

= Mirth & Girth =

Mirth & Girth is a posthumous portrait painting by School of the Art Institute of Chicago (SAIC) student David K. Nelson , Jr . , depicting the recently deceased , popular African @-@ American mayor of Chicago , Harold Washington wearing only a bra , G @-@ string , garter belt and stockings . After a brief showing at a May 11 , 1988 private student exhibition in the Art Institute , angry African @-@ American aldermen , including Ald . Allan Streeter , Ald . Bobby Rush and Ald . Dorothy Tillman , arrived with Chicago Police Department officers and confiscated the painting , triggering a First Amendment and race relations crisis and a civil lawsuit .

Free @-@ speech advocates condemned the seizure of the painting , while the aldermen maintained that the painting was an insult to Washington and should have been taken down . Some students at the SAIC showed their support for free speech by holding rallies in front of the school and at the Richard J. Daley Plaza , while other students criticized Nelson for poor timing in showing a racially insensitive image .

At some point between when the painting was confiscated and when it was returned , a 5 @-@ inch (13 cm) gash was made on the canvas . Nelson filed and later won a federal lawsuit against the city , claiming that the painting 's confiscation and subsequent damaging violated his First Amendment rights . He and the American Civil Liberties Union (ACLU) settled with the city for \$ 95 @,@ 000 (1994 ; \$ 138 @,@ 000 in 2008) in compensation for the damaged painting after the United States Court of Appeals for the Seventh Circuit upheld the lower court 's decision .

= = Background = =

= = = Harold Washington = = =

Harold Washington , the subject of the portrait , was elected in 1965 to the Illinois House of Representatives . After the death of Richard J. Daley in late 1976 , Washington won Chicago 's 1983 Democratic mayoral primary election . He was elected mayor , prevailing over Bernard Epton in a racially polarizing general election . His first four @-@ year term was characterized by the Council Wars , a period of political conflict with the mostly white aldermanic majority in City Council . Seven Washington @-@ backed aldermanic challengers prevailed in the April , 1986 special municipal election , facilitating progress with Washington 's agenda . Washington died suddenly of a heart attack in his office . His death was followed by a period of mourning by Chicagoans , particularly in the African @-@ American community .

= = = Creation of painting = = =

Shortly after Washington 's death , Nelson (who is white) painted Mirth & Girth , a " full @-@ length frontal portrait of a portly grim @-@ faced Harold Washington clad in a white bra and G @-@ string , garter belt , and stockings " . The painting was approximately 4 feet (122 cm) tall by 3 feet (91 cm) wide . In the portrait , Washington is holding a pencil in his right hand . His aide , Alton Miller , initially mistook Washington 's slumping over his desk as an attempt to pick up a pencil that had fallen onto the floor . The title of the piece is believed to have been derived from the name of an organization for overweight gay men , " Girth and Mirth " .

In an interview with the Chicago Sun @-@ Times , Nelson stated that he had painted Mirth & Girth over the course of one night , standing in his underwear . He said that he had painted it in response to how the city populace revered Washington shortly after his death . Nelson stated , " (i) n Chicago , at this time , Harold Washington is like an icon . He 's like a deity . " In particular , Nelson painted the portrait after seeing prints of " Worry Ye Not " , another poster that depicted a smiling Washington with a blue @-@ robe adorned Jesus Christ , looking down on the Chicago skyline . Nelson later testified that he had based the iconoclastic elements of the painting on a rumor that doctors at Northwestern Memorial Hospital had discovered female underwear beneath the suit

Washington was wearing at the time of his death . Three weeks after the controversy erupted , in an interview with the New Art Examiner , Nelson explained that the portrait referenced an existing photograph of Washington holding a cigarette prop at an American Cancer Society event .

The caricature was not Nelson 's first . He had drawn a portrait of his mother as " Whistler 's Mother " for Mother 's Day . Nelson had also drawn a caricature of his father as the model depicted on boxes of Cream of Wheat . Nelson explained , " (t) his kind of irreverence and iconoclasm runs through all my artwork " . In an April Fools ' Day edition of a Weekly World News parody produced by Nelson , he illustrated SAIC president Edward Jones as an infant in the arms of a bare @-@ breasted Madonna .

= = Display and confiscation = =

= = = Initial display = = =

On May 11 , 1988 , Mirth & Girth was displayed at a private exhibition in one of the school 's main interior hallways . The painting was part of a set of six that Nelson was displaying in a judged three @-@ day student fellowship exhibition held to showcase upcoming graduates . Another of his works was a self @-@ portrait titled " I 'm Sensitive , and I Love All Humanity " , depicting Nelson holding little people of multiple nationalities . As soon as the exhibit opened , between 7 : 30 and 8 : 30 am , the painting drew enough negative attention for the Art Institute to post a security guard in front of the painting . Shortly thereafter , the school began to receive angry phone calls about the painting .

