

The Associated Press

Opponents of Barnes Foundation move ask judge to reopen case

February 17, 2011

by Joann Loviglio,

PHILADELPHIA — Opponents of a plan to bring The Barnes Foundation's extensive art collection to Philadelphia asked the judge who approved the move to reopen the case, contending that a recent documentary brought to light misconduct by then-Attorney General Mike Fisher to deceive the court and force the controlling board to go along with the relocation.

A spokesman for acting Attorney General William H. Ryan Jr. called the allegations "completely without merit." Fisher, through a spokeswoman, declined to comment.

The Friends of the Barnes Foundation, a group trying to halt the collection's 5-mile move from Lower Merion, said in the petition filed Thursday that Montgomery County Orphans' Court Judge Stanley Ott was "grossly misled by the actions of the attorney general."

The petitioners allege that Fisher, now a federal appeals judge, failed to serve as a neutral party acting in the public interest and instead was a "co-conspirator and major player" in facilitating the collection's move by undermining and pressuring the controlling board of trustees to drop its opposition.

"The attorney general absolutely violated his fiduciary duties by taking an improper role and without advising this honorable court of this role," the petition states.

Nils Frederiksen, Ryan's spokesman, flatly rejected the foundation's claims. "This is a cheap and desperate attack," he said. "The attorney general has always acted appropriately to protect the public. We've never misled the court or the public, and we'll vigorously defend our actions against this kind of attack."

A call to Gov. Tom Corbett, the former attorney general, was not immediately returned.

Dr. Albert C. Barnes, a pharmaceutical magnate, established the foundation in 1922 to teach populist methods of appreciating and evaluating art. His will stipulated that his legendary trove of 800 impressionist and postimpressionist masterpieces forever "remain in exactly the places they are" and gave control of his foundation to Lincoln University, a historically black school in Chester County.

Besides the attorney general, Lincoln University was the only party with legal standing to intervene in the case.

Barnes officials first asked Ott's permission in 2002 to relocate near Philadelphia's museums and cultural attractions. The foundation said its endowment was exhausted and it would go bankrupt if required to keep the 181 Renoirs, 69 Cezannes, 60 Matisse, 44 Picassos and thousands of other objects in their current home, which was subject to township zoning regulations restricting the number of visitors.

The Pew Charitable Trusts, The Lenfest Foundation and The Annenberg Foundation promised to help the Barnes raise \$150 million for a new gallery and an endowment when the relocation was approved in 2004. In exchange, Lincoln University ceded control of the foundation's board of trustees and permitted its new benefactors to appoint their own members.

Although bias was part of the opponents' earlier legal arguments, their new attorney, Samuel C. Stretton, said statements by Fisher and then-Gov. Ed Rendell in a 2009 documentary shed new light on the interference that forced Lincoln to cede its majority on the board of trustees.

"The Art of the Steal," made and funded by opponents of the move to Philadelphia, brought international attention to the Barnes battle.

In his decision allowing the move to proceed, Ott sharply criticized the attorney general's office, which has oversight over charitable trusts, for not seeking alternatives that might have avoided breaking Barnes' trust.

The new petition also states the case should be reopened because when Ott approved the relocation in 2004, he was not told about two appropriations for the foundation totaling \$107 million approved in Pennsylvania's 2002 budget. The petitioners claim Ott, who has jurisdiction over Barnes' trust, didn't know about the earmarks until the group informed him in 2006.

The judge did know about the money when he dismissed a 2007 request to reopen the case. He made no mention of the money, stating only that the petitioners lacked legal standing.

The petition alleges that Rendell in "The Art of the Steal" knowingly and falsely asserted that "the foundation became fiscally impossible to sustain in its current location."

"It is now known that public monies were being set aside by the former governor of Pennsylvania to facilitate the transfer," the petitioners state. "A tiny fraction of the \$107 million ... could have easily supported the (current) location."

Rendell said while he supported and provided funding for the Barnes move, he was never involved in the legal wrangling and the accusations against him were baseless.

The Barnes galleries are slated to close in June and reopen in 2012 on the Benjamin Franklin Parkway, near the Philadelphia Museum of Art and the Rodin Museum.