



FIRE

Foundation for Individual
Rights and Expression

September 15, 2023

Thomas LoBasso
President's Office
Daytona State College
1200 West International Speedway Boulevard
Daytona Beach, Florida 32114

Sent via U.S. Mail and Electronic Mail (Thomas.LoBasso@DaytonaState.edu)

Dear President LoBasso:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by Daytona State College's cancellation of an art exhibit at the Southeast Museum of Photography. We signed onto a joint letter with NCAC and the ACLU of Florida about the issue earlier this week, but write now separately to provide additional detail about FIRE's objections to the apparently viewpoint-based cancellation, and to provide additional information about DSC's binding legal obligation to uphold free expression in all forms on its campus. We urge DSC to reschedule the exhibit as soon as logistically possible and to publicly commit to delivering on its free speech obligations and commitments.²

Our concerns arise out of the reported December 2022 cancellation by DSC officials of artist Jon Henry's exhibit, "Stranger Fruit," scheduled to open on January 10.³ The exhibit included photographs of Black mothers holding their sons in a prone position similar to "Pietà"—

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² FIRE also joined other advocacy organizations to call on Daytona State College to reschedule the exhibit as soon as possible. *Free Speech Community Demands Daytona State College Reschedule "Stranger Fruit" Exhibition*, NAT'L COAL. AGAINST CENSORSHIP (Sept. 11, 2023) <https://ncac.org/news/free-speech-community-demands-daytona-state-college-reschedule-stranger-fruit-exhibition>.

³ Mark Harper, *Water damage or politics? Artists questions why provocative exhibit was canceled by DSC*, DAYTONA BEACH NEWS-JOURNAL, Aug. 31, 2022, <https://www.news-journalonline.com/restricted/?return=https%3A%2F%2Fwww.news-journalonline.com%2Fstory%2Fnews%2Feducation%2Fcampus%2F2023%2F08%2F31%2Fwhy-did-daytona-state-college-abruptly-cancel-artists-photo-exhibit%2F70619233007%2F>. The recitation here reflects our understanding of the pertinent facts, which is based on public information. We appreciate that you may have additional information to offer and invite you to share it with us.

Michelangelo’s sculpture of Mary holding Jesus after his crucifixion—as a reflection on police killings of Black men.⁴ School officials told Henry an HVAC unit leaked and caused damage inside the museum, necessitating the exhibit’s cancellation.⁵ But public reporting suggests the explanation was pretextual, and the college instead canceled the exhibit because it “did not align with the school’s values” and could “call negative attention to the college,” specifically, DSC’s police training program.⁶ That reporting also indicated the museum cancelled after receiving and reviewing the exhibit, and declined to offer an alternative arrangement for the display inside the museum or to schedule a postponement or an abridgement of the exhibit limited to accommodating repairs to the museum.

As a government actor bound by the First Amendment,⁷ DSC may not censor artistic expression on campus based on administrator concerns about the viewpoint(s) conveyed. It is a “bedrock principle underlying the First Amendment . . . that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”⁸ This protection extends to artistic expression, especially where it sends a political message or touches upon other matters of public concern.⁹ That is because “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.’”¹⁰ Likewise, the Supreme Court has repeatedly, consistently, and clearly held government actors may not restrict expression on the basis that others find it to be offensive.¹¹

These principles apply with particular strength to college campuses, which are, by their nature, dedicated to open debate and discussion. To censor this exhibit for its views concerning police violence represents impermissible viewpoint-based discrimination, which the Supreme Court

⁴ Elaine Velie, *Florida School of Accused of Censoring Show About Police Violence—and Lying About It*, HYPERALLERGIC, Aug. 21, 2023, <https://hyperallergic.com/840302/florida-school-accused-of-censoring-jon-henry-show-about-police-violence-and-lying-about-it/>.

⁵ Harper, *supra* note 3.

⁶ Velie, *supra* note 4.

⁷ It has long been settled law that the First Amendment is binding on public universities. *See, e.g., 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).

⁸ *See, e.g., Texas v. Johnson*, 491 U.S. 397, 414 (1989).

⁹ *Id.* at 404 (holding freedom of expression “does not end at the spoken or written word,” but also extends to artistic expression “intend[ed] to convey a particularized message” that is likely to “be understood by those who viewed it.”).

¹⁰ *Papish v. Bd. of Curators v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

¹¹ Take for example the arrest of a man for wearing inside a Los Angeles courthouse a jacket bearing the phrase “Fuck the Draft,” which the Court held was unconstitutional, writing that while the language on the jacket may have been “distasteful,” “one man’s vulgarity is another man’s lyric.” *Cohen v. California*, 403 U.S. 15, 25 (1971). And in holding the First Amendment protects protesters holding insulting signs outside of soldiers’ funerals, the Court reiterated this fundamental principle, remarking that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.” *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

has called an “egregious” act of “censorship in its purest form.”¹² For the university “to cast disapproval on particular viewpoints” on campus “risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses.”¹³ While DSC may advocate its own values and beliefs on contested social issues, it cannot restrict expression based on its viewpoint.

Artistic exhibits in particular are integral to the intellectual life of any campus, and colleges should encourage—not censor—opportunities for students to engage with a wide range of artistic expression. Those who dislike certain art, the Supreme Court has noted, are free to “avert their eyes.”¹⁴ DSC administrators accordingly may not censor campus expression—including art—simply because some dislike the artist’s perceived message.

We request a substantive response to this letter no later than the close of business on Friday, September 29, confirming DSC will publicly commit to upholding free expression on campus, refuse to engage in viewpoint-based censorship in the future, and reschedule the exhibit as soon possible.

Sincerely,



Graham Piro
Program Officer, Campus Rights Advocacy

Cc: Rigo Rincones, Vice President, Academic Affairs
Southeast Museum of Photography, Daytona State College
Rodnie Marquinez, General Counsel

¹² *Rosenberger v. Rectors of the Univ. of Va.*, 515 U.S. 819, 836 (1995).

¹³ *Id.*

¹⁴ *Cohen*, 403 U.S. at 21.