 million claimed value was fabricated in 2010 at the behest of Hynie's attorney by Peter Afterman, the Legacy Trust's music manager at the time.

Since 2013 Peter Afterman has served as music manager to Hynie's attorneys, helping Hynie and her attorneys siphon off about \$2 million in termination rights proceeds in 2015 and since. Hynie's efforts and those of her son to take U.S. royalties to more than 100 James Brown copyrights between 2015 and 2023 were made a part of the public record in the U.S. Copyright Office in August 2013, but neither the AG nor Bauknight, who spoke almost daily with Peter Afterman while he aided Hynie, took any action to challenge Hynie's taking. In her 2016 deposition in

This statement by the Supreme Court helped break the logjam of matters in Richland 4900 which AG Jones, Bauknight and Hynie had been persuading the circuit court not to hear for the 8 years since the May 2013 announced plan that would put Hynie and Sr. Asst. AG Jones back in control of Brown's music empire through Bauknight.

Judge Newman has scheduled a hearing for July 29, 2021 on the 2012 motion to reconsider the 2012 order declining to disqualify and enjoin Wingate and Bauknight from acting on behalf of the State/Attorney General while serving the interests of Hynie, Terry Brown, and those aligned with them. This Court's ruling that the AG, who is still active in Richland 4900, should be dismissed while the Richland 4900 Court, on the mandate of the Supreme Court, is considering these questions which the AG himself has helped delay for 9 years would be manifestly unjust.

Richland 4900 Hynie admitted she had received about \$1 million; did not disclose what her son and lawyers received; and refused to answer questions about her marital status.

Judge Early, deeply committed to the May 29, 2013 announced plan of Hynie and most Richland 4900 Plaintiffs to reinstate the AG's 2008 settlement, issued more than 30 rulings and orders between May 2013 and his retirement in February 2019 which advanced Hynie's plan to be declared Brown's spouse and reinstate the AG's 2008 settlement.

Sr. Asst. AG Jones was present when the May 29, 2013 announced plan to defy *Wilson v. Dallas* was made by Levenson and Alan Medlin, Esq. as were Bauknight with two Legacy Trust attorneys, and David Bell, Esq.

By August 2013 Bauknight, in sworn testimony, was defending the settlement which gave Hynie \$1 million a year and a quarter of the "I Feel Good" charity; called Pope dishonest; and claimed that Pope (and presumably Buchanan) had "raped" James Brown's estate.

Respondent James Brown II, through his attorney and GAL, refused repeated requests made by Buchanan and Pope in 2008 to take a \$300 paid-for DNA test, but was awarded \$700,000 in legal and GAL fees for his quest for approximately 1/20 of what his attorney said was a \$5 million estate. His attorney also had a contingency fee contract with Hynie.

The Court's dismissal of the AG before these pending constitutional questions are finally decided would be manifestly unjust and further the State's violation of Appellant's Due Process rights.

The Circuit Court Order Dismissing the AG Should be Vacated Under Rule 60²⁹

The 2016 Order dismissing the AG as a party to Richland 4900, allowing him to remain in the FOIA portion of the case to give state support to Hynie, has been final for less than a year, and Relief from Judgment under Rule 60 (b)(3) or (4), or both, should be granted. It is void because every action taken by AG Wilson, through Sr. Asst. AG Jones, after the unconstitutional filing of Richland 4900 was void, making the complaint itself void. The circuit court dismissal is also the product of fraud, misrepresentation or other misconduct of the AG, through Sr. Asst. AG Jones, the Legacy Trust the AG controls, and Hynie and Bauknight, who acted under color of state law for private benefit.

The Common Interest Alliance of AG Jones, Hynie and Bauknight Supports Denial

In March 2013 AG Wilson, Solicitor General Cook and Chief Deputy AG John McIntosh obtained actual knowledge that the "common interest" alliance between AG Jones, Hynie and Bauknight, particularly the Bauknight/Afterman \$79 million devaluation of Brown's music empire to \$4.7 million and the claim that Hynie was Brown's spouse, threatened severe damage to Brown's charity.

