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The Future of Art in New Jersey's Public Buildings: Possible Repeal of the Arts Inclusion Act

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67. Rule 1.52, General Rules of the United States District Court for the Northern District of Illinois, states, "[t]he taking of photographs, radio and television broadcasting or taping in the court environs during the progress of or in connection with judicial proceedings . . . is prohibited." *Torres*, 602 F. Supp. at 1464.

68. *United States v. Torres*, 602 F. Supp. at 1463.

69. Steven Brill, *How The Willie Smith Show Changed America*, AM. LAW., Jan./Feb. 1992, at 3.

70. See JAMES WARREN, *You'll be the Judge; Steven Brill and his Court TV Cable Service are Ready for Trial*, CHI. TRIB., June 18, 1991, at Tempo 1.

71. Nora Wolf, *High Court TV?: Burger Might OK Full Coverage*, 72 A.B.A.J. June 1986, at 25.

72. Richard Lacayo, *Trial by Television*, TIME, Dec. 16, 1991, at 30. CNN alone attracted an estimated 3.2 million viewers, nine times its average number during the morning and afternoon hours of broadcasting. *Id.*

73. Lacayo, *supra* note 72.

74. Gardner, *supra* note 23, at 481.

75. Lacayo, *supra* note 72.

76. *Id.*

77. *Nightline: Television and the Willie Smith Rape Trial*, (ABC television broadcast, Dec. 10, 1991).

78. *Id.* (comment by host Ted Koppel in reference to the William Kennedy Smith trial, "[i]f there is any public interest that is being served here, it is first, last and foremost our prurient interest.").

79. Alter, *supra* note 8.

80. *Id.*

81. *Nightline*, *supra* note 69. In an effort at balancing private and public interests, Court TV never broadcasts the testimony of children nor broadcasts the visual image of witnesses who request their faces to be concealed. The network also avoids filming the jury or shooting close-ups of a grieving family.

82. Lacayo, *supra* note 63.

83. Brill, *supra* note 69.

84. *Id.* "What television viewers saw . . . [is that] lawyers are fallible humans with varying skills and a propensity to cough and shuffle papers and hesitate and misspeak, just like the rest of us."

85. *Id.*

86. Dyk, *supra* note 63, at 954.

87. *Id.*

88. *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596 (1982).

89. *Id.* at 607.

90. Gardner, *supra* note 23, at 487.

91. *Chandler v. Florida*, 499 U.S. 560 (1981).

92. *But see Gardner*, *supra* note 23.

93. States that allow some or all witnesses to ban the televising of their testimony include: Alabama, Alaska, Arkansas, Iowa, Kansas, Maryland, Minnesota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Utah and Washington. Gardner, *supra* note 23, at 512.

94. *Id.* at 484.

95. *Id.*

96. *Id.*

("NEA") began to explore ways in which to support the placement of art in public places.¹ The means first proposed for such support was to commission a sculpture and give it to a city for public display.² As the concept of public art has expanded since then, so has the form of its funding. Currently, one of the most common mechanisms used to fund public art is "percent-for-art" state legislation and municipal ordinances.³

Such legislation has existed in New Jersey since 1978. This legislation, entitled the Public Buildings Arts Inclusion Act (the "Act") and administered by the New Jersey State Council on the Arts (the "Council"), provides funding for the incorporation of public art in state-constructed buildings.⁴ Despite the numerous projects successfully funded under the Act,⁵ on September 14, 1992, Assemblyman John Hartmann introduced New Jersey Assembly Bill 1726 (the Bill) which proposes the repeal of the Act.⁶ The Bill also rescinds approval of any expenditures for the inclusion of art in public buildings on or after July 1, 1992.⁷ This Update discusses the background of the Act, outlines its substantive provisions, compares it to a similar legislation in Florida, and suggests possible effects of the proposed repeal of funding for public art in state-constructed buildings.

