



Foundation for Individual Rights in Education

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March 7, 2011

Martha T. Nesbitt, President
Gainesville State College
3820 Mundy Mill Rd
P.O. Box 1358
Gainesville, Georgia 30503

Sent via U.S. Mail and Facsimile (678-717-3830)

Dear President Nesbitt:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals from 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. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of expression and academic freedom caused by your removal of a painting by art professor Stanley Bermudez because of its controversial content.

The following is our understanding of the facts. Please inform us if you believe we are in error.

Gainesville State College's (GSC's) 2011 Faculty Biennial art exhibition opened on January 10, 2011, at GSC's Roy C. Moore Art Gallery. Professor Bermudez's painting "Heritage?" appeared in the exhibition. "Heritage?" features a torch-wielding member of the Ku Klux Klan and a lynching superimposed onto a Confederate flag. Bermudez's artist's statement at the exhibition stated in part:

[On] the KKK web site the rebel flag is used often. [This and other] things strengthen my negative view of the Dixie flag and the reason for this painting. This painting represents what I feel and think of when I see the flag. However, after living in Georgia for the last 4 years and talking to several people from Georgia, I have also learned that there is a strong heritage and pride associated with the flag that has nothing to do with the KKK or racism. As is the case in many of the paintings, I do like to show two sides of

the coin. I am in the process of creating an accompanying painting of a Rebel flag that shows the image in a more positive manner.

On January 25, the painting was criticized on the *Southern Heritage Alerts* blog (available at <http://shnvalerts.blogspot.com>). On the same day, you and one other GSC administrator removed “Heritage?” from the exhibition without notifying or consulting Bermudez. According to Bermudez, he learned that night from Beth Sale, Director of the Moore Gallery, that you had taken down his painting. Sale and Bermudez left the nails in place and put his artist’s statement in the space so that at a reception for the art show on January 26, the censorship would be noticeable.

On February 2, explaining your action, you stated, in relevant part:

First and foremost, I have to consider the impact of an action on the health and reputation of the institution. In this instance, I made a judgment call that the negative results would outweigh the positive ones.

You followed up this statement on February 4, stating, in relevant part:

I stand behind my original decision which was not based on any one group’s agenda, complaint, or the overall content of the painting. It focused solely on the image that has been perceived as aggressively hostile in other areas of the country and other academic institutions—that being the graphic depiction of a lynching.

That the First Amendment applies fully at public colleges such as GSC has long been settled law. As the Supreme Court famously stated, “the 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.’” *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted).

Censorship of artwork that had appeared peacefully on campus for more than two weeks is particularly threatening to the First Amendment and to academic freedom at GSC. Time and again, courts have determined that to be considered legal, restrictions on the time, place, and manner of expression must be reasonable and narrowly tailored to serve substantial governmental interests. *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). The generalized concern for order expressed in your desire to avoid the display of an “image that has been perceived as aggressively hostile” is neither specific nor substantial enough to justify censorship of such images.

This censorship of an art professor’s work tells the GSC community that certain topics and issues are simply too incendiary for civil dialogue. This notion strikes at the very heart of the academy’s mission. The Supreme Court has held that academic freedom is a “special concern of the First Amendment” and that “[o]ur nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.” *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967). Indeed, at a panel discussion on

February 16, about 250 members of the local community engaged in meaningful dialogue about Professor Bermudez's art and your censorship of it.

A democratic society cannot thrive when the authorities decide for the citizens which expression they may and may not see. Yet, FIRE has seen many cases in which the Confederate flag has unacceptably been censored on college campuses, and it is no more acceptable to censor artwork that criticizes the flag than to censor artwork that glorifies it. As the Supreme Court wrote more than sixty years ago in *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.” Please fulfill your obligations to the First Amendment and academic freedom by announcing to GSC's students and faculty that their protected expression will never again be subject to censorship.

Please spare Gainesville State College the embarrassment of fighting against the Bill of Rights. We request a response to this letter by March 21, 2011.

Sincerely,



Peter Bonilla

Assistant Director, Individual Rights Defense Program

cc:

Al Panu, Interim Vice President for Academic Affairs, Gainesville State College

Beth Sale, Director, Roy C. Moore Art Gallery, Gainesville State College

Andrew Santander, Chair, Department of Visual and Performing Arts, Gainesville State College