



November 14, 2008

Via Electronic Mail

The Honorable Mayor Tom Bates
mayor@ci.berkeley.ca.us

Re: Addison Street Window Gallery's Rejection of Artwork from the Art for Democracy Project

Dear Mayor Bates:

I am writing on behalf of the American Civil Liberties Union of Northern California. It has come to our attention that the curator of the Addison Street Window Gallery has rejected several pieces from the Art for Democracy project, apparently based on a practice of banning from the space any depictions of firearms.¹ We are concerned that this censorship violates the principles of free speech that are fundamental to our society and to Berkeley's traditions of artistic freedom, and we urge the City to take action to prevent it from reoccurring.

According to the City's website, the Addison Street Window Gallery is a City-owned "visual art exhibition space that exhibits regular shows by local artists and art organizations."² As we understand it, the City itself has not imposed any restrictions on the types of art that can be displayed in the gallery; instead, the City has hired a private curator to determine what works will be included.

Although the curator of a government-sponsored art show necessarily exercises broad discretion in determining what will or will not be displayed, that discretion cannot be used to suppress ideas or points-of-view with which the curator disagrees.³ Furthermore, by creating the Gallery without any explicit limitations on what topics or images may be displayed, the City has designated the space as a public forum, where the First Amendment strictly limits a curator's authority to exclude art based on its content.⁴

¹ The remainder of the artists involved then withdrew in protest.

² <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=9726>

³ See *National Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998); cf. *Univ. of Cal. Nuclear Weapons Labs Conversions Project v. Lawrence Livermore Lab*, 154 Cal. App. 3d 1157, 1172 (1984).

⁴ *Hopper v. City of Pasco*, 241 F.3d 1067, 1074-75 (9th Cir. 2001) (designated public forum); *Burnham v. Ianni*, 119 F.3d 668, 676 n.12 (8th Cir. 1997).

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Banning all depictions of firearms constitutes content-based censorship. Moreover, it works to suppress the view that guns, whatever one's opinion of them, are a part of our history and our current world. The First Amendment therefore prohibits government officials from excluding images from a government-owned display case simply because they contain depictions of weapons.⁵

The proper role of firearms in our society is one that evokes strong feelings on all sides of the debate. But it is precisely the existence of this controversy that makes it crucial that the public discourse on this topic be free of censorship. The City's press release for the display of Art for Democracy promised that it would address "immigration raids, police surveillance, lost liberty, and war."⁶ To invite artists to address war, but to insist that they do so without depicting a gun, is not curatorial discretion. It is censorship. Lost liberty indeed.

We urge you to act to ensure that decisions as to what will be displayed in the Addison Street Window Gallery uphold the fundamental principles of free expression and artistic freedom.

Sincerely,



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Staff Attorney

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⁵ *Burnham*, 119 F.3d at 675-76 (holding state university official liable for censoring photographs with weapons). That children may see the art does not justify this censorship. *Hopper*, 241 F.3d at 1081.

⁶ <http://www.cityofberkeley.info/ContentDisplay.aspx?id=28090>