

National
Coalition
Against
Censorship



Chancellor Bob Meyer
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Dear Chancellor Meyer,

The National Coalition Against Censorship (NCAC), founded in 1974, is an alliance of over 50 national non-profit organizations, including literary, artistic, religious, educational, professional, labor, and civil liberties groups dedicated to promoting the right to free speech. The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses.

As organizations committed to free speech principles, we write to the University of Wisconsin-Stout to express our deep concern about the proposal to remove two recently restored 1935–36 paintings by Cal Peters from Harvey Hall and place them in storage. In justifying the removal, you have argued that the works may have “a harmful effect on ... students and other viewers.”

It is our understanding that the call to remove the paintings—which have clear historical and educational value—came from individual students as well as from the university's Diversity Leadership Team (DLT). It is also our understanding that the DLT has claimed that the depictions of First Nations peoples in the works reinforce racial stereotypes and promote “acts of domination and oppression.”

Individuals respond to expression—including verbal and visual representation—in

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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
for Free Expression
American Civil Liberties Union
American Ethical Union
American Federation of Teachers
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
Comic Book Legal Defense Fund
The Creative Coalition
Directors Guild of America
Dramatists Guild of America
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
National Youth Rights Association
The Newspaper Guild/CWA
PEN American Center
People for the American Way
Planned Parenthood Federation
of America
Project Censored
SAG-AFTRA
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
Woodhull Sexual Freedom Alliance
Writers Guild of America, East
Writers Guild of America, West

unpredictable ways. Any effect speech may have upon its audience is necessarily contingent upon an observer's individual experiences and beliefs. Beauty, and all else, is always in the eye of the beholder. The U.S. Court of Appeals for the Seventh Circuit has identified this subjective process as "mental intermediation," noting that "almost all cultural stimuli provoke unconscious responses." *American Booksellers Assoc. v. Hudnut*, 771 F.2d 323, 329, 330 (7th Cir. 1985), *aff'd*, 475 U.S. 1001 (1986). In *Hudnut*, the Seventh Circuit—the jurisdiction of which includes Wisconsin—answered arguments in support of a statutory prohibition on pornography that mirror those advanced by DLT here. In upholding First Amendment protection for "pornographic" images said to demean women, the court observed:

Racial bigotry, anti-Semitism, violence on television, reporters' biases — these and many more influence the culture and shape our socialization. ... Yet all is protected as speech, however insidious. Any other answer leaves the government in control of all of the institutions of culture, the great censor and director of which thoughts are good for us.

Id. at 330. *Hudnut* and other cases establish that state officials, including employees of state universities, may not constitutionally suppress expression solely because it is subjectively harmful or offensive. *See, e.g., Snyder v. Phelps*, 131 S. Ct. 1207, 1220 (2011) ("As a Nation we have chosen ... to protect even hurtful speech on public issues to ensure that we do not stifle public debate."); *UWM Post, Inc. v. Bd. of Regents of Univ. of Wis. Sys.*, 774 F. Supp. 1163 (E.D. Wis. 1991) (ruling that policy prohibiting discriminatory epithets was overbroad and vague).

The few studies the DLT has offered in support of its claim that Native Americans who witness stereotypical media depictions of other Native Americans suffer adverse psychological consequences, such as decreased self-esteem, are limited in scope and focus on mascots and mass media representations rather than historical paintings. The findings are neither definitive nor applicable to the artwork in question.

Of course, speech does have effects. Expression may cause offense and pain, or reinforce or undermine values and beliefs. But First Amendment protections are needed precisely for this reason. If all speech some found uncomfortable or disturbing were to be suppressed, public discussion and debate would be radically impoverished and open conversation about beliefs and values would be imperiled.

Such dialogue is especially important at a university, the quintessential "marketplace of ideas." A public university fails its educational mission when it eliminates material because some members of its community consider it offensive or objectionable. Such a paternalistic response from the university impinges on the academic freedom of the faculty and denies students important learning opportunities.

Popular attitudes held by Americans in the 1930s differ from contemporary views—and, accordingly, are of historical significance. Conversations about history are not just conversations about what happened; they are also conversations about how we talk about what happened. Cal Peters' work invites reflection on the politics of historical memory and presents a valuable educational opportunity. Substantive dialogue across the divides of racial misapprehension,

anxiety, and pain will demand courage, imagination, dedication and perseverance. Putting Cal Peters' 1930s paintings in a closet ends the conversation prematurely and to the detriment of current and future students and faculty.

We support the DLT's proposal to convene a symposium or working group to discuss the issue of how to handle objections to historical murals and paintings. Such a conversation could have national significance, as many public officials and universities are currently grappling with similar questions. The university could take a leadership role by helping to develop best practices and procedures that acknowledge the legitimate concerns of groups who feel marginalized by historical representations while preserving their availability for future study, discussion, critique, and debate. We would be happy to assist in facilitating such a conversation.

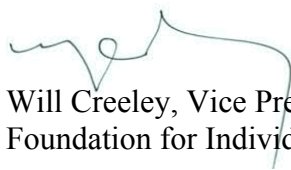
We strongly urge the University of Wisconsin-Stout—a public institution bound by the First Amendment—to keep the Cal Peters paintings on display as both historically important artifacts and teaching tools. To facilitate an open discussion about these works, we recommend that you provide an opportunity for observers to describe their reactions in writing—perhaps in a nearby notebook—and that you consider sponsoring workshops and the display of other work that provides different perspectives.

Removing representations of historically oppressed groups from view will not change the facts of history. Instead, more representations, more voices, and more conversations are needed. We ask that you trust your faculty and students to answer that challenge.

We look forward to your response.



Svetlana Mintcheva, Director of Programs
National Coalition Against Censorship



Will Creeley, Vice President of Legal and Public Advocacy
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cc:

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