



December 12, 2014

President Sally Mason  
University of Iowa  
Office of the President  
101 Jessup Hall  
Iowa City, Iowa 52242

**URGENT**

*Sent via U.S. Mail and Facsimile (319-335-0807)*

Dear President Mason:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. The National Coalition Against Censorship (NCAC), founded in 1974, is an alliance of over 50 national non-profit organizations, including literary, artistic, religious, educational, professional, labor, and civil liberties groups dedicated to promoting the right to free speech.

We write to the University of Iowa (UI) today to express our concern over the threat to free speech presented by UI's censorship of a faculty member's artwork due to the offense and discomfort felt by others over its content. While UI is free to criticize the professor's work and encourage students to do so as well, the disregard for basic First Amendment principles UI has demonstrated in its response to the artwork has deeply chilling implications for the free speech rights UI is bound to protect. UI must immediately, and publicly, make clear to its students in unambiguous terms that the artwork in question is fully protected by the First Amendment.

The following is our understanding of the facts. Please inform us if you believe we are in error. Professor Serhat Tanyolacar is a visiting assistant professor and Grant Wood Fellow at UI's School of Art & Art History. His work "In Their Shoes" consists of a collage of newspaper images concerning racial violence printed onto a customized robe and hood in the style of those worn by the Ku Klux Klan. In the piece's original incarnation, Tanyolacar

himself wore the outfit outside the Holocaust Museum in Washington, D.C. and engaged with passing spectators. In other instances since then, he has displayed the costume alone. Of the work's origins and motivation, Tanyolacar writes on his website:

The case of Holocaust Museum shooting on June 10, 2009, in Washington, D.C., inspired "In Their Shoes," a performance I did in October 2010. Although my goal with this work was to raise public awareness on the rise of organized racist groups in the United States, I also realized the impact of walking as a social intervention strategy. When I interacted with the audience during my performance, I intended to signify an anti-racist ideology that was articulated by an altered historical symbolic object.

As a reaction to the protests nationwide that followed grand jury decisions in the Eric Garner and Michael Brown cases, Tanyolacar installed "In Their Shoes" on UI's Pentacrest at around 7:00 a.m. on Friday, December 5, with the intention of removing it at the end of the day. Tanyolacar remained in the vicinity of the artwork for nearly all of the roughly four hours it remained standing, and he discussed the artwork with interested students and other passersby during that time. (A digital camera was placed under the hood to record interactions, as Tanyolacar has done in other settings, but due to a malfunction it recorded no footage.) As the day progressed, "In Their Shoes" drew increasing attention from students, including several students who strongly criticized the work. According to at least one press account of the scene, a student knocked the display down as debate grew more heated. Finally, between 4:00 and 4:30 p.m., according to Tanyolacar, UI officials directed Tanyolacar to remove the display, citing the fact that had not applied for a permit to place it on the Pentacrest, as UI policy requires. Tanyolacar removed the display as directed, and a police officer escorted him to his car as he left the area.

Meanwhile, at 2:03 that afternoon, Vice President for Student Life Tom Rocklin sent the following email to UI students, faculty, and staff:

**The University of Iowa is a diverse community with no tolerance for racism, and the artwork that was briefly displayed on the Pentacrest this morning was deeply offensive to members of our community.** Because it was placed without permission, university officials directed the visiting artist who created it to remove it, which he did.

The University of Iowa considers all forms of racism abhorrent and is deeply committed to the principles of inclusion and acceptance. **There is no room for divisive, insensitive, and intolerant displays on this campus. The display was not approved by nor sanctioned by the university. The UI respects freedom of speech, but the university is also responsible for ensuring that public discourse is respectful and sensitive.**

[Emphases added.]

Then, on December 7, you sent the following email to UI students, faculty, and staff, reading in part:

Dear Members of the University Community:

**The goal of the University of Iowa, as a higher-education institution, has always been to provide an environment where all members of our campus community feel safe and today, we failed.** On the morning of December 5, 2014, a 7-foot tall Ku Klux Klan effigy with a camera affixed to the display was installed without permission on our campus. The effects of the display were felt throughout the Iowa City community. **That display immediately caused Black students and community members to feel terrorized and to fear for their safety.**

The university's response was not adequate, nor did that response occur soon enough. Our students tell us that this portrayal made them feel unwelcomed and that they lost trust in the University of Iowa. **For failing to meet our goal of providing a respectful, all-inclusive, educational environment, the university apologizes.** All of us need to work together to take preventive action and do everything we can to be sure that everyone feels welcome, respected, and protected on our campus and in our community.

[Emphases added.]

In these public statements, UI has effectively announced that Tanyolacar's artwork is not protected by the First Amendment due to the discomfort it caused to some of those who encountered it. This is unacceptable and wholly at odds with both First Amendment jurisprudence and the University of Iowa's moral and legal responsibilities to respect the First Amendment rights of its students and faculty. The level of disregard displayed by UI for Tanyolacar's expressive rights, and for First Amendment rights in general, is deeply troubling and profoundly chilling.

That the First Amendment is fully binding on public universities like UI is settled law. *See Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.”); *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

The Supreme Court has repeatedly held that speech may not be punished merely because some or even many find it to be offensive or disrespectful. *See Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“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 itself offensive or disagreeable.”); *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”); *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (“[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”). *See also Village of Skokie v. Nat’l Socialist Party of America*, 373 N.E.2d 21 (Ill. 1978) (holding that public “use of the swastika is a symbolic form of free speech entitled to first amendment protections”).