²⁹ See Order Granting Motion to be Dropped, R. 180-185. On page 3, the Circuit Court mistakenly finds that there is no need for the AG to remain because "Bauknight is protecting these same interests." Bauknight was, in fact, acting under color of State law but protecting Hynie's interest. See the ROA and Briefs related to Aiken 1337 (Appellate Case No. 2019-362) in which Bauknight persuaded Judge Early to find that Buchanan and Pope are not entitled to any compensation as PR/Trustees because they had breached their fiduciary duty by challenging and appealing the AG's 2008 settlement.

The AG told the Supreme Court he was getting out of Richland 4900; would monitor and protect Brown's charity; and hoped to conclude the FOIA cases shortly. Then Sr. Asst. AG Jones did the opposite, taking immediate action to reinstate Bauknight (May 10) and helping Hynie advance her plan to retake control of Brown's music empire with the AG.

In 2016 Sr. Asst. AG Jones testified under oath that he had a "common interest" alliance with Hynie and her advisors from August 2008 until May 2013, and that his common interest alliance with Bauknight was continuing.

In 2016 Bauknight did not challenge a \$700,000.00 legal and GAL fee for Hynie's son, who was not a presumed heir of Brown, and had refused a paid-for \$300 DNA test in 2008.

On March 8, 2017 Bauknight and an SA/ST under him agreed to withdraw their appeal of the circuit court's finding that Hynie was the spouse of James Brown. This was consistent with the scurrilous 2013 testimony of Bauknight supporting the AG's 2008 settlement.

By 2018 at least four Richland 4900 Respondents had filed a California federal suit³⁰ claiming that Bauknight and Hynie were improperly aligned in improper termination rights deals, and were withholding public information. Hynie and Bauknight were in a legal battle over the vested termination rights Hynie assured Judge Early she had put in the Legacy Trust in 2009.

Aided by Peter Afterman, Hynie and her son were fighting over future U.S. royalties to 246 of Brown's 1100 + copyrights most had put in the Legacy Trust years earlier.

³⁰ U.S. District Court, Central Dist. CA, Case No. 2:18-cv-00307, now S.C. Dist. Court Case No. 1:18-cv-02191-JMC. The Federal Complaint was filed in Aiken 1337 on February 19, 2018, in response to Bauknight's effort to pay Pope's \$47,972 unpaid 2007 SA fee, with interest from March 2008, into the Court. Judge Early rejected Bauknight's efforts to prevent this payment to Pope, but Bauknight later persuaded Judge Newman to condone this taking. Bauknight claimed that Richland 4900, pursued solely for the benefit of Hynie and Legacy Trust owner-successors, and Aiken 1337 were "companion cases." This Court determined in 2020 that this taking by Bauknight was not an immediately appealable Order.

The alliance of AG Jones with Hynie and Bauknight has allowed and condoned the funding of Hynie's battles, including her Richland 4900 battle to damage and destroy the careers and reputations of Buchanan and Appellant, to be funded by James Brown's charity. The Attorney General should remain a party to this appeal until the Court sorts out this problem.

The AG is Responsible for the Tens of Millions Spent in Richland 4900

On February 28, 2018 Bauknight filed a motion to dismiss the California complaint or transfer venue to South Carolina and an affidavit of Bauknight. [Aff. 2/27/18] The motion stated that the James Brown litigation had been ongoing in Aiken County since 2007 and stated:

Litigation costs to the estate and ultimately to the charitable trust have now run into the tens of millions of dollars. Although the charitable trust purportedly was to provide scholarships for needy children, to date not one penny has been available for those scholarships because the probate litigation has continued.

