

**NATIONAL  
COALITION  
AGAINST  
CENSORSHIP**

**ARTS  
ADVOCACY  
PROGRAM**

February 20, 2020

Mayor Ron Nirenberg  
Office of the Mayor  
City Hall 100 Military Plaza  
San Antonio, TX 78205  
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Dear Mayor Nirenberg,

As a coalition of organizations dedicated to the First Amendment right to free speech, including freedom of artistic expression, we were deeply concerned to learn that San Antonio's Department of Arts & Culture removed an artwork from an exhibition because of your apparent discomfort with its unconventional viewpoint on representations of sexuality and the challenge it presents to gender stereotypes. This act of censorship flies in the face of the city's First Amendment obligations. We strongly urge you to allow the artwork to be restored to the exhibition immediately.

It is our understanding that Suzy González and Michael Menchaca, under their collective name "Dos Mestizx," curated the exhibition "XicanX: New Visions" celebrating Chicano art at Centro de Artes, a downtown gallery owned by and funded by the City of San Antonio's Department of Arts & Culture. The exhibition opened on February 13 and will remain up through June 28.

On the day of the opening, the video work "Spictacle II: La Tortillera" by Oakland-based artist Xandra Ibarra was removed upon orders from the city. Created in 2014 from a live 2004 performance, the video addresses race and gender stereotypes through Ibarra's performance as a minstrel Mexican housewife who takes on her "racial bondage to hot sauce, tacos, and demographic panic" in a humorous retro border *corrida*. The curators complied when asked to place advisory signage and curtain off the work within an enclosed space. Nevertheless the City ordered the work removed.

In a comment reminiscent of the culture wars of the 1990s, the city attorney decided that the work violated a Texas state statute that does not allow for "obscene content" and that the city's money could not be used to display the work. Even though the work has sexual content—as does a lot of contemporary artwork—it certainly does not meet the definition of obscenity as upheld in *Miller v. California* in 1973 (*Miller v. California*, 413 U.S. 15 (1973)), a definition which exempts material with "serious literary, artistic, political, or scientific value."

**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 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  
Freedom to Read Foundation  
Global Alliance for Behavioral Health and  
Social Justice  
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

Xandra Ibarra is a well-recognized performance artist. Her work has been shown in museums and other established venues like El Museo de Arte Contemporáneo (Bogotá, Colombia), the Broad Museum (LA, USA), ExTeresa Arte Actual (DF, Mexico), PPOW Gallery (NYC), Anderson Collection (Stanford) and the Yerba Buena Center for the Arts (SF). The controversial work in question has been exhibited nationally and internationally, including at Centro Nacional de las Artes in Mexico City, and the National Museum of Women in the Arts in Washington, DC.

Asking for the removal of Ibarra's work, which is fully protected under the Constitution, raises serious First Amendment concerns. The incident, ironically, comes exactly 30 years after the decision in *Contemporary Arts Center v. Ney; City of Cincinnati v. Contemporary Arts Center*, 735 F.Supp. 743 (S.D. Ohio 1990) preventing city officials from interfering with the Robert Mapplethorpe retrospective at Cincinnati's Contemporary Arts Center (CAC), which city officials claimed contained obscenity. As the case confirmed, material cannot be considered obscene unless the government can prove that it lacks serious artistic value.

After the trial, news outlets portrayed Cincinnati as a cultural backwater that would imprison a museum director before agreeing to exhibit difficult art. Vice Mayor David Mann, a City Council member at the time, called the trial "a PR disaster" and said that it "made us the laughing stock of sophisticated communities."

In removing Ibarra's work from the exhibition at Centro de Artes, the City of San Antonio is likely violating the free speech rights of the artist and thus exposing the city to both bad publicity and legal liability.

Obscenity claims aside, 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 and Rupp v. City of Pasco*, 241 F.3d 1067 (2001) in the Ninth Circuit Court of Appeals is a case in point. The plaintiff artists were invited to display their work at 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 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."

As a public space open to exhibiting artwork, city-owned spaces are ruled by the free speech clause in the First Amendment. This means that government officials cannot arbitrarily or systematically impose their prejudices on a curated exhibition. Suppressing everything that could potentially generate an objection would jeopardize the City's entire art and culture program. Allowing public officials to remove anything having sexual references or content is likely to violate First Amendment principles and generate—as in this case—decisions based on subjective interpretation.

The arbitrary and subjectively determined decision to exclude Ibarra's video from public view fulfills no compelling (or even rational) city interest. No one is well served by this violation of expressive freedom, certainly not the San Antonio public, which is illegitimately deprived of the

opportunity to view and evaluate artistic work for itself. This action opens the door to suppressing free speech in an arbitrary fashion, leaving decisions to the subjective opinions of city officials.

We urge the City of San Antonio to immediately allow the work to be restored to the exhibition and in the future to draft exhibition policies that are consistent with First Amendment principles. In addition, you should extend the exhibition for the amount of time that the work in it was illegally censored to rectify the harm caused by illegal censorship. Please let us know if you would like to discuss this matter further.

Sincerely,



Joy Garnett  
Arts Advocacy Program Associate  
National Coalition Against Censorship

Cc:

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