

October 14, 2020

The Honorable John C. Wobensmith  
Secretary of State of Maryland  
16 Francis Street  
Annapolis, Maryland 21401

The Honorable Brian E. Frosh, Esq.  
Attorney General of Maryland  
200 St. Paul Place  
Baltimore, Maryland 21202

Re: Baltimore Museum of Art

Dear Secretary Wobensmith and Attorney General Frosh:

This letter requests that the Office of the Secretary of State and the Maryland Attorney General undertake an investigation of The Baltimore Museum of Art (BMA), a non-profit entity, based on its recently-announced decision to deaccession three iconic works from its collection: Andy Warhol's *The Last Supper*, Clyfford Still's *1957-G*, and Brice Marden's *3*. Your offices are further requested to take legal action to stop the sale of these works, including the planned Sotheby's auction of the Still and Marden paintings on October 28.

The State of Maryland has an important public and financial interest in the BMA. Among other things, the State provided \$11.25 million in capital contributions to facilitate the recent museum renovations, including extensive renovations to the Contemporary Wing of the museum. In FY2019, the Maryland State Arts Council, part of the Maryland Department of Commerce, made annual contributions of over \$1.1 million to museum operating revenues. As summarized by the American Alliance of Museums ([www.aam-us.org](http://www.aam-us.org)):

"[i]t's at the state level ... that nonprofit organizations (including museums) are regulated. State law regulates their activities, defines the responsibilities of their leaders, and protects the charitable assets. ... a museum's assets belong to the beneficiaries of the charitable organization (the public) .... Each state attorney general oversees nonprofit organizations on behalf of the public and has the power to review and challenge a museum board's decisions."

This investigation and this action are particularly requested on two grounds:

First, that there were irregularities and potential conflicts of interest in the sales agreement with Sotheby's and the process by which staff approved the deaccessioning. The sale of the Warhol is being conducted privately, without auction, and without even any competitive bid or

sale proposals from multiple auction houses. Based on information available, we understand that the sale is being handled by Sotheby's as a private sale, in other words a sale neither announced nor accessible to the competitive open marketplace, and with an apparent "guarantee" price of \$40 million. However a comparably-sized Warhol *Last Supper* painting was sold in November 2017 by Christie's, at auction, for \$60,875,000. This significant disparity in price is extremely troubling, and leads one to conclude, independent of the merits or lack thereof of the deaccession, that the BMA did not sufficiently exercise its fiduciary duty in valuation of the work and seeking competition to maximize the sale proceeds. Instead, this iconic Warhol painting is likely being sold, or already has been sold, at a bargain-basement price. Additionally, competitive sales proposals from two or more auction houses for the Still and Marden works to be sold at auction would have also resulted in financial incentives that would increase the BMA's profits for the Still and Marden sales. Instead, the BMA made an exclusive deal with Sotheby's to auction the works. All this while the BMA's finances have remained steady, and the BMA's staff has not been subject to layoffs, belying any sense of urgency to a sale, or any need to bypass normal due diligence.

The Association of Art Museum Directors' (AAMD) overarching 2010 (amended in 2015) guidelines for deaccessioning speak to the important responsibility of museums to carefully evaluate various manners in which to dispose of deaccessioned works in Section IV. A.:

"Preferred methods of disposal are sale or transfer to, or exchange with another public institution, sale through publicly advertised auction, and sale to or exchange to or through a reputable dealer. Every reasonable effort should be taken to identify and evaluate the various advantages and yields available through different means of disposal."

Further regarding the issue of financial conflict of interest and procedural irregularities, the money to be raised from these sales will be utilized, among other things, for payment of BMA staff salaries. We applaud efforts to achieve pay equity, and to increase salaries of underpaid lower-level staff. However the Director of the BMA has acknowledged – for example on Tom Hall's Midday on WYPR on October 7, 2020 and in the New York Times article "Baltimore Museum to Sell 3 Paintings to Advance Equity" first published on October 2, 2020 – that salary increases will accrue to curatorial staff, staff who voted to approve the deaccession decision. We understand that the unanimous curatorial support reported by the BMA for deaccessioning was critical to several of the accession committee members and trustees who subsequently gave their vote to approve deaccessioning.