Dismissal Would Deprive Buchanan and Pope of Legal Fees Without Due Process

In 2012 Wingate directed the Attorney General to defy his public duty and withhold the public Wingate Contract and the Attorney General has done so for 9 years. In 2012 Appellant served offers of judgment to James Brown's Estate and 2000 Trust and the Attorney General, offering all the chance to get out of Richland 4900 at no cost to the State and no cost to James Brown's charity. The Attorney General and Bauknight bitterly refused, and filed, these offers of judgment.

That year the Attorney General made an unconscionable "settlement" with Buchanan, depriving him of Due Process and First Amendment rights, and allowing James Brown's charity to pay \$500,000.00 to silence Buchanan and grant an illegal release to Hynie, her son and others to whom he never owed a duty. The Attorney General, his Legacy Trust and Hynie never paid their share of the costs Judge Manning directed them to pay. Buchanan did not release Forlando

Brown. His release given the Attorney General, Hynie, the Legacy Trust and Bauknight was ill gotten and a motion to void this State violation of First Amendment rights has been pending since 2012

From March 2013, when the AG learned directly of the wrongdoing of Sr. Asst. AG Jones, Afterman and Bauknight, and April 24, 2013 when he notified Wingate that he had never been hired by the Office of the Attorney General, the Attorney General, and particularly Sr. Asst. AG Jones and the FOIA staff of the Attorney General's office, have continued their quest to damage and destroy the career and reputations of Buchanan and Appellant in favor of Hynie, Bauknight, the claimed-nonexistent Legacy Trust, and the Attorney General's own staff. The Attorney General has continued to conspire with Hynie and Bauknight, with funds from Brown's charity, make the false felony claim against Appellant with knowledge of its falsity, and while concealing the state-owned document which shows that the false felony claim was fabricated.

Buchanan and Pope are entitled to attorneys' fees and costs in this action against the Attorney General, Hynie, Bauknight "on behalf of" the Attorney General and everyone to whom the Attorney General had delegated the awesome power of the State for the private purpose of benefitting Hynie, Russell Bauknight and Sr. Asst. AG Jones in their effort to take private control of the assets of entertainer James Brown and blame the damage on Buchanan and Appellant.

The Attorney General has now helped make the Legacy Trust, which held the majority of \$8.8 million of termination rights proceeds in 2017, disappear. The Attorney General has helped Hynie and her son escape to London, U.K. The Attorney General has deprived Buchanan and Pope of property in the form of attorneys' fees, damages, and costs without Due Process of law, as have Bauknight and Wingate, whom the AG has allowed to act under color of state law, knowing their actions were unconstitutional and illegal.

This Court's dismissal of the Attorney General from this case before these unconstitutional actions of the Attorney General, his staff, Bauknight and Wingate have been properly addressed would further deprive Buchanan and Appellant of their right to collect these damages and costs and Due Process of law.

Conclusion

The Attorney General and Sr. Assistant AG Jones have, for more than a decade, orchestrated the damage to Buchanan and Pope in Richland 4900 and its consolidated FOIA case by violation of their Due Process, First Amendment and FOIA rights in Richland 4900. The action has either been direct state action, or state action through Wingate, Bauknight, the Legacy Trust and state actors selected or provided substantial support by the Attorney General.

The Attorney General is a necessary party to sort out this constitutional damage to Buchanan and Appellant under direction of the Court. The circuit court dismissal order was void and the product of fraud, misrepresentation or misconduct. The Court should deny the AG's motion to be dismissed. The Court's only action, if any, should be to affirm that it is appropriate for Appellant to proceed in the circuit court with a request for relief from the dismissal order under Rule 60(b)(3) and (4).

