

## PRESS CONFERENCE

August 13, 2008

### District Attorney John Morganelli, Democratic candidate for Attorney General Says Attorney General Tom Corbett Failed Montgomery County and the Public Generally in the Matter of the Barnes Foundation

I come to Lower Merion Township today, and particularly this location to address the failure of Attorney General Tom Corbett to fulfill his responsibilities to represent the public interest when it comes to charitable trusts. His failures also may result in Montgomery County losing one of its most significant treasures.

On December 4, 1922, the Barnes Foundation was chartered by the Commonwealth of Pennsylvania to “promote the advancement of education and the appreciation of the fine arts” and the “encouragement of arboriculture and forestry.” Dr. Barnes transferred the majority of his personal art collection and a sizeable endowment to the Foundation. On December 6, 1922, Dr. Barnes and the Barnes Foundation entered into a trust indenture. The indenture provided for the Foundation’s board to consist of five trustees. The indenture also prohibited removing the Foundation’s art collection from this Lower Merion Township location. Over the years, the financial situation of the Barnes Foundation deteriorated. Massive legal expenses in the 1990s helped put the Foundation on the verge of bankruptcy. Three well respected and regarded philanthropic organizations (The Pew Charitable Trusts, the Lenfest Foundation, and the Annenberg Foundation) promised to raise \$150 million for the Barnes Foundation on the condition that it expand the number of individuals on its board to fifteen and move the art gallery’s approximately \$6 billion collection from Lower Merion to a new location in Philadelphia. These two conditions, however, violated the provisions of Dr. Barnes’s trust indenture.

In 2004, Judge Stanley Ott of the Montgomery County Orphans Court issued two important rulings relating to the Barnes Foundation. On January 29, 2004 he approved the expansion of the board of trustees, and on December 13, 2004 he permitted the gallery to move to Philadelphia. Though Judge Ott approved the Foundation’s deviations from the indenture, he did so with reservations. In his January 29 opinion, he directed a particularly scathing criticism at the conduct of the OAG in this case:

**“We find nothing, however, to commend the Office of Attorney General’s actions in this regard. The Attorney General, as *parens patriae* for charities, had an absolute duty to probe, challenge and question every aspect of the monumental changes now under consideration. The law of standing, which has been repeated so many times in opinions concerning the Barnes**

**Foundation by this court and Pennsylvania appellate courts, permits only trustees, the Attorney General, and parties with a special interest in the charitable trust to participate in actions involving the trust. In these proceedings, the three students were granted *amicus curiae* status, but their participation was limited to exploring the impact of the proposals on the Foundation's education programs. Thus, the Attorney General was the only party with the authority to demand, via discovery or otherwise, information about other options. However, the Attorney General did not proceed on its authority and even indicated its full support for the petition before the hearings took place. In court in December, the Attorney General's Office merely sat as second chair to counsel for The Foundation, cheering on its witnesses and undermining the students' attempts to establish their issues. The course of action chosen by the Office of Attorney General prevented the court from seeing a balanced, objective presentation of the situation, and constituted an abdication of that office's responsibility. Indeed it was left to the court to raise questions relating to the finances of the proposed move and the plan's financial viability.**

In 2004, Mr. Corbett was **not** Attorney General. But the passive attitude of the Attorney General, which drew such a harsh reprimand from Judge Ott, continued under Mr. Corbett when he assumed office in January 2005. On August 27, 2007 and September 12, 2007, the Friends of the Barnes Foundation (a group of former Barnes students and other citizens opposing the move) and Montgomery County, respectively, filed petitions to reopen proceedings in the Barnes matter. In his May 15, 2008 ruling on the petitions, Judge Ott summed up the basis of the petitioners' argument to reopen the case:

**At some point after the December 2004 opinion was issued, it came to the Court's and the public's attention that a budget bill, passed by the state legislature and the Governor in 2002, contained a line item for approximately one hundred million dollars for the purpose of building a new facility in Philadelphia to house The Foundation's art collection. This revelation caused a flurry of speculation that the Foundation's trustees had knowledge of the budget item and had actively concealed its existence from the Court during the hearings on the petition for permission to move the gallery and art program from Merion. In the instant petitions, both the Friends and the County urge the Court to reopen the matter on the basis of this new information...**

