



January 19, 2024

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Sent via U.S. Mail and Electronic Mail (iupres@iu.edu)

Dear President Whitten:

FIRE¹ is deeply concerned that Indiana University reportedly cancelled Palestinian artist Samia Halaby's exhibition at IU's Eskenazi Museum of Art because of her political views.² While Halaby's activism in opposition to Israel's actions in Gaza may be controversial, canceling her exhibit because of that expression violates IU's binding First Amendment obligations as a public institution to refrain from viewpoint discrimination. The cancellation also diminishes the "environment of free expression" IU promises students and faculty, which necessarily includes welcoming "a variety of different perspectives and viewpoints," to campus.³ We urge IU to reschedule the exhibit as soon as logistically possible and to publicly recommit to upholding its constitutional obligations.

Our concerns center on Halaby's planned exhibit, a retrospective titled "Centers of Energy," that IU had scheduled to open at the museum February 10,⁴ to include, among other works, a previously unseen piece of Halaby's called "Worldwide Intifada."⁵ However, Museum Director

¹ As you may recall from prior correspondence, the Foundation for Individual Rights and Expression defends freedom of expression, conscience, and religion, and other individual rights on America's university campuses. You can learn more about our expanded mission and activities at www.thefire.org.

² The recitation here reflects our understanding of the pertinent facts, which is based on publicly available information. We appreciate you may have additional information to offer and invite you to share it with us.

³ *Free Speech*, Preserving an environment of free speech, IND. UNIV. <https://freespeech.iu.edu> [<https://perma.cc/F4LY-58KG>].

⁴ Elaine Velie, *Indiana University Cancels Palestinian Artist Samia Halaby's Exhibition*, HYPERALLERGIC (Jan. 10, 2024) <https://hyperallergic.com/865825/indiana-university-cancels-palestinian-artist-samia-halaby-exhibition>.

⁵ Zachary Small, *Indiana University Cancels Major Exhibition of Palestinian Artist*, N.Y. TIMES (Jan. 11, 2024), <https://www.nytimes.com/2024/01/11/arts/design/indiana-university-samia-halaby-exhibition-canceled.html>.

David Brenneman told Halaby in an early December phone call that some museum employees had expressed concerns about Halaby’s social media activity, which has included frequent posts expressing support for Gazan civilians and comparing Israel’s actions in Gaza to Nazi concentration camps.⁶ In a subsequent two-sentence note sent to Halaby on December 20, Brenneman said IU had cancelled the exhibit and did not provide any further explanation.⁷

The cancellation occurred despite the fact agreements had *already* been signed with grant-making foundations and museums that had sent artwork to IU for the exhibit.⁸ An IU spokesman said “academic leaders and campus officials canceled the exhibit” based on asserted “concerns about guaranteeing the integrity of the exhibit for its duration.”⁹ IU has not, however, cited any threats against the exhibit, suggesting a cancellation for alleged safety reasons was unwarranted.

As a government actor bound by the First Amendment,¹⁰ IU may not censor artistic expression on campus based on concerns—actual or perceived—over viewpoints expressed by the artist. 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.”¹¹ This principle applies with particular strength to public universities like IU, dedicated by their fundamental nature to free inquiry, intellectual debate, and creative discovery.

To cancel Halaby’s exhibit for views she has expressed on social media concerning Israel suggests impermissible viewpoint-based discrimination, which the Supreme Court 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 Courts have held public authorities cannot remove or censor expressive works based on viewpoint or exclude disfavored viewpoints in furtherance of the officials’ own views.¹⁴ Thus, while IU retains the authority to curate what it presents in its museums, it cannot exclude works based on an artist’s viewpoint.

⁶ See, e.g., Samia Halaby (@samiahalaby), INSTAGRAM (Nov. 10, 2023), <https://www.instagram.com/p/Czff2MYs3j5/?hl=en> [<https://perma.cc/72S8-U7LG>].

⁷ Small, *supra* note 5.