Soon after the exhibit opened , word of the controversy reached the Chicago City Council , which was in session . Alderman Bobby Rush (then of the 2nd ward) immediately put together a resolution that would cut off the city 's contribution to the Art Institute unless it apologized for displaying the painting . In part , the resolution read " Whereas , the artist David Nelson obviously exhibits some type of demented and pathological mental capacities ... " . Another resolution was written that asked the Art Institute to remove the painting immediately . After passing both items , a group of aldermen left to deliver the resolutions to the Art Institute .

Nelson returned to the painting about an hour after it was first displayed . He had forgotten a hammer and nails to hang the painting , and had left it leaning against the wall for an hour . Shortly after he returned , city aldermen , police officers and local reporters arrived at the scene , leading to a dramatic confrontation between aldermen and other students , while Nelson remained incognito nearby .

= = = Confiscation = = =

Aldermen Edward Jones (20th) and William C. Henry (24th) were the first aldermen to arrive from the City Council session . According to the federal lawsuit , Henry showed he had a gun , and then with Jones removed the now @-@ hung painting from the wall and placed it on the floor , facing the wall . After they left , another student rehung the painting . Three other aldermen , Allan Streeter (17th) , Dorothy Tillman (3rd) and Rush , arrived later . They took down the painting and attempted to remove it from the school , but were stopped by a school official . The aldermen then took the painting to the office of the school president Anthony Jones (no relation to Edward Jones) . The painting had a 5 in (13 cm) gash , and it had been wrapped in brown paper .

Alderman Tillman threatened to burn the painting in President Jones ' office , but a Chicago Police Department (CPD) lieutenant present with the aldermen , Lt. Raymond Patterson , advised against this . Instead , another unnamed alderman called CPD superintendent Leroy Martin . Martin telephoned Patterson in Jones ' office and ordered Patterson to take the painting into police custody , telling Jones that the painting amounted to " incitement to riot " . Patterson overrode this direct order , citing his own powers as the lieutenant on the scene and hung up on Martin . A CPD sergeant accompanied Rush , Streeter and Tillman to a waiting police car with the wrapped painting in hand . Parts of the incident were later broadcast on television .

The incident was marked by a volatile shouting match between the aldermen and students , and met with condemnation from free @-@ speech advocates . As the aldermen escorted the painting to the police vehicle , a mass of students outside of the Art Institute jeered them , naming the aldermen " commies " , " fascists " , " brownshirts " and " philistines " . Seventeen bomb threats were recorded at the school after the controversy erupted .

= = Responses = =

= = = African @-@ American community = = =

Shortly after the incident , a black alderman told reporters that he believed the painting was the work of a Jewish artist . Nelson replied through a Chicago Tribune story that he " is not Jewish " . The remark was made in part because racial tensions had already been elevated a week earlier after the firing of Steve Cokely , a mayoral aide , by African @-@ American mayor and Harold Washington 's successor Eugene Sawyer . Cokely had accused Jews of " engaging in an international conspiracy for world control " . His firing caused a rift in segments of the black community , leading some to believe that Sawyer was also involved in the same conspiracy .

In a New York Times article published on May 13 , 1988 , Alderman Streeter reiterated his stance regarding the removal of the painting , saying that he would have " gone to jail to get that painting down " , calling it " an insult to a great man and an affront to blacks " . On May 16 , 1988 , Streeter appeared on the local public television station news program Chicago Tonight . He reinforced that Nelson had abdicated his " responsibility to his constituency " to " do what is right " . In the segment , he reaffirmed that he believed the aldermen had " a law , the law of common sense , the law of morality , the law of decency [that] transcends the First Amendment " .

Operation PUSH , an organization that pursues social justice and civil rights , threatened to impose " sanctions " on the Art Institute unless the Art Institute acted to prevent offensive portraits from being shown by students or contributing artists in the future . Separately , the Illinois Alliance of Black Student Organizations called for racial parity with regards to faculty and student enrollment within the school . One recent African @-@ American student alleged that there was an underlying attitude of racism at the school , while other black students distributed a flyer listing incidences of theft and advice given to foreign students about socializing with blacks . By contrast , another white graduate noted that school officials looked at students ' slides and paintings without knowing the race of the student . The school noted that 236 of its 1 @, @ 312 undergraduate students were minorities , a higher percentage than comparable private professional art schools .