BACKGROUND

In 1965, when the NEA was created, there were only a handful of ongoing public art programs in the United States.⁸ At that time, proponents of the National Foundation on the Arts and Humanities Act (which created the NEA)⁹ felt that the arts deserved government commitment. Foreshadowing the arguments of subsequent advocates of public art programs, these early proponents advanced four reasons for governmental sponsorship of the arts.¹⁰ First, the proponents argued that public support of art would be popular because it appealed to the country's demonstrated interest in cultural activities.¹¹ Second, the arts would foster an informed, democratic citizenry with creativity and imagination.¹² Third, America's cultural heritage merited preservation and encouragement.¹³ Finally, they argued that a governmental arts agency was necessary in light of the rising costs of artistic undertakings.¹⁴ Opponents of the NEA focused on the possibility that federal subsidization of the arts would fail to encourage excellence and could ultimately lead to political control of culture.¹⁵ Furthermore, they worried that the availability of government funding would discourage private sector support.¹⁶

Within one year after its inception, the NEA began to explore ways in which to support the placement of art in public places.¹⁷ The means first proposed for such support was to commission a sculpture and give it to a city for public display.¹⁸ Since then, the concept of public art has expanded dramatically. Public art

THE FUTURE OF ART IN NEW JERSEY'S PUBLIC BUILDINGS: POSSIBLE REPEAL OF THE ARTS INCLUSION ACT

INTRODUCTION

Almost every definition pertaining to the field of public art has undergone scrutiny and changes since 1966, when the National Endowment for the Arts

projects today encompass a variety of disciplines involving artists, architects, developers, urban planners, conservators, lawyers, administrators, educators, art historians, and curators.¹⁹ Perhaps the concept of public art and its twenty year evolution is best illustrated by the following quote:

[I]n two decades we have seen a shift in emphasis from studio work made monumental (in order to meet the scale of outdoor plazas) to monuments made to contain cultural artifacts; from a handful of arts activists attempting to commission a sculpture reflecting the promise of urban renewal, to cities such as Seattle and Philadelphia funding artists to think in tandem with other members of interdisciplinary design teams about how public spaces might function as more congenial, social places; and from dedicatory brass ensembles, to street performances and events tied to lunch hour traffic.²⁰

There are a variety of public art programs across the country which use public money either for individual projects on a regular basis or for ongoing public art programs.²¹ In 1988, there were at least 135 annually funded programs at the state and local levels with many more single projects undertaken by communities.²² They included agencies of municipal, county, state and federal government.²³ They also include a variety of specific federal agencies, such as transportation and national and state park services, as well as redevelopment agencies and planning commissions which require or encourage public art in private development.²⁴

Public funds are commonly designated for public art in one of three ways: 1) appropriations on a project-by-project basis; 2) appropriations in the form of line items in an administering budget; and 3) "percent for art" legislation or ordinances.²⁵ Of the three, percent-for-art models are the most common mechanisms employed to fund public art.²⁶ The typical percent-for-art law requires or suggests that a certain percentage of the cost of constructing or renovating a public building or site be set aside for art.²⁷

Currently, percent-for-art statutes exist in several states.²⁸ Colorado, for example, provides that each capital construction appropriation for a public construction project include an allocation of not less than 1% of the capital construction costs for the acquisition of works of art.²⁹ The works of art acquired under the statute shall be placed in a publicly accessible location within the state agency for which the capital construction project is to be constructed.³⁰ A collection of works of art may be selected for placement within a state agency and, at the discretion of the state agency

and the Colorado Council on the Arts, may be made available for loan, circulation, and exhibition in other public facilities.³¹

Similarly, Maine's percent-for-art statute provides that a contracting state agency must spend a minimum of 1% of the cost of a public building for the purpose of acquiring, transporting and installing works of art.³² Donations and gifts to the contracting agency may be used to offset this minimum amount.³³ Under this statute, works of art may be included as an integral part of the structure of the building or facility, may be attached to the structure, or may be detached within or outside of the structure.³⁴

