

William E. Harrell, President and CEO
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January 18, 2018

Dear Mr. Harrell,

I am writing on behalf of the Arts Advocacy Program at the National Coalition Against Censorship, an alliance of 56 national non-profit organizations united in defense of free expression, regarding the rejection of Alison Stinely's paintings by Hampton Roads Transit (HRT). We urge HRT to establish a set of clear and Constitutionally sound guidelines between itself and the Norfolk Arts Commission governing the artworks to be exhibited in the Transit Gallery space to avoid similar confusion and impermissible censorship in the future.

It is our understanding that, as the result of the proposal that Ms. Stinely submitted to a Norfolk Arts Commission Open Call, the artist was invited to mount a solo exhibition of her paintings at Transit Gallery, HRT's exhibition space, one of two local spaces where Norfolk Arts regularly installs rotating exhibitions. Ms. Stinely's show was scheduled to open on January 26, but shortly after the artist delivered her works to the site, some HRT employees expressed concerns about the nudity depicted in the paintings. On the basis of these complaints, HRT rejected the work.

Having opened the Transit Gallery as an exhibition space, HRT, as a government agency, cannot arbitrarily reject work from that space because some individuals dislike it. The gallery functions as a designated public forum where any restrictions must be viewpoint-neutral. Banning nudity on the basis of complaints made by a few individuals who find it offensive is clearly viewpoint-based censorship.

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."

Simple nudity is not a sufficient ground for excluding artwork from public exhibition. If it were, a vast amount of great art, including masterpieces like Michelangelo's David, would be off limits. As the Supreme Court has noted multiple times, "nudity alone' does not place

Christopher Finan
Executive Director

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
The Dramatists Guild of America
Dramatists Legal Defense Fund
Educational Book & Media Association
First Amendment Lawyers Association
Free Speech Coalition
International Literacy Association
Lambda Legal
Modern Language Association
National Center for Science Education
National Communication Association
National Council for the Social Studies
National Council of the 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

otherwise protected material outside the mantle of the First Amendment.” *Schad v. Mount Ephraim* (1981), *Jenkins v. Georgia* (1974), *Osborne v. Ohio* (1990). Nor does the simple inclusion of images of nude figures in a contemporary arts exhibition constitute a “hostile work environment” as you appear to have claimed. Paintings are not and cannot be construed to be the type of repeated and systematic behavior that defines sexual harassment. In a case decided in 1997, the City of Murfreesboro, Tennessee removed a painting of a nude from the Rotunda of City Hall after receiving a complaint that the display of the painting constituted sexual harassment. In response to the legal case filed by the artist (*Henderson v. City of Murfreesboro* 960 F. Supp. 1292 (M.D. Tenn. 1997)), the court agreed that the removal of the painting violated her First Amendment rights: “... the defendant’s arbitrary decision to remove the painting of the plaintiff was guided by nothing other than the subjective perceptions of municipal officials. In this context, such an action banning protected expression based on a standardless discretion cannot be upheld as constitutional.”

Alison Stinely’s work does not constitute sexual harassment nor does it contribute to a hostile work environment. Her work is plainly not obscene and is thus entitled to protection under Constitution. The Norfolk Arts Commission itself has recognized its artistic value. Norfolk residents and visitors should not be deprived of their right to see the work of an artist who has been honored by Norfolk Arts because of an arbitrary, subjective, and vague determination that they are inappropriate for a “public space.”

We urge you to develop a set of clear guidelines so as to make sure that moving forward HRT is able to administer its designated public spaces in a viewpoint neutral manner that will not arbitrarily censor artists in the future.

Sincerely,



Joy Garnett
Arts Advocacy Associate
National Coalition Against Censorship

Cc:

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