



February 14, 2018

President Angela Garcia Falconetti
Office of the President, WAD-216
Polk State College
3425 Winter Lake Road
Lakeland, Florida 33803

URGENT

Sent via U.S. Mail and Electronic Mail (agarciafalconetti@polk.edu)

Dear President Falconetti:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses. The National Coalition Against Censorship (NCAC), founded in 1974, is an alliance of over 50 national nonprofit organizations, including literary, artistic, religious, educational, professional, labor, and civil liberties groups dedicated to promoting the right to free speech.

FIRE is concerned about the state of freedom of expression at Polk State College following the college's rejection of a faculty member's contribution to an art exhibit because it was "too controversial."

I. FACTS

The following is our understanding of the facts; please inform us if you believe we are in error.

On January 3, Professor Holly Scoggins emailed all Visual Arts faculty members to ask that they submit artwork for a faculty exhibition beginning February 12:

This is a notice that we will be having a Faculty exhibition on the Lakeland Campus during February and March.
We are asking everyone to submit between 1-5 pieces (depending on the size) for the exhibition.

The artwork should arrive to the Lakeland Gallery no later than FEBRUARY 8TH

If you are doing an installation, you may install between February 5th-9th. Please let me know the dimensions of the installation ahead of time. Submit an inventory list to Nancy Lozell nlozell@Polk.edu, no later than February 8th. Inventory list should include: Title, Artist name, Materials, Price if for sale, Insurance value (even if it is NFS), dimensions, and your contact info.

Part-time faculty member Serhat Tanyolacar submitted a piece titled “Death of Innocence,” which includes images of several poets and writers, including T.S. Eliot and his wife Vivienne Haigh-Wood Eliot, Pablo Neruda and his wife Matilde Urrutia, Woody Guthrie, Jack Kerouac, and Elizabeth Bishop, whose main subjects are love, consciousness, freedom and justice. As juxtaposition, the piece also depicts a number of graphic iterations of President Donald Trump and other political figures engaging in sexual activity. According to Tanyolacar, the artwork is intended to highlight “moral corruption and moral dichotomy” and provoke dialogue.

On February 6, Program Coordinator Nancy Lozell informed Tanyolacar that his artwork would not be shown in the faculty art exhibit because it was “too controversial.” Lozell wrote:

Thank you for your interest in displaying your artwork in the Polk State College Faculty Art Show. After review by the gallery committee and the gallery administrator it was agreed upon that your piece Death of Innocence should not be displayed in the Faculty Art Show. Polk State College offers classes and volunteer opportunities to our collegiate charter high schools and other high schools in Polk county and we feel that that particular piece would be too controversial to display at this time. We would be very happy for you to display some of your other artworks.

Tanyolacar asked for further explanation about the gallery committee’s decision not to display his artwork. On February 9, Lozell replied, in part:

I apologize for the delay in responding. We very much appreciate your passion for your work and your desire to exhibit in our Faculty Art Show. As mentioned in my e-mail below, the gallery committee, which is comprised primarily of full-time art faculty, has declined to include it in the show.

I hope you understand that this is a limited exhibit sponsored and presented by Polk State College, and we have an established process for reviewing and selecting the art to be exhibited. Submissions or proposed exhibits are reviewed by the gallery committee, and they make a decision about what pieces to include in a show. Their decision is based on a number of criteria, which include, without intending to set out a complete list of such criteria, the theme of the show, the appropriateness of the piece, the number of pieces that can be displayed based on available space, and the size of individual works.

II. ANALYSIS

Polk State’s rejection of Tanyolacar’s artwork for being “too controversial to display at this time” is contrary to the college’s moral and legal obligation to protect and honor the freedom of expression of its faculty.

The primacy of the First Amendment at public colleges like Polk State is well established. *See Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.”); *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted). This precedent should serve as a lodestar for public colleges and universities navigating art controversies.

i. **Tanyolacar’s artwork should not be barred simply because it has the potential to cause offense**

As a preliminary matter, the Supreme Court has repeatedly cautioned against limiting expression like Tanyolacar’s on the basis that those who witness it may be offended. *See Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”); *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (“[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”).

