

National Coalition Against Censorship

September 25, 2013

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NCAC PARTICIPATING ORGANIZATIONS

Actors' Equity Association
American Association of
School Administrators
American Association of
University Professors
American Association of
University Women
American Booksellers Foundation
for Free Expression
American Civil Liberties Union
American Ethical Union
American Federation of Teachers
American Federation of Television
& Radio Artists
American Jewish Committee
American Library Association
American Literary Translators
Association
American Orthopsychiatric Association
American Society of Journalists
& Authors
Americans United for Separation of
Church & State
Association of American Publishers
Authors Guild
Catholics for Choice
Children's Literature Association
College Art Association
The Creative Coalition
Directors Guild of America
The Dramatists Guild of America
Educational Book & Media Association
First Amendment Lawyers Association
International Reading Association
Lambda Legal
Modern Language Association
National Center for Science Education
National Communication Association
National Council for the Social Studies
National Council of Churches
National Council of Jewish Women
National Council of Teachers of English
National Education Association
The Newspaper Guild/CWA
PEN American Center
People For the American Way
Planned Parenthood Federation
of America
Screen Actors Guild
Sexuality Information & Education
Council of the U.S.
Society of Children's Book Writers
& Illustrators
Student Press Law Center
Union for Reform Judaism
Union of Democratic Intellectuals
Unitarian Universalist Association
United Church of Christ
Office of Communication
United Methodist Church
United Methodist Communications
Women's American ORT
Writers Guild of America, East
Writers Guild of America, West

Dear Ms. Welch and Board of Supervisors,

As organizations dedicated to promoting the First Amendment right to free speech, including freedom of artistic expression, we were deeply concerned to learn that officials at the San Bernardino County Government Center ordered the removal of at least three paintings from an exhibition held at the Center because they considered them "inappropriate". This action, based on a subjective dislike of the viewpoint and content of the work, raises serious First Amendment concerns. We urge the Government Center to immediately put the work back on display and, in the future, draft exhibition policies that are consistent with First Amendment principles.

It is our understanding that the Hispanic Heritage Art Exhibit, which showcases artists associated with the Inland Empire Latino Art Association and has been sponsored by the Hispanic Employees Alliance in honor of Hispanic Heritage

Month, opened September 16th. Soon after the opening, Government Center spokesperson Susan Cary requested the removal of one painting by Armando Aleman, and two by Efren Montiel Jimenez. Apparently some visitor to the space had found the works “offensive.”

While every single visitor may not necessarily like all of the work in an exhibition, they should also be made aware that, as a public space opened to exhibiting artwork, the Government Center is ruled by the free speech clause in the First Amendment, meaning that government officials cannot arbitrarily impose their prejudices on a curated exhibition.

In removing the work the Government Center is not only violating the free speech rights of the artist and the exhibiting organization, but is also exposing the county to legal liability. Our courts have time and again reaffirmed that the First Amendment prohibits public officials from censoring art they find offensive or provocative. The case of *Hopper v. City of Pasco* (2001) in the Ninth Circuit Court of Appeals is a case in point. There, the plaintiff artists were invited to display their work at the City Hall, and were then precluded from doing so because the work provoked controversy and public officials considered it “sexually suggestive.” The Court noted that Pasco, by opening its display space to expressive activity has evinced “an intent to create a designated public forum.” In such a forum, the court concluded, the content-based removal of work would only be justifiable if there is a “compelling state interest and is narrowly drawn to achieve that end.”

It is unclear to us what could be “offensive” or “inappropriate” in any of the paintings removed in San Bernardino but, based on our experience, it is likely to be the presence of nude or semi-nude figures. If that is the case, please note that there are representations of nudes in many public places—by far not only in galleries and museums. There are nude sculptures in the capital's public squares and nudes in the friezes of government buildings.

The U.S. Supreme Court has specifically declared that simple representations of nudity are a constitutionally protected form of artistic expression. As the Court has noted multiple times, “‘nudity alone’ does not place otherwise protected material outside the mantle of the First Amendment.” *Schad v. Mount Ephraim* (1981), *Jenkins v. Georgia* (1974), *Osborne v. Ohio* (1990). Nor is nudity in art “harmful to minors.” Subjective concerns about what children would see do not provide a basis for refusing to exhibit art work: “[R]egardless of the strength of the government’s interest’ in protecting children, ‘[t]he level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox.’” *Ashcroft v. ACLU* (2002), and cases cited therein.

The arbitrary and subjectively determined decision to exclude the three paintings from public view fulfills no compelling (or even rational) state interest. No one is well served by this violation of expressive freedom, certainly not the San Bernardino County public, which is illegitimately deprived of the opportunity to view and evaluate artistic work for itself.

We urge you to make sure the work is restored to the exhibition as soon as possible. Please let me know if you would like to discuss this matter further.

Sincerely,



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