⁸ *Id.*

⁹ *Id.*

¹⁰ *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).

¹¹ See, e.g., *Texas v. Johnson*, 491 U.S. 397, 414 (1989). This protection extends to artistic expression, especially where it sends a political message or touches upon other matters of public concern. *Id.* at 404 (holding freedom of expression “does not end at the spoken or written word”).

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

¹³ *Id.*

¹⁴ Courts have held that even in circumstances where expressive works are presented by or at public facilities or institutions, the First Amendment still restricts government actors in how they can treat the works based

If IU has genuine concerns about ensuring “the integrity of the exhibit for its duration,” it should detail them and explain why the university is unable to sufficiently address them. Simply put, if an exhibit is targeted by those seeking to compromise its “integrity,” universities must respond not by canceling or otherwise hamstringing the exhibit—rather, they must undertake “bona fide efforts” to protect the free speech rights of the artist, organizer, and prospective patrons “by other, less restrictive means.”¹⁵ Efforts short of that effectuate a “heckler’s veto.”¹⁶ Further, censoring art exhibits in response to vague, unsubstantiated concerns also incentivizes the use of threats to exhibits to shut down future events.

Artistic exhibits in particular are integral to the intellectual life of any campus, and universities should encourage—not suppress—opportunities for faculty and students to engage with a wide range of artistic expression. Those who dislike given works of art, the Supreme Court has noted, are free to “avert their eyes.”¹⁷ But IU administrators may not censor expression based simply on views the artist has expressed elsewhere. And it certainly cannot censor art because some may find the work offensive.

We request a substantive response to this letter no later than close of business Friday, February 2, confirming IU will reschedule Halaby’s “Centers of Energy” exhibit and refrain from censoring expression on the basis of artists’ viewpoints in the future.

Sincerely,



Graham Piro
Program Officer, Campus Rights Advocacy

on viewpoint. *See, e.g., Piarowski v. Ill. Cmty. Coll. Dist.* 515, 759 F.2d 625, 628-29 (7th Cir. 1985) (holding a public college did not violate an employee’s First Amendment rights when they merely moved his controversial installation to a less prominent area rather than suppressing it, in part, because the college had more control over the actions of employees; conversely, when a public college opens an art gallery “to the public to use as a place for expression” it cannot regulate that expression “anyway it please[s] just because the gallery [is] its property”), *Sefick v. City of Chi.*, 485 F.Supp. 644, 653 (N.D. Ill. 1979) (once Chicago city officials permitted display of an artist’s sculptures at a public civic center, they became bound by the First Amendment, such that revoking permission for a specific sculpture based on the officials’ objection to its social and political nature violated the artist’s First Amendment rights); *Hopper v. City of Pasco*, 241 F.3d 1067, 1082 (9th Cir. 2001) (removal of art from exhibition space in City Hall constituted “violation of the artists’ First Amendment rights”); *Cf. Bd. Of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982) (plurality op.) (in holding a school board may not exercise its discretion over which books to include in school libraries in an overly partisan or political manner, the Supreme Court noted schools cannot seek the removal of books “to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion”) (internal quotations and citation omitted); *compare Serra v. U.S. Gen. Servs. Admin.*, 847 F.2d 1045, 1050 (2d Cir. 1988) (a governmental decision to remove a commissioned piece of art for aesthetic reasons from federal property was permissible but could not serve to “camouflage an impermissible condemnation of political viewpoint”).

¹⁵ *Bible Believers v. Wayne Cnty.*, 805 F.2d 228, 255 (6th Cir. 2018) (en banc).

¹⁶ A heckler’s veto occurs where government actors burden expression based on the anticipated (or actual) audience reaction. *See, e.g., Zach Greenberg, Rejecting the ‘heckler’s veto,’ FIRE* (June 14, 2017), <https://www.thefire.org/news/rejecting-hecklers-veto>.

¹⁷ *Cohen v. California*, 403 U.S. 15, 21 (1971).