These holdings are applicable in assessing restrictions on expression imposed by public institutions like Polk State. In *Papish v. Board of Curators of the University of Missouri*, a case involving the speech rights of a public university student expelled for distributing a newspaper containing a cartoon depiction of the Statue of Liberty and Goddess of Justice being sexually assaulted by police officers, the Supreme Court held that speech “on a state university campus may not be shut off in the name alone of ‘conventions of decency.’” 410 U.S. 667, 670 (1973). Tanyolacar’s artwork enjoys similar protection.

ii. **Polk State cannot treat members of the campus community as if they are children**

To the extent that Polk State believes it *must* limit expression on the basis that minors might encounter it, it is misguided. Courts have consistently held that college students are not minors, and that debate on campuses cannot be sanitized as if they are. *See Healy*, 408 U.S. at

197 (Douglas, J., concurring) (“[s]tudents—who, by reason of the Twenty-sixth Amendment, become eligible to vote when 18 years of age—are adults who are members of the college or university community”); *see also Kincaid v. Gibson*, 236 F.3d 342, 346 (6th Cir. 2001) (holding that the Supreme Court’s decision in *Hazelwood v. Kuhlmeier*, 484 U.S. 260 (1988), did not apply to the college setting because college students are “young adults”); *Bradshaw v. Rawlings*, 612 F.2d 135, 139 (3d Cir. 1979) (“[c]ollege students today are no longer minors; they are now regarded as adults in almost every phase of community life”). Furthermore, while the Supreme Court has—in certain limited circumstances—permitted government actors to impose narrowly targeted content-based restrictions in the interest of preventing children from viewing indecent or patently offensive sexual programming, that interest does not extend to a “free-floating power to restrict the ideas to which children may be exposed.” *Brown v. Entm’t Merchs. Ass’n*, 564 U.S. 786, 794 (2011). Specifically, the Court has held that “[s]peech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.” *Erznoznik v. Jacksonville*, 422 U.S. 205, 213–14 (1975). “[T]he government may not ‘reduce the adult population . . . to reading only what is fit for children.’” *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 73–74 (1983) (quoting *Butler v. Michigan*, 352 U.S. 380, 383 (1957)). On a public college campus, adults sharing views with one another cannot constitutionally be required to childproof their expression, including artistic or scholarly expression, simply because a passing teenager might happen upon it.

iii. **Polk State underestimates high school students’ ability to cope with controversial art**

In addition to the harm Polk State inflicts upon Tanyolacar by disallowing the exhibition of his artwork, the college does a disservice to the young people it seeks to engage by attempting to sanitize the world around them.

In a 1973 letter to Charles McCarthy, head of the school board at North Dakota’s Drake High School who had demanded that 32 copies of Kurt Vonnegut’s novel *Slaughterhouse-Five* be burned in the school’s furnace because of “obscene” content, Vonnegut implored McCarthy to rethink his decision. Vonnegut wrote, in part:¹

If you were to bother to read my books, to behave as educated persons would, you would learn that they are not sexy, and do not argue in favor of wildness of any kind. They beg that people be kinder and more responsible than they often are. It is true that some of the characters speak coarsely. That is because people speak coarsely in real life. Especially soldiers and hardworking men speak coarsely, and even our most sheltered children know that. And we all know, too, that those words really don’t damage children much. They didn’t damage us

¹ Letter from Kurt Vonnegut to Charles McCarthy, Head of School Board, Drake High School (Nov. 16, 1973), available at <http://www.lettersofnote.com/2012/03/i-am-very-real.html>.

when we were young. It was evil deeds and lying that hurt us.

After I have said all this, I am sure you are still ready to respond, in effect, “Yes, yes—but it still remains our right and our responsibility to decide what books our children are going to be made to read in our community.” This is surely so. But it is also true that if you exercise that right and fulfill that responsibility in an ignorant, harsh, un-American manner, then people are entitled to call you bad citizens and fools. Even your own children are entitled to call you that.

