



VIA EMAIL AND CERTIFIED MAIL

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To the City of Dayton:

This week, the City of Dayton prematurely removed a student artwork display at the Dayton Convention Center because some viewers were uncomfortable with the artwork's message: a celebration of African American history. Viewpoint-based government censorship of speech, and government endorsement of the views of certain groups over others, are among the most fundamental evils the First Amendment is designed to prevent. We write to inform you that your actions were unconstitutional. We urge you to issue a public apology and a statement acknowledging your First Amendment obligations to these students and to the public.

According to recent news coverage, the City invited ninth grade students to display their artwork at the Convention Center. The artwork celebrated Black history and offered an examination of historic Black oppression including police brutality. Just two days after inviting this display, and after some viewers happened to dislike the artwork's content, the City ordered the artwork down. In making "the decision to remove the artwork," City officials cited the reasons for removal were both the attitudes of the complainants, and "the political nature" of the art.¹

¹ Maytal Levi, City of Dayton asks STEM students to remove artwork, 2 Dayton News (May 4, 2016, 10:25 AM) <http://wdr.com/2016/05/03/city-of-dayton-asks-stem-students-to-remove-artwork/>

As you know, political speech and artwork are at the core of First Amendment expression, and are entitled to the strictest constitutional protection.² And as the U.S. Supreme Court held many years ago, "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."³

The City of Dayton may not remove these students' speech on the basis that some viewers do not like it, or because of its "political nature." But removing these students' artwork display is not only unconstitutional. It sends the message to these young people that their speech is less important than the attitudes of others who may not like it. Worse yet, it sends the clear message that the City of Dayton will subordinate the celebration of African American history to the attitudes of those who feel challenged by it.

We urge the City to publically reform its position. The First Amendment does not permit the state to pick and choose the content of political expression displayed in the public square.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'F' followed by a horizontal line extending to the right.

Freda J. Levenson
Legal Director, ACLU of Ohio

² See, e.g., *Schad v. Mount Ephraim*, 452 U.S. 61, 65 (1981) (recognizing "entertainment" and art is protected similarly to "political and ideological speech"); *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557 (1975) (recognizing theatre performance as protected speech); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 502 (1952) (recognizing film as protected speech); *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 569 (1995) (recognizing visual art as protected speech).

³ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (citing, *inter alia*, *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 54-44 (1988); *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984); *FCC v. Pacifica Foundation*, 438 U.S. 455, 462-3 (1978)).