On February 12 , 1994 , during a rally to raise money for the defendants ' mounting legal bills , Nation of Islam leader Louis Farrakhan supported the three aldermen 's right to seize the painting , calling it " an act of righteous indignation " . Farrakhan referred to Washington as " a father figure for black people " , and described the painting and subsequent lawsuit " a total disrespect for our feelings and our community " .

= = = Free speech advocates = = =

On May 12 , 1988 , representatives from the American Civil Liberties Union (ACLU) picked up the painting and returned it to Nelson . Jay Miller , another representative for the ACLU , described the incident as " vigilante stuff " , noting that the action " was done in the name of one of the great civil libertarians of our time . Harold Washington had a 100 percent voting record in Congress and in the state Legislature on issues of civil liberties and civil rights . " In 1984 Washington had supported the civil rights of sculptor John Sefick after Sefick had created a satirical statue of Washington . By comparison , former mayor Michael Bilandic had ordered a Sefick statue satirizing his handling of Chicago 's crippling Blizzard of 1979 covered by a blanket , a decision that was later overturned in federal court .

Students from the SAIC protested on Columbus Drive the next day , holding signs that asked

drivers to " honk for free speech " . Student leaders began to consult attorneys to file a lawsuit against the Chicago Police Department and the aldermen . Other groups of students planned a " be @-@ in " at the Richard J. Daley Plaza , but it was canceled after the students learned other groups might cause a confrontation . Some students felt that the school had been a victim of racial politics , and that the incident would be used to censor the Art Institute .

On Chicago Tonight , Daniel Polsby , a law professor at Northwestern University , cited federal statutes violated during the confiscation of the portrait . He then faulted Marshall Field 's reluctance to defend the First Amendment , further comparing the seizure of Mirth & Girth to then @-@ Arkansas governor Orval Faubus ' refusal to abide by the First Amendment and allow minorities to enroll in Little Rock Central High School . According to Polsby , Faubus ' rationale at the time was to preserve a delicate civil rights situation . Polsby called the aldermen 's action " crushingly ironic and terribly sad " .

= = = Reactions within the SAIC = = =

At the SAIC , students ' characterizations of the painting ranged from political caricature , to " whimsy " , to a commercial success . One student noted that Nelson was " known nationally now , which is every artist 's dream " . Another student noted that " (a) rtists have to be responsible for what they make , and this guy is not being responsible " . In a meeting with 100 students after the incident , Anthony Jones , then @-@ president of the SAIC , assured the students that he stood behind their First Amendment rights . Regarding the painting , Jones said that the painting was in poor taste and should not have been displayed .

Members of the Art Institute Board met the day after the incident and agreed not to display Mirth & Girth any further . Chairman Marshall Field also issued a formal apology for displaying the painting and agreed to consider demands that the school both hire more black administrators and accept more black students . Field also published the apology in each of the city 's daily metropolitan newspapers . After the apology was issued , Polsby strongly criticized Field 's refusal to more aggressively stand up for the students ' First Amendment rights .

= = = Other reactions = = =

Members of the Council of Religious Leaders of Metropolitan Chicago , which included leaders from mainline Protestant , Roman Catholic and Jewish organizations from the city , issued a statement that expressed " moral dismay " over the painting . They further added that the display of the painting showed " a lack of sensitivity which we could have expected from those who were responsible for its showing " .

As for the painting 's critical reception , one local art reviewer mentioned that " the only thing [the SAIC] might have felt sheepish about was not having a staff that in four years could instill in Nelson a better grasp of figure painting " . In a newspaper interview , Nelson responded that the criticism was " the one thing that did make me kind of angry . I don 't think the painting was poorly executed , though it wasn 't my favorite painting . " In his book *Arresting Images ? Impolitic Art and Uncivil Actions* , Stephen C. Dubin suggested that the painting represented a symbolic castration of Washington , reflecting more " traditional " reactions to African @-@ Americans in positions of power .

Nelson gave only a few interviews before leaving Chicago for the suburbs , and then Graceland to avoid the press . On the advice of his friends , Nelson stayed away from his graduation ceremony on May 14 , 1988 . He turned down a \$ 15 @,@ 000 (1988 , \$ 22 @,@ 000 in 2008) offer for the painting , calling it a " grossly inflated " price . He also turned down a separate opportunity to appear on Phil Donahue 's syndicated talk show , saying that he never watched the show and was genuinely uninterested in the offer . Other than the interview with WLUP , Nelson 's views were expressed by Harvey Grossman , the legal director for the ACLU . Through Grossman , Nelson said he would not press for the returning of the painting , as it had fulfilled its purpose of " drawing attention to his ' iconoclastic ' work " .

