

**DAVIS McGRATH LLC**  
ATTORNEYS AT LAW



SUITE 1380  
125 SOUTH WACKER DRIVE  
CHICAGO, ILLINOIS 60606-4478  
(312) 332-3033

WILLIAM T. McGRATH  
(312) 332-4748

wmcgrath@davismcgrath.com  
FAX (312) 332-6376

October 18, 2018

**VIA OVERNIGHT DELIVERY**

Pamela Reece  
City Manager  
Town of Normal  
11 Uptown Circle  
Normal, Illinois 61761  
preece@normal.org

**VIA OVERNIGHT DELIVERY**

A.J. Loss  
President  
Bush Construction  
5401 Victoria Avenue  
Davenport, IA 52807-2991  
ajloss@bushconstruct.com

Re: Uptown Normal Mural

Dear Ms. Reece and Mr. Loss:

Our firm represents twelve artists who created art works for the Uptown Normal Mural (the "Mural") in 2011. Each of those artists owns the copyright in their respective work and has certain rights relating to the integrity of their works under the Visual Artists Rights Act, 17 U.S.C. §106A ("VARA"). One of the rights afforded to artists under that Act is the right to prevent the intentional destruction of their works without permission. §106A(a)(3)(B).

It is our understanding that the town of Normal and Bush Construction are collaborating on a \$29 million project for the development of a five-story building to be constructed at the northeast arc of Uptown Circle. We understand that this development plan calls for the demolition of the building at 104 E. Beaufort (the "Building") on which the Mural is painted, and thus will result in the destruction of each of the artworks painted on the Building. We have now learned that at its meeting on October 15, 2018, the Town Council has approved the destruction of the Mural.

Each of my clients has painted a work on the Building as part of the Mural, and the destruction of the Mural without their permission violates their rights under VARA.

The Visual Artists Rights Act was enacted in 1990. The legislative history of the Act states that it was intended to "enable visual artists to protect the integrity of their works and the fact of their authorship," noting that the visual arts covered by the Act "meet a special societal need," and that "their protection and preservation serve an important public interest." The Act enables artists to prevent the destruction of their works "by giving the artist the right of integrity and the power to enforce it."

A recent example of the effectiveness of VARA is seen in the recent case of *Cohen v. G&M Realty* 2018 WL 851374 (E.D.N.Y. 2018), known as the 5Pointz case, in which a developer's destruction of 45 aerosol mural paintings created by street artists on a group of abandoned factory buildings resulted in judgment against the developer of \$6.75 million.

Recognizing that property owners have interests at stake as well, VARA balances the respective interests by allowing property owners to obtain waivers from artists where artistic works are incorporated into buildings if the artist "expressly agrees." §106A(e)(1). Such waivers must be in a written instrument and must be signed by the artist. No such written waivers were requested or secured from the artists who contributed works to the Mural.

My clients, many of whom still live in the area, recognize that the development of the Uptown Circle is important for Normal and they have no desire to stand in the way of progress. At the same time, the destruction of the Mural will deprive them of the reputational and economic benefits of having their work displayed in this iconic Mural. It will deprive them of the personal pride in having their work bring joy to the community, and it will destroy forever the work into which each of them invested their time, skill, and creativity. The loss of the Mural will be a personal loss to each of them and to the community. To appreciate the value of the artworks and the benefit to the community, one need only view images of the wall before and after the completion of the Mural (see attached).

My clients are willing to have discussions about ways the development plans could go forward while still preserving the Mural. If that cannot be done in a way that would preserve the integrity of the Mural, my clients are each willing to sign a waiver of their VARA rights, but they are entitled to fair compensation for their relinquishment of these rights. Rather than rushing into litigation in federal court to preserve their works at this time, my clients have authorized me to enter into negotiations on their behalf to attempt to reach an amicable resolution of the competing interests at stake.

We look forward to hearing your views on this matter.

In the meantime, we remind you of your obligation to retain and preserve all records, documents, or other evidence relevant to this matter, including the Mural itself. This letter is an offer of compromise made pursuant to the provisions of Federal Rule of Evidence 408. My clients hereby reserve all rights and remedies available to them.

Very truly yours,

DAVIS McGRATH LLC



William T. McGrath

WTM:nj



*Stark*  
**EXCAVATING**  
UPTOWN OFFICE