[...]

If you are an American, you must allow all ideas to circulate freely in your community, not merely your own.

If you and your board are now determined to show that you in fact have wisdom and maturity when you exercise your powers over the education of your young, then you should acknowledge that it was a rotten lesson you taught young people in a free society when you denounced and then burned books—books you hadn’t even read. You should also resolve to expose your children to all sorts of opinions and information, in order that they will be better equipped to make decisions and to survive.

Polk State has not burned books. But it has nonetheless made the same mistake that Charles McCarthy did. Polk assumes that high school students—who may not even come across Tanyolacar’s artwork in the first place—will be unable to understand or cope with the controversial ideas contained within it.

The opposite is true. For many students, the most groundbreaking moments of education are the ones in which their beliefs, thoughts, or feelings are fundamentally challenged, an act that often involves literature or artwork that is controversial, subversive, or unnerving. Refusing to display controversial art on the basis that young people might encounter it not only limits what adults might view, but does so on an unfounded basis: that controversial educational material serves no purpose.

The world in which high schoolers live is not childproofed, and their education should not be either.

One can hardly forget that for months, a 2005 tape of now-President Donald Trump was played regularly by news stations and was a major topic of national discussion in the weeks leading up to the 2016 election. On that tape, Trump can be heard making a number of sexually-charged comments about women, including “I moved on her like a bitch, but I couldn’t get there, and she was married. Then all of a sudden I see her, she’s now got the big phony tits and everything,” and “I just start kissing them. It’s like a magnet. Just kiss. I don’t

even wait. And when you're a star they let you do it. You can do anything . . . Grab them by the pussy. You can do anything."² For twenty years, former president Bill Clinton's sexual relationship with White House intern Monica Lewinsky has been a common topic of conversation in American politics. Since January, news stations have discussed the possibility that Trump paid a large sum to adult film star Stormy Daniels in 2016 so that she would not publicly discuss their alleged 2006 affair.³

Polk State will be hard-pressed to explain why high school students seeing the phrase "grab them by the pussy" plastered on the news for months will be incapable of encountering artwork intended to criticize perceived moral depravity in American politics. Polk State cannot shield high school students from encountering stories which, due to their sexual nature, undoubtedly lead to uncomfortable conversations. But a college should not attempt to shield students from artwork that seeks to offer commentary on or criticism of these stories, however uncomfortable its viewers may be.

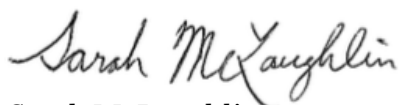
III. CONCLUSION

Polk State College's decision to reject "Death of Innocence," undertaken with the stated purpose of shielding high school students from "controversial" artwork, is unbecoming of an institution of higher education. The college must reverse its illiberal decision and reassess Tanyolacar's submitted artwork in a viewpoint-neutral manner.

NCAC has vast experience with art controversies and will be pleased to advise Polk State College further in handling controversies in a productive manner, which respects both academic freedom and First Amendment principles.

Because the faculty art show at which Tanyolacar intends to display his work began on February 12, we request a response to this letter no later than February 16, 2018.

Sincerely,



Sarah McLaughlin
Senior Program Officer, Individual Rights Defense Program, FIRE

² *Trump Was Recorded in 2005 Bragging About Grabbing Women "by the Pussy,"* Ben Mathis-Lilley, SLATE (Oct. 7, 2016), http://www.slate.com/blogs/the_slatest/2016/10/07/donald_trump_2005_tape_i_grab_women_by_the_pussy.html.

³ *Stormy Daniels: Donald Trump's alleged porn star affair and hush money scandal explained,* Dylan Matthews, VOX (Jan 30, 2018), <https://www.vox.com/policy-and-politics/2018/1/17/16901602/trump-stormy-daniels-hush-money-scandal-porn>.

A handwritten signature in black ink that reads "Chris Finan". The signature is written in a cursive, flowing style.

Christopher Finan

Executive Director, National Coalition Against Censorship

cc:

Nancy Lozell, Program Coordinator