The Director of the BMA placed the curatorial staff in an untenable position where they could not avoid the appearance of a conflict of interest, as they could directly benefit from the sale of works in violation of Section III. E. of the AAMD's 2010/2015 guidelines, which states:

“No member of a museum’s board, staff, or anyone whose association with the museum might give them an advantage in acquiring the work, shall be permitted to acquire directly or indirectly a work deaccessioned, wholly or in part, by the museum, or otherwise benefit from its sale or trade;”

Second, there are important questions regarding whether the BMA has breached the public trust in choosing works of such iconic status for deaccession, works that have held a prominent place in the BMA’s contemporary wing galleries, education programs, and publications for decades. These works embody the BMA’s noteworthy history of supporting LGBTQ+ and Maryland artists, such as Andy Warhol in the first instance and Clyfford Still in the second. Further, once again the sales are not justified based on any economic hardship of the BMA. There are competing indications from the BMA itself and those who were privy to BMA presentations about the three artworks as to whether the deaccessions of the works were justified based on the ostensibly minor status of the works being sold, an assertion which experts in the field have attested could not be farther from the truth. Other indications are that the BMA acknowledged the significance of the works and selected them purely to hit a dollar threshold for the sale, without consideration to their status as Maryland cultural assets. This approach is expressly prohibited by the International Council of Museums (ICOM) guidelines for deaccessioning, which unambiguously state:

“In no event should the potential monetary value of an object be considered as part of the motive for determining whether or not to deaccession.”

[https://icom.museum/wp-content/uploads/2019/08/20170503\\_ICOM\\_standards\\_deaccessioning\\_final\\_EN-v2.pdf](https://icom.museum/wp-content/uploads/2019/08/20170503_ICOM_standards_deaccessioning_final_EN-v2.pdf)

The American Alliance of Museums (AAM), the primary governing and accrediting body for museums in the United States, expands:

“Museums acquire items of cultural or scientific value for their collections through donation, purchase, rescue or field research and hold these items for the benefit of present and future generations. Although these items may have a monetary value, once they become part of a museum’s permanent collection, that value becomes secondary to their importance as a means to enhance understanding of our world and ourselves. Consequently, museum collections are considered cultural—not financial— assets, to be held for the public benefit.”

<https://www.aam-us.org/wp-content/uploads/2018/01/direct-care-of-collections-ethics-guidelines-and-recommendations-pdf.pdf>

The College Art Associations, another highly regarded authority on art, collections, and museums, also notes that neither market considerations, nor changes in taste should lead to deaccessioning:

“Deaccessions should never be prompted by changes in taste, art market fluctuations, or expressions of interest from institutional or individual collectors.”

<https://www.collegeart.org/standards-and-guidelines/guidelines/sales>

Given these considerations, questions that arise include:

- Why the rush to sell these works on short notice and in such an opaque manner, without public consultation, open discussion, and marketplace competition?
- Why sell these three works, instead of, as was generally done in 2018, works of less iconic stature or of a duplicative nature?
- Although sale proceeds are expected to be \$60-70 million (and potentially \$90-100 million or more, were there competitive bidding on the Warhol), only \$10 million is being targeted for acquisition of works by underrepresented groups including artists of color and female artists. Moreover, only about \$2-2.5 million per year will be spent to indirectly support a variety of other initiatives, including salary increases. Why the need to sell \$100 million of iconic art for a comparably modest initiative?
- Why have the BMA trustees and its director absolved themselves from their obligations to raise necessary funds for the museum's operations through standard fundraising procedures?
- If one purpose of the sale is to acquire works by underrepresented groups, then what possible justification to sell the Warhol which, as indicated below, was a groundbreaking acquisition of work by an artist in the LGBTQ+ community?

We strongly support the important stated goals of the BMA's sale, including the acquisition of art from underrepresented groups and the desire to increase staff salaries, however the reality is that the vast bulk of the proceeds from these sales are not being dedicated to these goals, and these goals could and should be achieved through other means.

Further, of the three paintings, some facts are noteworthy:

**ANDY WARHOL's *THE LAST SUPPER* (1986, acquired by the BMA in 1989)**

During the late 1980s and early 1990s, distinguished curator and administrator Brenda Richardson, a pioneering female leader in the artworld, acquired multiple paintings by Andy Warhol for the BMA collection. Warhol's monumental *The Last Supper*, a perennial favorite of BMA visitors, is the most important work of these holdings as it is an exceptional example of the influential Pop artist's final series before his death. Through the Warhol acquisitions,