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully submitted,

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Telephone: (803) 758-2886
charlie@carpenterappeals.com
S.C. Bar No. 1133

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

Counsel for Appellant Adele J. Pope

June 29, 2021

EXHIBIT A



ALAN WILSON
ATTORNEY GENERAL

April 24, 2013

Everett A. Kendall, II, Esq.
Sweeny Wingate & Barrow, PA
P. O. Box 12129
Columbia, SC 29211

RE: Russell L. Banknight, et al. v. Adele J. Pope
Civil Action No. 2010-CP-40-04900
Your File: 4077-7389

Dear Mr. Kendall:

This is to advise that the Attorney General's Office has no responsibility for legal fees to Sweeny, Wingate & Barrow, as this Office did not employ the firm's services.

Your letter is entitled "Privileged Attorney-Client Communication". Please be advised that the Office of Attorney General has never been a client of Sweeny, Wingate & Barrow in this matter.

My letter of April 18, 2013, was a response to your letter of April 12, 2013. However, we are not signing any documents and are always willing to discuss matters. As you are aware, if the Supreme Court decision stands as is, any fees Sweeny, Wingate and Barrow have heretofore received in the 4900 case are required to be disgorged and returned to the trust established by James Brown. In any event, there is no liability on this Office for legal fees.

Yours very truly,

John W. McIntosh
Chief Deputy Attorney General

CC: Kenneth Wingate, Esq.

JWM/as

SCANNED

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EXHIBIT B

**Schedule of Compensation
For the Service of
Russell L. Bauknight, as Fiduciary**

Effective January 1, 2008, compensation for Russell L. Bauknight's services as sole or co-trustee of a testamentary or inter vivos (revocable or irrevocable) trust will be determined in accordance with the following schedule:

Trust administration, including investment and non-investment management of the assets in the trust, in compliance with any governing terms of the trust itself or, in default thereof, any governing state law.

Current Market Value Of Trust Assets	Annual Compensation Rate
First \$1,000,000	1.25%
Next \$1,000,000	1.00%
Next \$3,000,00070%
Over \$5,000,00050%

Fees are calculated and paid at of the end of each month based upon values at the first of the month. One-twelfth of the annual fee is due and payable each month.

Principal distributions and payments	1.00%
(e.g., discretionary, directed, withdrawal, removal, termination)	

Sale of Trust Real Estate:

Trustee markets and sell the property	7.00%
Trustee markets and broker procures purchaser	5.00%
Property is listed and sold through a broker.....	3.00%

Additional information regarding compensation as trustee:

This fee schedule does not include fees charged by outside professionals such as attorneys, accountants or investment advisors. These fees do not include the cost of tax return preparation or the preparation of work papers that may be used for tax preparation and trust accountings.

Extraordinary Services:

The forgoing schedule of compensation is for the normal services required in the administration of a trust. Where special services are required, appropriate additional charges will be made based upon the nature of the work involved and the extent of the duties and responsibilities assumed. Some examples of unusual services might include:

Other Fee Information:

The fee structure outlined above does not contemplate every situation with which the fiduciary may be faced. Special assets or unusual assets may require additional attention that will result in additional fees. (Examples of "special assets" include, but are not limited to, annuity income streams where charges based upon value may not be appropriate, intangible assets that may be difficult or expensive to value on a regular basis, bankruptcy situations or contingent assets.)

Addendum – Special Fiduciary Services and Fiduciary's Counsel:

All services performed as Special Trustee, Special Administrator, or in other similar fiduciary capacities shall be charged at the regular hourly rate for Russell Bauknight charged by Bauknight Pietras & Stormer, P.A. at the time such services are rendered (currently \$350.00 per hour). In addition, it is anticipated that the services of Nexsen Pruet, LLC will be retained to assist with legal matters associated with the administration of the estate and trusts and the related business matters. The hourly rates charged by those attorneys expected to assist significantly with these matters range from \$375.00 to \$500.00 per hour. The primary attorneys expected to be involved in the performance and supervision of these legal matters are Fred Kingsmore, Jr. and William (Corky) Klett III. Mr. Kingsmore specializes in tax, estate planning and probate and currently charges at a rate of \$450.00 per hour for matters of this type. Mr. Klett specializes in intellectual property matters, including copyright law, both domestic and international, and currently charges at a rate of \$425.00 per hour for matters of this type. Other lawyers in the firm of Nexsen Pruet, LLC may be used from time to time but their rates will not exceed those rates charged by Messrs. Kingsmore and Klett.

