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Removing On-Campus Artwork in Wake of Sexual Misconduct Allegations

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The #MeToo movement has sparked a dialogue about sexual harassment and sexual misconduct that has had far reaching, and at times unexpected ramifications. For example, in December, the Metropolitan Museum of Art (the Met) in New York was presented with a petition (now with over 11,000 signatures) to remove a Balthus painting of a preteen girl in a suggestive pose from display. The Met declined, citing the work as an “opportunity for conversation.” Meanwhile in January, JW Waterhouse’s work, “Hylas and the Nymphs,” was temporarily removed from Manchester Art Gallery as part of a performance piece by Sonia Boyce. In connection with the removal, visitors were invited to post notes about the gallery’s decision to remove the work in the location where the painting once hung. The comments that poured into the gallery ranged from criticism of the gesture to celebration of the critical lens with which the public was invited to engage with the work.

While the subject matter of art has long been the focus of controversy, institutions of education are currently



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struggling with a new concern. This time, the controversy is related not to the subject matter of the work of art, but rather the propriety of displaying works of art by artists that have been accused of sexual harassment and sexual misconduct. In December, this issue came to light in connection with the artwork of American portraitist Chuck Close who was recently accused of sexual harassment by several women. Two schools displaying Close’s artwork took immediate action. In January, Seattle University in Washington made the decision to remove a prominently displayed self-portrait of the artist from the school library. Locally, at the Pennsylvania Academy of Fine Arts (PAFA), there was some discussion about cancelling a retrospective of Close’s photography.

PAFA decided to continue the exhibition, but modify it to broaden the message of the show.

LEGAL BACKGROUND

Institutions of higher education are not newcomers to challenging issues raised by art on campus. In 2014, as part of her undergraduate visual art thesis at Columbia University, Emma Sulkowicz designed a performance piece called “Mattress Performance (Carry That Weight),” which was intended to criticize Columbia’s handling of her Title IX complaint. As part of the performance, Sulkowicz carried a twin extra-long mattress (representative of the campus dorm mattress where the alleged assault occurred) with her everywhere that she went on campus while her alleged aggressor remained a student at Columbia. The male student identified as Sulkowicz’s aggressor denied the allegations. He later sued Columbia (though not Sulkowicz individually) for the way he was treated on campus as a result of Sulkowicz’s Title IX complaint, and the media attention and fallout caused by Sulkowicz’s highly visible and publicized thesis in *Nungesser v. Columbia University*, 244 F. Supp. 3d 345 (S.D.N.Y. 2017). As part of

the lawsuit, the plaintiff claimed that Sulkowicz's school sanctioned the thesis and the negative atmosphere it created for him on campus constituted gender-based harassment and defamation in violation of Title IX. Ultimately, the district court dismissed the plaintiff's second amended complaint with prejudice. Before an appeal was taken, the plaintiff and Columbia settled.

Times have changed. The landscape of Title IX enforcement is now in flux. Secretary of Education Betsy DeVos indicated that one reason the Trump administration rescinded previous Title IX guidance was because of its perceived overreach with respect to students accused of sexual misconduct. However, schools nationwide continue to take a more forward looking approach to questions of sexual harassment or sexual misconduct on campus. The actions of Seattle University and PAFA in connection with the allegations against Close demonstrate that schools must constantly re-examine their obligations, legal and otherwise to their diverse community members.

Accordingly, the short-term questions become, should schools remove works of art by artists that are accused of sexual misconduct from public display? If they do not remove the works, should they add additional explanation or material to a wall label to explain the controversy surrounding the creator of the work? There is no "right" answer for every institution, but schools should consider the following issues before making an informed decision.

HOW WAS THE ARTWORK ACQUIRED BY THE SCHOOL?

• A Gift

Many works of art find their way into a school's collection by virtue of a charitable gift. The gift will often be made with the expectation of a tax deduction. The donor may also require that the work be prominently displayed or installed on campus for students to use in connection with their studies. Donors may try to negotiate for particulars they would like, such as specific acknowledgement language on a wall label. Where the donor is also the copyright holder of the work, there is frequently discussion regarding how the work may be reproduced. The final negotiated terms are memorialized in a donor gift agreement.

