

**NATIONAL
COALITION
AGAINST
CENSORSHIP**

**ARTS
ADVOCACY
PROGRAM**

September 5, 2019

Michele Seville, Arts & Culture Manager
Richmond Arts and Culture Commission
Richmond City Hall
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Richmond, CA 94804
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Dear Ms. Seville,

As an organization dedicated to promoting free speech, including freedom of artistic expression, we were concerned to learn that the Richmond Arts and Culture Commission (RACC) prohibited Richmond-based artist Christy Chan from including sentences critical of President Trump in her public art project last month. Since RACC is a publicly administered government agency, preventing Chan from displaying her work as she intended solely because the viewpoints expressed could prove politically controversial raises serious First Amendment concerns and represents a profound lapse in judgment on the part of city officials. We strongly urge RACC to develop and institute guidelines that will enable it to uphold its Constitutional responsibilities and to support artists in its programs in the future.

It is our understanding that for her project, *Inside Out*, Chan collected over a thousand messages submitted by local residents to be projected on the exterior of the Richmond Civic Center as part of their Neighborhood Public Art Grant program. The content of these messages ranged from personal to political, and included comments on the environment and immigration.

A small but significant portion of the messages were critical of President Trump. At the last minute, a few days before the project was to go live, Chan was told by RACC staff that she had to purge any messages that mention Trump "by name." Chan complied with the demand, but substituted the censored messages, redacted and alternating with texts informing the public that city officials barred her from displaying comments critical of the president.

While public arts organizations may include content restrictions in their programming, they are still subject to First Amendment proscriptions on viewpoint-based suppression of speech. The Supreme Court has made it clear that rules "calculated to drive certain ideas or viewpoints from the marketplace" are constitutionally suspect. (National Endowment for the Arts v. Finley (1998)). In this instance, such rules were not even in place; the censorship of Chan's work was capricious and arbitrarily applied at the last minute, threatening the integrity of the project.

**NCAC PARTICIPATING
ORGANIZATIONS**

Actors' Equity Association
AICA-USA
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 NewsGuild-CWA
PEN America
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

It is our understanding that the City Attorney advised RACC to reject the 'Trump' quote because it was "controversial" unless there was specific approval by the Richmond City Council. As the City Council was in recess until after the installation, the decision was made to censor the work. However, potential controversy is not a sufficient reason to remove an artwork. In the case of *Hopper v. City of Pasco* (9th Cir. 2001), 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 deemed the work inappropriate. The Court noted that the city, by opening its display space to expressive activity, evinced "an intent to create a designated public forum." In such a forum, the Court concluded, the viewpoint-based removal of work would only be justifiable if there was a "compelling state interest and is narrowly drawn to achieve that end." The Court held that the mere fact that the artwork caused controversy was insufficient to justify its suppression. Indeed, the Supreme Court has noted that "[i]f there is a bedrock principle of 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." *Texas v. Johnson* (1989). RACC is not exempt from these principles.

Chan is the daughter of immigrants. She describes her family as having "worked their way from being voiceless to claiming their voice." Her *Inside Out* project reflects her experience growing up and that of fellow citizens of color who feel silenced in the current cultural climate. Richmond is one of the most racially and socioeconomically diverse cities in California; the spirit of the project is inclusion and representation, and to raise the voices of everyday people. By eliminating comments of local residents that were critical of President Trump, the City of Richmond suppressed the voices of the very community the project intended to highlight. The project was hence retroactively misrepresented to the community that had responded so positively with the knowledge their messages would be displayed (over one thousand submissions for the project arrived in only four weeks, along with comments from people who said they were eager to be heard). By censoring the words of residents, the city and RACC have failed not only the artist, but the whole local community. If the commission, as described in RACC's mission statement, aspires to "reflect the strength and diversity of the City," it utterly failed in its mission when it censored the voices that Christy Chan sought to give a platform.

The arbitrary, subjectively determined decision to preclude certain viewpoints from public display based on totally undefined standards of any kind crosses the line separating a legitimate exercise of curatorial discretion from censorship. No one was well served by this blatant violation of First Amendment principles—not the public, which was deprived of the opportunity to view and evaluate the work for itself, nor artist who sought a neutral forum for display.

We strongly urge you to develop and implement guidelines that would prevent this from happening again. It should be made known to all artists who are invited to submit to open calls or exhibitions precisely what policies and practices will govern the selection of work for public display. We would be eager to assist the commission to develop and refine such guidelines moving forward. We look forward to your response.

Sincerely,



Joy Garnett
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