Other Fee Information:

The fee structure outlined above does not contemplate every situation with which the fiduciary may be faced. Special assets or unusual assets may require additional attention that will result in additional fees. (Examples of "special assets" include, but are not limited to, annuity income streams where charges based upon value may not be appropriate, intangible assets that may be difficult or expensive to value on a regular basis, bankruptcy situations or contingent assets.)

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EXHIBIT C

RECEIVED

S-W-B

JAN 20 2012

S.C. Attorney General's Office
Civil Section
WENBY WINGATE & BARROW P.A.

Referred to Victoria Cook
Answered Mr. Antonio...
Jowen, T. Meyers

January 20, 2012

JAN 23 2012

Received by _____
Reviewed by/Date _____
Referred to/Date _____
Notes: _____

Reply to Main Office
Mark V. Genda
(803) 256-2733 x121
mvg@swblaw.com

URGENT - PRIVILEGED ATTORNEY/CLIENT COMMUNICATION

VIA HAND DELIVERY

Alan Wilson
South Carolina Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

RE: Russell L. Bauknight, et al. v. Adele J. Pops and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Mr. Attorney General:

It is my understanding that you have decided to release what you deem the public portion of the fee agreement in the above-referenced matter. As your attorney in this matter, I am writing to advise you against releasing any portion of the agreement until the Court rules on this matter.

Releasing these documents at this time will have the following detrimental impact on this litigation.

First, you will certainly incur the sanction of costs and attorney fees in the pending FOIA actions. That defeat will be more costly and publicly embarrassing than a decision to continue litigating the fee agreement issue.

Secondly, your decision will jeopardize the rights of your co-litigants. Once you release what you have deemed the public portions, the Defendants will certainly argue that your actions waive your co-litigants claim to privilege for the remainder of the agreement.

Third, FOIA specifically exempts from production privileged documents. Whether this complicated fee agreement is privileged is currently before the Court. You are complying with

MAIN OFFICE T: 803-256-2233 F: 803-256-0172 1515 LAMB ST (2500) • Post Office Box 11549 • COLUMBIA, SC 29211
PINE DUNE OFFICE T: 843-878-0390 F: 843-878-0393 118 GARGLE WAY • SUITE B • Post Office Box 88 • HARTSVILLE, SC 29551

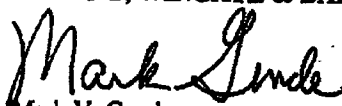
January 20, 2012
Page 2 of 2

both the spirit and letter of FOIA if you decline to produce the requested documents until the Court has determined whether any of the fee agreement is privileged.

I trust that you will reconsider your decision. I am available throughout the day to discuss this matter.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.


Mark V. Gende

MVG/smt

cc: C. Havird Jones, Jr., Esquire – via electronic mail
Mary Frances Jowers, Esquire – via electronic mail
Tracy Meyers, Esquire – via electronic mail
Russell Bauknight – via electronic mail

**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

Appellate Case No.: 2018-002229

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.

PROOF OF SERVICE

The undersigned counsel for Appellant certifies that he has served a copy of Appellant's Return to Respondent Attorney General's Motion to be Dismissed from Appeal on all

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

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Mark V. Gende
Sweeny, Wingate & Barrow, P.A.
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kbw@swblaw.com
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Counsel for Respondents

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Robert D. Cook, Solicitor General
J. Emory Smith, Jr., Deputy Solicitor General
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Telephone: (803) 734-3680
esmith@scag.gov

Counsel for Respondent Attorney General

s/Adam T. Silvernail
Counsel for Appellant

June 29, 2021