On the other hand, some schools prefer more flexibility in choosing to display a gifted artwork. They will often request the donor give a sum of money to the school to cover the costs associated with caring for the artwork. There should also be some discussion of what will happen should the school need to remove the work from display for any reason (i.e., if wall space is needed to display something else, or if the school determines the work is no longer appropriate for display). Many school gift acceptance policies will contain guidelines for appropriately accepting artwork, and will outline how and if the work can be removed or disposed of by the school.

Before removing a gifted work from public display, a school should determine whether the relevant donor gift agreement contains any restrictions on how and where the work must be

displayed on campus. Removing the work and placing it in storage may breach the gift agreement. Trying to give the work back to the donor is not always a workable solution because it could implicate the donor's tax deduction, or may require that the school return any preservation funds given in connection with the work. For example, it has been reported that the Close self-portrait at Seattle University was donated to the school, and is one of the most important works in the school's collection, valued at \$35,000. Depending on the terms of the donor gift agreement (if there is one) there is always the possibility that the donor of the Close work will be in touch with the school to express displeasure or concern. A well drafted gift acceptance policy that contemplates these issues before they arise is helpful, and may provide additional guidance if a donor gift agreement is silent.

• Loaned as Part of an Exhibition

Sometimes artwork will be loaned to a school as part of a traveling exhibition, or may be loaned to the school in anticipation of a future charitable gift. If the work is part of a traveling exhibition, these exhibition schedules are typically set years in advance. Cancelling an exhibition on short notice, or returning an individual work to the lender may not be feasible. When the National Gallery of Art announced that it would be postponing a forthcoming exhibition of Close's work (as well as an exhibition of the work of Thomas Roma—a photographer and professor at Columbia who retired amid accusations of sexual misconduct by several students), it made

waves as the first time in history that the National Gallery had postponed exhibitions because of sexual misconduct allegations against the featured artists. It still has not identified what will replace the forthcoming shows. If it takes the National Gallery of Art time to identify a replacement, it will likely prove challenging for most schools.

SHOULD THE COMMUNITY BE CONSULTED?

School community members may have conflicting views as to whether a work of art by a controversial figure should remain on display. Removing a work may offend some who would wish to confront the controversy of the work through an explanatory wall label, catalog or interpreting text. On the other hand, leaving the work on display without acknowledging its controversy may alienate other community members. Re-contextualizing the work at all may offend others who wish to focus on the aesthetic qualities of the work separate from an explanation of the alleged personal misconduct of the artist.

The Close photography exhibition at PAFA raises the question of whether the community should be consulted when considering whether a work of art should be removed from public display. PAFA is widely celebrated as the oldest art school in the United States with many notable graduates including Thomas Eakins, Mary Cassatt and Henry Ossawa Tanner. On the other hand, PAFA is also a museum that collects and displays works from important American artists. Its two hats closely inform one another—faculty and students frequently look

to the museum collection to enhance their training and study. However, museums are not always schools, and schools are not usually museums (though some may be affiliated with accredited and unaccredited galleries or museums alike). While there is some overlap in terms of educational mission, schools and museums do not always have the same institutional concerns, culture, oversight and obligations (legal, ethical, or otherwise).

In deciding what to do, PAFA thoughtfully embraced its dual role, and opened the question to their community via public forum. Unsurprisingly, the attendees of the forum came out on both sides—complete removal, and continued display. Considering both views, PAFA kept the Close exhibition, but added additional works from PAFA's permanent collection as additional context. Titled, "The Art World We Want," the additional exhibition is meant to spur dialogue about gender, power and politics in the workplace in the art world.

CONCLUSION

It may not always be feasible for schools to consult every trustee, student, stakeholder, art historian, donor or subject matter expert to determine whether a work of art must be or should be removed from campus display. However, a school must know and understand some of the potential repercussions before deciding what to do to avoid unanticipated legal consequences. Public attitudes about accusations of sexual harassment and misconduct against prominent figures are changing. Behavior that was once tolerated as an open secret devoid of

consequences is now being exposed across industries. Schools are often at the center of this dialogue—both as drivers of change, and as the subject of complaint under Title IX. The conversation is not going away anytime soon, and schools should have an action plan in place should they face the difficult question of whether they should remove a work of art from display on campus based on the potentially negative implications of the work or the artist behind it.

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