

New York's Mayor Giuliani and the Brooklyn Museum reach a settlement

Alan Whyte
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New York City's Mayor Rudolph W. Giuliani and the Brooklyn Museum of Art reached an out-of-court settlement Monday ending the city's attempt to cut off all of its funding to the institution. The museum, for its part, withdrew its lawsuit charging the city with violating its freedom of expression as guaranteed by the First Amendment to the Constitution.

The legal battle in Brooklyn's Federal District Court resulted from the mayor's attempt to shut down the museum because of objections to an art exhibit last fall entitled "Sensation," a collection of works produced by British artists. Giuliani condemned the show as "anti-Catholic," pornographic and sacrilegious. The exhibit ran from October 2 to January 9.

Under the conditions of the settlement, the city administration agreed to restore its monthly payments to the museum and to halt its attempt to evict the museum from the city-owned building and its efforts to remove the institution's board of trustees. The city contributes about one third of the Brooklyn Museum's annual \$24 million operating budget.

The city also agreed to pay the \$5.8 million that it had already consented to spend to rehabilitate the foyer, although this is less than the \$11 million that the museum had sought. Each side agreed to pay its own legal fees. The museum had originally wanted the city to cover its legal expenses estimated to be around \$1 million.

The settlement also guarantees that the Brooklyn Museum will not be treated any differently than any other museum receiving money from the city. In other words, if the city decides to cut funding to the arts, it cannot reduce its contribution to the Brooklyn Museum by a larger amount than it does to any other museum. This leaves open the real possibility that future exhibits felt to be objectionable will result in across-the-board cuts to all the cultural institutions that receive public funding. This agreement is binding until Giuliani leaves office.

The mayor may have known that his attempt to destroy a museum that has been in existence for approximately 150 years would fail in court. This administration has become notorious for provoking and then losing First Amendment cases. In another case that was heard recently in the US Court of Appeals for the Second Circuit in Manhattan, Judge Guido Calabresi made note of the fact that courts had ruled 17 times in the last four years of the Giuliani administration that the city violated the constitutionally guaranteed rights of freedom of expression of the grieving parties.

By the settlement Giuliani has been saved from undergoing a public deposition in the middle of a close electoral contest with Hillary Rodham Clinton for the United States Senate. While the mayor has undoubtedly used this case to help solidify his credentials with the right wing in the Republican Party and conservatives, it has also produced a popular backlash against him.

In addition to the large number of people who went to see "Sensation," in part as a form of political protest against the mayor's attack on the freedom of the arts, polls showed that the majority defended the museum's right to show the exhibit. For example, a poll conducted by the *New York Daily News* showed that 60 percent of all New Yorkers, including 48 percent of Catholics, opposed the mayor's stand.

The legal outcome of the "Sensation" case is clearly preferable to its opposite, but there is no cause for complacency. Few individuals and institutions have the resources to combat the mayor of New York in the courts. The affair has already no doubt had a chilling effect on the willingness of museums to mount "controversial" shows.

Giuliani has set a precedent in New York City, one of the art capitals of the world. The mayor has not backed down from his bullying and attacks on democratic rights. On the contrary, he has stepped them up, as his illegal

intervention in the Patrick Dorismond killing and his criticism of the Hans Haacke exhibit at the Whitney Museum have demonstrated.

This increased aggressiveness has been made possible in part by the other element of the “Sensation” affair that was so telling: the refusal of the liberal cultural establishment to take any principled stand in defense of artistic freedom.

It should be recalled that a concerted effort was made by officials at the Brooklyn Museum to reach a compromise agreement with Giuliani. The museum's chairman of the board offered to remove Chris Ofili's offending painting, segregate five or six other works and accept a 20 percent reduction in the city's subsidy to the museum during the run of the show. The negotiations only broke down when city officials revealed to the press the existence of the talks and the proposed surrender.

The response by the city's museums was belated and extremely weak. The *New York Times*' art critic Michael Kimmelman disclosed that private email between museum officials “reveals a mixture of timidity and confusion ... along with the desperate hope that the affair would blow over.”

Philippe de Montebello, director of the Metropolitan Museum of Art, intervened in the controversy with an obsequious *Times* article in which he mildly criticized the mayor for “his effort at censorship,” but praised his “astute critical acumen” and his “aesthetic sensibilities” in opposing the Brooklyn Museum's exhibit.

Hillary Clinton, Giuliani's opponent in the Senate race in New York, described the mayor's action as a “very wrong response,” then declared, “I share the feeling that I know many New Yorkers have that there are parts of this exhibition that would be deeply offensive. I would not go see the exhibition.”

Clearly, none of the dangers posed by Giuliani's attack on the Brooklyn Museum have disappeared.



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