The Court’s consistent clarity places the errors of UI’s public statements in stark relief. Rocklin’s December 5 email to the campus categorically states that “[t]here is no room for divisive, insensitive, and intolerant displays on this campus.” Yet no such exceptions to the First Amendment exist. The vast majority of speech some might consider “divisive,” “insensitive,” “intolerant,” or not suitably “respectful” is without question constitutionally protected. As the Court has made clear, the protection of challenging speech is of particular importance at our nation’s public universities, because “[t]he college classroom with its surrounding environs is peculiarly the ‘marketplace of ideas.’” *Healy*, 408 U.S. at 180 (internal citation omitted). Furthermore, there is no general right to be free from speech we find offensive, even deeply so. *See Boos v. Barry*, 485 U.S. 312, 322 (1988) (“[I]n public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide ‘adequate breathing space’ to the freedoms protected by the First Amendment.”) (internal quotation marks and citation omitted).

In your own statement to the UI community, you argue that the censorship of Tanyolacar’s artwork is justified on the basis that it “immediately caused Black students and community members to feel terrorized and to fear for their safety.” But Tanyolacar’s artwork does not constitute a “true threat,” defined by the Supreme Court as “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). Tanyolacar’s artwork, offensive though it proved to be to many students, does not qualify as such a threat. Tanyolacar was present on the Pentacrest for much of the time the artwork was displayed to explain the artwork’s context and listen to students’ reactions. While some discussions were heated, at least some students came to understand his point of view after talking with him, even if they disagreed with his decision to display it. Take, for instance, these exchanges reported by the *Iowa City Press-Citizen*:

“My immediate response was that I was really upset,” [student Anthony] Johnson said. “That kind of art should not be displayed with all that is going on in the black community.”

Johnson said after he and his friends were able to pull Tanyolacar aside to discuss the sculpture, he realized that the artist's intent was to "bring light to racism" and to "show people that this stuff is going on today."

[...]

UI sophomore Anthonie Perla said the statue brought back memories of growing up in Houston when a neighbor, who belonged to the Klan, caused trouble with Perla and his father.

"I really did want to burn" the sculpture, Perla said. "But after talking to him, we see what he's trying to do."

These students, while initially hostile to the art installation, nevertheless understood the work in context and engaged in meaningful discussion about both the artwork and the message it was meant to convey. The work drew students out of their comfort zones and prompted them to engage with provocative ideas—exactly the sort of thing that Americans *expect* to occur on our nation's campuses. The fact that these UI students engaged meaningfully with the art and appreciated the nuance and meaning of the piece provides a noteworthy and disturbing contrast to the attitude of UI administrators, who have displayed no sign of either appreciation of or sophistication towards an artistic endeavor.

Yet perhaps even more concerning than UI's inexcusable disregard for context and its suggestion that Tanyolacar's artwork constituted a threat to the community is something that does *not* appear in your statement: any mention at all of Tanyolacar's First Amendment rights. This omission sends a chilling message to UI community members and badly miseducates them about the extent of their free speech rights. Implicit in UI's public statements is not only that Tanyolacar's artwork is unwelcome on the Pentacrest, but that it is unwelcome *anywhere* on the UI campus, and that the controversy it has caused places it firmly outside the protections of the First Amendment. To effectively ban Tanyolacar's artwork from display due to institutional disapproval of its content is unconstitutional. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 401 (1992) (finding that a regulation may not "regulate use based on hostility—or favoritism—towards the underlying message expressed"). Yet UI has conveyed to its more than 50,000 students, faculty, and staff and to many more beyond its campus that it is willing to do precisely that—an unacceptable abdication of its duty to uphold its community members' constitutional rights.

Finally, UI's actions betray its own fundamental ideals. The university identifies as its "basic functions" the "advancement and dissemination of knowledge, the development of critical intelligence, and the education of citizens," and hails the "atmosphere of intellectual freedom" as of paramount importance to the work of the faculty. The price of censoring faculty that seek to enlighten and challenge our students is high, and is felt far outside the university. As the Supreme Court stated in *Sweezy v. New Hampshire*, 354 U. S. 234, 250 (1957):

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. ... Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

The University of Iowa must promptly and publicly issue a statement recognizing the First Amendment rights of Professor Tanyolacar and make clear that his artwork is fully protected under the First Amendment—the same First Amendment that permits UI students to voice their own opposition to his work. Furthermore, if Tanyolacar wishes to display his “In Their Shoes” work at UI in the future, the university may not use any content- or viewpoint-based criteria to reject his application or registration to do so.

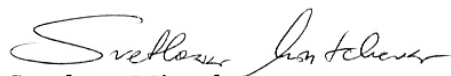
We hope that a productive dialogue among the UI community can ensue from this controversy. But dialogue is impossible when UI declares that some ideas and opinions are simply too controversial and damaging for consideration on a university campus, and that those voicing such expression should be censored in the brazen fashion witnessed here. UI owes it to the community, and not least of all to Tanyolacar, to take swift action to rectify this error in accordance with its obligations under the Constitution.

We request a response to this letter by December 23, 2014.

Sincerely,



Peter Bonilla  
Director, Individual Rights Defense Program  
Foundation for Individual Rights in Education



Svetlana Mintcheva  
Director of Programs  
National Coalition Against Censorship

cc:

P. Barry Butler, Executive Vice President and Provost  
Chaden Djalali, Dean, College of Liberal Arts & Sciences  
John B. Scott, Director, School of Art & Art History  
Tom Rocklin, Vice President for Student Life