Richardson boldly centered the BMA's contemporary collection around a Queer artist, a ground-breaking achievement in diversifying art history undertaken at a time when the United States was struggling to address the AIDS crisis and failing to grant all people in its population the right to marry whom they wanted and to openly serve in the military. The foresight and courage of Richardson's acquisition has been acknowledged by the inclusion of *The Last Supper* and other BMA works in the 2009-2010 traveling exhibition Andy Warhol: The Last Decade. This show was the first American exhibition to focus on the significance of Warhol's late career and greatly expanded knowledge of Warhol's late themes and techniques. The show was organized by the Milwaukee Art Museum, and traveled to the Modern Art Museum of Fort Worth, the Brooklyn Museum, and the BMA. Because of the extraordinary scale of the work and the expense and risk associated with traveling the painting, it is rarely lent to other institutions, and it is important that the BMA continues to serve as a venue for the public to experience such a powerful and personal work by Warhol, who remained a practicing Catholic throughout his life. The work has a special resonance for Marylanders, as Maryland was initially established as a colony by Roman Catholics escaping persecution for their beliefs in England.

**CLYFFORD STILL'S 1957-G (1957, acquired by the BMA in 1969)**

Clyfford Still was a much-celebrated Abstract Expressionist who lived in New Windsor, Maryland from 1961 though 1980. His painting is central to the BMA's ability to discuss this important period of art history, and the art historical importance of artists who were born in Maryland and/or lived in Maryland. During his lifetime, Clyfford Still limited the sales of his works. Therefore, his works are not well-distributed throughout museums or private collections, and it is particularly noteworthy for the BMA to have a piece which was given as a gift from the artist himself. The BMA joins the San Francisco Museum of Modern Art and the Albright-Knox as the rare museums that were gifted paintings by the artist during his lifetime. Because Still's paintings have price tags that run in the tens of millions, one can say with almost 100% certainty that if the BMA deaccessions its single piece by the artist, the museum will never again represent the work of this major Abstract Expressionist, who lived in the State of Maryland. All other paintings by Still in Maryland are owned by private collectors or private institutions, which restrict public access. It is important to recognize that Still's work continues to resonate with artists of different generations and backgrounds. For example, Mark Bradford, who has been a figure central to the BMA's collection and exhibition program in recent years, curated an exhibition of Still's work for the Clyfford Still Museum in Denver in 2017. This show ran concurrently with a Denver Art Museum exhibition pairing Bradford and Still's works. It is a shame that such a topical juxtaposition will never be able to occur at the BMA.

**BRICE MARDEN'S 3 (1987-88, acquired by the BMA in 1988)**

Lastly, it is troubling that the BMA would consider selling its only painting from Brice Marden, an important American abstract artist who is still alive. Institutions commit to holding on to objects beyond the lifetime of an artist to ensure that multiple viewpoints over time can be

brought to evaluating the importance of an artwork. Further, by selling a work of art during an artist's lifetime, a museum might negatively impact the market of that artist's work—a consequence that is inherently antithetical to the BMA's role of supporting art and artists. Ethically, museums strive to distance the definition and implementation of their missions (including the judgements they make and the actions they take) from the art market, knowing that the art market acts in the interest of those of the highest economic privilege rather than the general public good. With most museum deaccessions, artworks are transferred out of the public sphere and into private hands, where they can no longer be accessed by most people. For these reasons, many museums have an explicit policy against deaccessioning works by living artists.

In normal times the deaccession of these works with use of proceeds for general operating purposes would be strictly disallowed by the previously referenced guidelines of the Association of Art Museum Directors (AAMD). Faced with museums in severe financial distress and facing significant layoffs in personnel — neither of which are the case for the BMA — the AAMD did issue some revisions to its guidelines in April 2020, allowing museums to take action to survive despite the coronavirus pandemic, even while the revised guidelines state that they were “not intended to incentivize deaccessioning or the sale of art, only to provide additional flexibility on the use of the proceeds [i.e., interest income] from art that may be sold.” The point is only to emphasize the unusual and extraordinary nature of the current BMA deaccessions, and that BMA's extraordinary actions to deaccession three iconic works, and to use the interest income for general operating purposes, without the financial distress that prompted the guidelines, prompts scrutiny as to the reason for and justification for the sales.

We look forward to your investigation of these matters and urge prompt action before the October 28 sales of these iconic artworks are finalized and the State of Maryland loses a significant part of its cultural heritage.

Sincerely,

[partial list of signatures]

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Former BMA Trustee; former Chair of BMA Contemporary Accessions Committee

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