**A second reason put forth for reconsidering our earlier decision is the proposal floated in June of 2007 by the Montgomery County Commissioners to purchase The Foundation's land and buildings for approximately \$50 million, and to lease the property back to the Foundation. The County**

**suggested that the influx of cash to The Foundation from the sale would permit the art collection to be preserved, an endowment to be established, and the gallery and art education program to remain in Merion. Shortly after receiving this proposal, the Foundation rejected it, stating the decision to move to Philadelphia was irreversible...**

On October 19, 2007, in a preliminary objection to the petitions, Mr. Corbett concluded that “there is no justification in law or fact to reopen the Orders of this Court as sought by Petitioners...” Mr. Corbett further asserted that “The Office of Attorney General, which represents the interests of the general public in charitable trusts, has participated fully in this proceeding, and has determined that the public interest is well served by the Court’s Orders of January 29, 2004 and December 13, 2004 which are final orders, which have not been appealed and which should not be reopened.”

Mr. Corbett had greater confidence in Judge Ott’s two decisions from 2004 than did Judge Ott himself. The Attorney General stated that the public interest was “well served” by the January 29 opinion even though Judge Ott believed that the AG’s conduct at the time “constituted an abdication” of its responsibility to serve the public interest.

On May 15, 2008 Judge Ott ruled on the petitions of the Friends and Montgomery County, dismissing the petitions for lack of standing. Ott stated:

**“As the Attorney General and the trustees point out, [Montgomery] County’s “special interests” in protecting historical resources and nurturing economic welfare are matters within the purview of the Attorney General’s office. That Office as *parens patriae* protects the general public, and there is no authority for a second sovereign to participate on behalf of a subset of the general public.”**

It is unfortunate that Tom Corbett took the side of the elites over the citizens of Montgomery County and the general public. It is unfortunate that Tom Corbett failed to represent the wishes of Dr. Barnes and this community. The fact is that the public and the community of Lower Merion and Montgomery County were not well served by the failure of Mr. Corbett to fulfill his responsibilities. The AG as “*parens patriae*” is obligated to protect the general public. In 2007, on Mr. Corbett’s watch, there existed a substantial basis to re-examine and re-open the proceedings in the Barnes matter. Instead of allowing the court to re-examine the matter with the new information that came to light, Mr. Corbett chose to conclude that there was no justification to re-open the case. Mr. Corbett disregarded the wishes of Dr. Barnes, and the interests of this community. People who leave large sums of money for benevolent purposes must have confidence that their wills and trusts will be honored. The failure of AG Corbett to protect Dr. Barnes’ wishes and thereby the public interest, undermines the likelihood

that generous individuals will do good things with confidence that their wishes will be respected. This hurts charities across the board. If people feel that their wishes will be thwarted by elites who know better, we will see a decrease in generous bequests.

Mr. Corbett's failure is in stark contrast to the AG of Montana who recently intervened to save the Charles M. Bair Family Museum in Martindale, Montana. The Montana case has facts similar to the Barnes situation. There Alberta Bair created a trust that stated her intention that the museum established by her family stay in the Bair family house. Board members, citing declining attendance and that the site was ill-suited for a museum, attempted to violate the wishes of the Bair family. Thirteen states filed amicus briefs in support of the Montana AG who eventually won the case in court against the board and preserving the museum at its intended location. Unfortunately, our Attorney General, unlike the AG of Montana, failed to do his job. Mr. Corbett was content to let the Barnes matter proceed without protecting the interests of Montgomery County citizens or Dr. Barnes' wishes.

Today, I promise that if elected Attorney General, I will do my best not to allow something like this to ever happen again in Pennsylvania without a vigorous representation of the public interest, and fully carrying out the duties of the AG to act as "parens patriae" I also promise to try to re-open this matter so that the court can consider the options available to keep the Barnes' collection in Montgomery County. At the very least, this matter deserves to be considered on the merits. Moving the Barnes' art collection should be only a last resort after all other options are fully investigated and presented for serious consideration. It was the job of Mr. Corbett to see that this was done, and he failed. As a result, Judge Ott was left with his hands tied, and had no options than to rule as he did. The new information and the proposal offered by Montgomery County commissioners never had a chance to be considered. Montgomery County voters should remember this when they go to vote in November.