= = Nelson v. Streeter = =

On June 23 , 1988 , the ACLU filed a federal lawsuit on behalf of Nelson against the three aldermen who were seen on television handling the painting . It claimed the removal of the painting violated Nelson 's First Amendment right to freedom of expression , Fourth Amendment right to protection from unreasonable seizures , and Fourteenth amendment right against being deprived of property without a hearing . The ACLU sought \$ 100 @,@ 000 (1988 , \$ 182 @,@ 000 in 2008) to compensate Nelson for damage to the painting , and to " punish " the aldermen and police for their actions .

Ald . Robert Shaw (9th) called the suit " a slap in the face to the black community " . Rush questioned the motive of the suit , as himself , Tillman and Streeter all were supporters of Alderman Timothy C. Evans (17th) , a political rival of mayor Eugene Sawyer . Rush specifically called the suit " frivolous " and " impetuous " , openly questioning whether the ACLU had filed the suit to enhance fundraising activities or for other political reasons .

The City of Chicago refused in February 1990 to pay mounting legal costs for the aldermen . The aldermen argued that they were performing their official duties " in protecting the security of the city during the turmoil created by the exhibit " when they removed the painting . The city contended that the aldermen had taken the action as individuals . Nelson refused a \$ 10 @,@ 000 (1990 , \$ 16 @,@ 000 in 2008) settlement at the time .

On August 11 , 1992 , U.S. District Judge George Lindberg dismissed the City of Chicago from the lawsuit , but ruled that Superintendent Martin must go to trial and that the three aldermen violated Nelson 's civil rights . Lindberg supported the recommendations regarding that issue Magistrate Judge Elaine Bucklo 's had made in March 1992 . Tillman 's lawyer , James Chapman , recommended to Tillman that an immediate appeal be filed in federal court .

= = = Appellate court = = =

In the appeal , decided February 1 , 1994 , judges Richard Posner , Frank H. Easterbrook , and Michael Stephen Kanne affirmed Lindberg 's earlier decision . Writing for the court , Posner rejected claims of official immunity and said city officials had no right to enter private property and take " offensive " paintings off its walls . He also rejected the argument that removing paintings from walls was an official duty .

Posner also rejected the argument that the defendants were removing the painting to save Chicago from racial riots that the continued showing of the painting might have started , and in which it might have been destroyed . He found that Tillman herself threatened to burn the painting on the spot , and that there was no mob . In addition , the court found that because Nelson had not intended to provoke a riot , the First Amendment could still be used to protect his speech .

The appellate court also faulted the district judge for allowing " more than a year and a half elapsed before the filing and disposition of the motions for summary judgment " . Posner noted in his opinion that " the governing principles are clear , the facts have been explored exhaustively , and the defendants should be aware that efforts to mount a last @-@ ditch , no @-@ holds @-@ barred defense may simply increase their liability for the plaintiff 's attorney 's fees under 42 U.S.C. § 1988 . " He then affirmed the district court 's decision .

= = = Settlement and aftermath = = =

On September 20 , 1994 , the city and the ACLU reached a settlement . The ACLU agreed to drop claims against the city and Superintendent LeRoy Martin . In return , the city of Chicago agreed to pay Nelson and the ACLU \$ 95 @,@ 000 (1994 , \$ 138 @,@ 000 in 2008) for damage to the painting and to issue police procedures about what materials protected by the First Amendment may be seized . The elected officials also agreed not to appeal the district court 's ruling . Left unresolved were the hundreds of thousands of dollars of legal fees owed to lawyers defending Tillman , Rush

and Streeter ; by September 1994 , \$ 200 @, @ 000 (1994 , \$ 292 @, @ 000 in 2008) in fees were owed by Tillman alone . Earlier in the year , the City Council 's Finance Committee voted against paying for the aldermen 's legal fees . The vote split along racial lines , 12 to 8 .

Grossman stated that the relatively small settlement showed that Nelson had proceeded with the lawsuit " on a matter of principle " . Tillman , however , called the settlement a " great victory " , saying , " we didn 't admit to anything , all the charges were dropped , we 're not paying anything (in damages) , and we preserve our rights to pursue efforts to have our legal fees paid " . At the time the lawsuit was settled , Nelson did not issue any statements . The Chicago Tribune reported that he was employed as an advertising artist at an undisclosed firm ; he continued to paint in his free time . As of 1994 , the painting had not been sold , exhibited , or repaired after the incident .