

National
Coalition
Against
Censorship

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**NCAC PARTICIPATING
ORGANIZATIONS**

Actors' Equity Association
American Association of
School Administrators (The School
Superintendents Association)
American Association of
University Professors
American Association of
University Women
American Booksellers for Free Expression
American Civil Liberties Union
American Ethical Union
American Federation of Teachers
American Jewish Committee
American Library Association
American Literary Translators Association
American Orthopsychiatric Association (Global
Alliance for Behavioral Health and Social
Justice)
American Society of Journalists & Authors
Americans United for Separation of
Church & State
Association of American Publishers
Authors Guild
Catholics for Choice
Children's Literature Association
College Art Association
Comic Book Legal Defense Fund
The Creative Coalition
Directors Guild of America
The Dramatists Guild of America
Dramatists Legal Defense Fund
Educational Book & Media Association
First Amendment Lawyers Association
Free Speech Coalition
International Literacy Association
Lambda Legal
Modern Language Association
National Center for Science Education
National Communication Association
National Council for the Social Studies
National Council of the Churches (of Christ in
the USA)
National Council of Jewish Women
National Council of Teachers of English
National Education Association
National Youth Rights Association
The Newspaper Guild/CWA
PEN American Center (PEN America)
People For the American Way
Planned Parenthood Federation
of America
Project Censored
SAG-AFTRA
Sexuality Information & Education Council of
the U.S.
Society of Children's Book Writers
& Illustrators
Speech Communication Association
Student Press Law Center
Union for Reform Judaism
Union of Democratic Intellectuals
Unitarian Universalist Association
United Church of Christ
Office of Communication
United Methodist Church,
United Methodist Communications
Women's American ORT
Woodhull Freedom Foundation
Writers Guild of America, East
Writers Guild of America, West

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December 20, 2018

Dear President Walcott,

As a national organization dedicated to promoting free speech, including freedom of artistic expression, we are very concerned by the last minute cancellation of an exhibition of photographs at the Queens Library's Flushing branch. The show's cancellation is likely to be a violation of the artist's constitutional rights, and we urge you to restore the exhibition in the first three months of 2019 on dates that are mutually agreeable to both the library and the artist.

It is our understanding that three weeks after the library approved Drew Kerr's exhibition *Faces of The 7 Train* for display, and one week before it was scheduled to open, the library cancelled the show. An email message from the library's Deputy General Counsel Sara Hausner-Levine, states: "We don't feel comfortable moving forward with this exhibit, as there are serious concerns regarding possible privacy and IP infringement." The exhibition consists of 32 black-and-white photographs that the artist shot of passengers on the 7 train over the course of six years.

Surreptitiously taken portraits of passersby on the street or riders on the subway occupy an important place in the genre of street photography. Celebrated series of New York City subway portraiture produced respectively by Walker Evans and Helen Levitt are well-known, as are more contemporary works by Philip-Lorca DiCorcia and photojournalists for whom reportage often straddles artistic genres. Many of these works are highly regarded, collected by museums such as New York's MoMA.

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Several court rulings uphold that art photographers' right to free expression includes the right to take surreptitious images for artistic purposes whenever the subjects are visible in a public space. In [*Nussenzweig v. DiCorcia*](#), 2006 NY Slip Op 50171(U), the New York Supreme Court ruled that an artist could exhibit, publish, and sell street photography without the consent of the subjects of those photographs. In 2015, a New York Appellate Division decision went even further and affirmed New York photographer Arne Svenson's expressive right over the right to privacy in a case involving photographs of people in their own home surreptitiously taken through a window ([*Martha Foster et al. v. Arne Svenson*](#), 2015 NY Slip Op 03068).

Queens Library administrators were, however, uncomfortable with the conventions of urban street photography. In a phone conversation with the Deputy General Counsel, we learned that the reason for cancelling the exhibition is concern that displaying these portraits on library premises would expose unsuspecting citizens who ride the 7 train to law-enforcement officials and agencies such as ICE.

By cancelling Kerr's show, Queens Library is suppressing public access to artwork that is fully protected under the Constitution on purely subjective grounds. There is no reasonable state interest that this suppression serves. While we appreciate the effort of the General Deputy Counsel to protect all Queens residents, including undocumented immigrants, it is confounding how anonymous portraits of 7 train commuters, taken over a long period of time, could put them at risk.

As public institutions, libraries are bound by the same First Amendment principles as public universities and other public cultural institutions. A library can decide whether to invite an artist to present their work or not, but once they have done so, library administrators cannot cancel a show for subjective reasons related to viewpoint. While the Deputy General Counsel appears to take the view that the appropriateness of artwork is to be decided solely by whomever is in charge of the venue, our courts have time and again reaffirmed that those administering public venues cannot impose their subjective viewpoints to exclude work they do not like.

As an organization dedicated to promoting freedom of expression, NCAC routinely advises public institutions that are in the process of developing policies and best practices to ensure they are in keeping with First Amendment principles, and we are happy to assist the Queens Library in drafting clear and practical procedures for exhibiting artwork in its designated exhibition spaces. One of our partner organizations, the American Library Association, offers *Visual and Performing Arts in Libraries: an Interpretation of the Library Bill of Rights*, which can be found here:

<http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/arts>

In the meantime, we urge Queens Library to reschedule the exhibition to its Flushing branch calendar in the first three months of 2019 on dates that are agreeable to both the library and the artist. We request your response by Friday, December 28th.

Sincerely,



Joy Garnett
Arts Advocacy Program Associate
National Coalition Against Censorship

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Cc:

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