

**NATIONAL
COALITION
AGAINST
CENSORSHIP**



July 28, 2023

Mayor Amourence Lee and Board of Trustees at the San Mateo Public Library
San Mateo City Hall
330 West 20th Avenue
San Mateo, CA 94403

Sent via email to alee@cityofsanmateo.org, LibraryTrustees@cityofsanmateo.org

Dear Mayor Lee and the Board of Trustees at the San Mateo Public Library,

We write on behalf of the National Coalition Against Censorship and the American Civil Liberties Union of Northern California—nonpartisan organizations dedicated to defending freedom of speech, thought, and inquiry—to express our alarm at reports that *Out of Covid and into the Fire*, an exhibition by Diego Marcial Rios, was removed abruptly following its installation at the San Mateo City Hall Art Gallery. We are also deeply concerned that the controversy surrounding two works in the show apparently prompted the suspension of all public art displays presented by the city library’s Public Art Exhibit Program. Access to the arts—including works that spark debate—is crucial to a vibrant and democratic society. We urge the city to restore its Public Art Exhibit Program and prevent such cancellations in the future by adopting an exhibition criteria policy that explicitly protects artists’ right to explore political subject matter and engage in social commentary within publicly-funded exhibitions.

It is our understanding that Mr. Rios’s work was selected from a pool of exhibition proposals submitted to the San Mateo Library Public Art Exhibit Program. Exhibited artists are supposed to be chosen based on their artistic styles, use of various mediums, and their reflection of the San Mateo community. A California native, Mr. Rios is known for his colorful paintings that blend religious iconography with Aztec and Mayan symbolism to examine themes of social and economic justice.

Mr. Rios was invited to display twenty recent works at San Mateo’s City Hall from July 17 - August 29, 2023. Within a day of the exhibition’s installation, the artist received an email from a

city employee asking to substitute some paintings that had “caused concern” among some government workers, and which could contribute to “workplace conflict.” Before Mr. Rios was able to discuss this further with the city employee, he learned that his entire exhibition had been removed as a result of “police backlash” in response to two small paintings that address police brutality.

The City’s subsequent and sudden decision to suspend all public arts programming—not just Mr. Rios’s exhibition—appears to be in response to the controversy over the viewpoints expressed in Mr. Rios’ work. While the 2023 Exhibition Application Guidelines indicate that the City reserves the right not to show work that it deems “unsuitable,” no further details are provided as to what this might include. The government has considerable leeway in determining what arts projects to fund and display, but its First Amendment obligations explicitly prevent it from denying projects with political messages it disapproves of while permitting those it supports.

In absence of a public arts policy that defends the right of artists to engage in social and political commentary, artistic expression is vulnerable to the subjective whims and opinions of a handful of government employees.

Speech in the form of artwork that critiques government-run agencies, engages in social or political commentary, expresses controversial and provocative ideas, and stimulates debate is essential to a thriving democracy and vibrant visual culture. Such artwork is also fully protected by the First Amendment.¹ As the U.S. Supreme Court has long emphasized, “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 offensive or disagreeable.”² This is because “in public debate [we] must tolerate insulting, and even outrageous, speech in order to provide adequate ‘breathing space’ to the freedoms protected by the First Amendment.”³

For these reasons, we urge the City of San Mateo to not only reinstate its public arts programs, but to fortify them with policies that protect artists’ rights to depict controversial subject matter, free of viewpoint discrimination. Attached are NCAC’s *Guidelines for State Arts Agencies, Museums, University Galleries and Performance Spaces*, which we encourage you to draw from as you draft your policies.

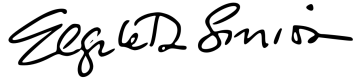
¹ *Id.* (“[T]he speech in which [the plaintiff] engaged—handing out leaflets in the advocacy of a politically controversial viewpoint—is the essence of First Amendment expression. . . . No form of speech is entitled to greater constitutional protection[.]”); see also *Snyder v. Phelps*, 562 U.S. 443, 458–59 (2011) (holding that even highly controversial speech on matters of public concern is entitled to full First Amendment protection); *id.* at 435 (“The arguably ‘inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern.’”) (quoting *Rankin v. McPherson*, 483 U.S. 378, 387 (1987)).

² *Id.* at 458 (quoting *Texas v. Johnson*, 491 U.S. 397, 414 (1989)); see also *Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017) (reiterating “bedrock First Amended principle” that “[s]peech may not be banned on the ground that it expresses ideas that offend”).

³ *Snyder*, 562 U.S. at 458 (quoting *Boos v. Barry*, 485 U.S. 312, 322 (1988)) (alteration in original).

Please contact us if we can be of any further assistance.

Sincerely,



Elizabeth Larison
Director, Arts & Culture Advocacy Program
National Coalition Against Censorship



Angélica Salceda
Director, Democracy and Civic Engagement
Program
ACLU Foundation of Northern California

cc: Lisa Diaz Nash, Deputy Mayor
Adam Loraine, City Council Member
Rob Newsom Jr., City Council Member
Rich Hedges, City Council Member
Noreen Chwee, Art Gallery Coordinator, San Mateo Public Library
San Mateo Civic City Arts Committee