

FRIENDS of the BARNES FOUNDATION

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FRIENDS OF THE BARNES FOUNDATION, UNDAUNTED BY JUDGE'S DISMISSAL OF CASE, DECRIES INACTION OF ATTORNEY GENERAL

(MERION STATION, May 16, 2008) Montgomery County Orphans' Court Judge Stanley Ott issued a Memorandum Opinion denying legal standing for Friends of the Barnes Foundation and Montgomery County in the matter of the Barnes Foundation in Merion, Pennsylvania.

In denying standing to the petitioners, the Memorandum rests on an exclusive, but conflicted role of the Attorney General as the protector of the public interest and as enforcer of charitable trusts. Friends of the Barnes Foundation attorney Eric F. Spade, Esq. commented on the difficulty, stating, "The Court based its ruling on the Pennsylvania Supreme Court's decision in *Hershey* case. The requirements for special interest standing are so strict under *Hershey*, that virtually nobody will be able to achieve standing. This leaves the Office of the Attorney General as the sole representative of the public interest. The problem is that there is no recourse when the Attorney General's Office fails to carry out its duty out of incompetence or for political reasons. Another problem is a lack of transparency. The Attorney General's Office basically works in secrecy in overseeing

charitable organizations and does not share what it is doing with the public. This situation leaves the public interest and the trust unprotected and vulnerable."

The eight-page document makes no statement as to the merits of the petitions filed by the advocacy group and the County, other than to conclude that the actions were "made in good faith" and "of sufficient import" as to not be arbitrary. The Court denied requests by the Barnes Foundation Board and the Pennsylvania Attorney General to assess fees against the petitioners.

The Memorandum also omits any references to increased visitation -- up to 140,000 people annually -- or to the June 2007 Assessment of the Barnes Foundation as a National Historic Landmark. That report states that the Barnes Foundation, in its entirety, is eligible to apply for the coveted designation. Neither the Merion site nor a Philadelphia site would be eligible for it should the art collection be removed.

Ironically, these omissions speak to a deeply troubling inconsistency in the Barnes Foundation matter between the duty of the Attorney General to uphold the public interest and his role in the planned destruction of a site of national historic significance.

Friends of the Barnes Foundation member Aram Jerrehian, Esq. reacted to the Memorandum, saying, "Attorney General Corbett has actively worked to further the interests *not* of the public, *not* of the Trust, but of those parties interested in pursuing the reprehensible destruction of Albert Barnes's incomparable bequest. Judge Ott himself noted that in 2004 the Attorney General acted as a "cheerleader" for those seeking to move the Barnes art collection, showing that no one, in fact, represented the public interest. The

Judge has the authority to right this wrong and act *sua sponte* , on his own, to overcome the lack of representation of the public interest by ordering the Barnes Foundation to accept the \$50 million offer from Montgomery County and other remedies.”

The advocacy group Friends of the Barnes Foundation is considering an appeal of Judge Ott’s dismissal and is also pursuing other initiatives. Friends of the Barnes member Jay Raymond said, “Judge Ott’s refusal to examine the merits of the Friends’ and Montgomery County’s petitions does not change the fact that the leadership of the Barnes Foundation could, in a simple and straightforward way, preserve this irreplaceable treasure in its intended form. There is no need to waste upwards of 250 million dollars, some of it public funds, to create a watered down tourist attraction. If the Trustees of the Barnes Foundation were to choose a course on the basis of common sense and respect for education, rather than on what is good for the tourist industry, then history will judge us all to be prudent guardians of our national heritage. Those committed to the preservation of the Barnes Foundation’s art galleries will not cease in their work to protect it.”

The controversy over the Barnes Foundation has fostered heightened interest in the site, as evidenced by the hundreds of print articles and blogs sharply critical of the plan to dismantle the Barnes Merion site and millions of internet entries. Philadelphia, known worldwide as a repository of the nation’s historical legacy, is singled out for withering criticism as a party to destruction of a site with almost ensured designation as a National Historic Landmark.

Artist and Friends of the Barnes Foundation member Nancy Herman stated, “The move would destroy a national treasure and deprive the world of an unparalleled experience in art appreciation. The Attorney General of Pennsylvania, unlike the Attorneys General in and around Montana, has not protected the indenture of Dr. Barnes. If the prospect of tourist dollars means more to Philadelphia than protecting its national treasures we have come a long way from what our founding fathers began here. Friends of the Barnes has been gathering members and strength over the past four years and can only hope that the art community will bring pressure to bear on the misguided trustees of the Barnes Foundation and prevent this move.”

Further information is available at www.barnesfriends.org

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Background

The advocacy group Friends of the Barnes Foundation and Montgomery County government filed separate petitions in the Fall of 2007 seeking a re-opening of hearings based on numerous significant changes in circumstances surrounding the Barnes Foundation, including the following main points:

- A previously unknown appropriation of \$100 million was inserted into the 2002 Capital Spending Budget for construction of a building in Philadelphia to house the Barnes art collection. An additional \$7 million was inserted to pay for the actual move. These funding initiatives in the legislature were unknown to the Court at the time of the 2004 hearings.

- A commitment has been made by Montgomery County for a AAA bond-funded purchase/leaseback arrangement to support the Barnes Foundation in Merion for approximately \$50 million. The offer was rebuffed by the current Barnes Board.
- Since June 2007, a Lower Merion Township Ordinance created the opportunity for vastly increased visitation to the Merion site, up from 62,400 visitors annually to more than 144,000 annually. Recent changes in visitation policy by the current Barnes Board have increased visitation by approximately 16,000.
- An expert assessment of the historic significance of the Merion site states that the Barnes Foundation, in its entirety, is eligible to apply for National Historic Landmark status. The current Barnes Board has not taken steps to apply for the highly esteemed designation, which could invite substantial financial support for the institution. The planned dismantling of the site would make it ineligible for the Landmark status either in Merion or Philadelphia.