PROPOSED REPEAL OF THE NEW JERSEY PERCENT-FOR-ART LEGISLATION

The Public Buildings Arts Inclusion Act, which New Jersey Assembly Bill 1726 proposes to repeal, is a percent-for-art law similar to those described above.³⁵ Currently, the law provides that the state contracting officer and architect engaged to build a new public building shall consult with the Council regarding the elements of fine art to be included or incorporated into the design of the building.³⁶ The recommendations of the Council may be incorporated by the architect in the building plans.³⁷ However, the total estimated cost of incorporating art into a public building shall not exceed 1.5% of the total estimated cost of the construction of the building.³⁸ Expenditures concerning the inclusion of artistic designs in state buildings must be approved by the State House Commission.³⁹

There are two ways in which artists are selected for specific projects. The first method is direct commission of an artist.⁴⁰ The statute provides that the architect and the contracting officer together select the artist(s) to execute the fine art elements of the building. This is done after consultation with the Council and the principal user.⁴¹ The Council is required to develop criteria which may be employed in the selection process.⁴² The second method is through public competition.⁴³ The Council establishes the terms of the competition and awards the contract to the artist who appears most able to execute a work which will be consistent with the architect's intentions and the design of the building.⁴⁴ The Council may offer prizes to deserving competitors other than those awarded contracts if the Council finds prizes are necessary to encourage artists to enter a competition.⁴⁵ In addition, the Council must create a register of New Jersey artists who are particularly suited for the type of work likely to be required for projects funded under the Act.⁴⁶

Before making recommendations for the inclusion of art in a building and before conducting a competition, the Council has a duty to consult with relevant art institutions and organizations in New Jersey.⁴⁷ Such

entities include museums, societies and associations of artists and architects, schools of art and architecture, or other appropriate institutions.⁴⁸ The statute does not provide for any public notice.

The Act has funded a variety of public art projects. For example, in 1987, New Jersey commissioned George Segal's sculpture, "The Constructors," through the funding of the Act. This large work sits in the plaza of the State Commerce Building in Trenton.⁴⁹ The tableau has interlocking steel I-beams supporting three bronze figures representing construction workers surrounded by building equipment.⁵⁰

Another example is Nina Yankowitz's floor work in the lobby of the New Jersey Department of Transportation.⁵¹ Executed in tiles of muted pinks, blues, greys and beiges, the inlaid floor was designed to harmonize with the walls and ceiling of the building.⁵² At the entrance is an abstract brass representation of a bridge. From there, two diagonal roads inlaid with shapes of cars and trucks move in opposite directions toward the elevators.⁵³ The building itself cost \$3.9 million resulting in \$40,120 of funding for the art project under the Act.⁵⁴

A third example is "The Triumph of Pegasus," a \$30,000 work designed in 1988 for the Joseph Kohn Rehabilitation Center for the Blind and Visually Impaired.⁵⁵ The artist of this work, Wopo Holup, hand-molded the various forms depicting her mythological story of Pegasus using cement, pigmented black and highly polished with linseed oil.⁵⁶ Unlike most works of art, this work is to be appreciated through touch rather than sight.⁵⁷

Despite successful projects like these, the New Jersey Bill seeks to repeal the legislation which makes such projects possible.⁵⁸ Apparently, one of the primary reasons for the repeal is budgetary constraints. For example, in 1990, state arts councils similar to the New Jersey Council lost a combined total of \$30 million in funding from the NEA.⁵⁹ This was the first decline in arts support at the state level since at least 1979, according to NEA officials.⁶⁰ Between 1989 and 1991, the New Jersey Council suffered a fifty percent reduction in funding for all of its programs and grants.⁶¹ The proposed repeal appears to be the next in this series of cuts to public art funding. But as the next section illustrates, New Jersey's experience is not an isolated occurrence.

REPEAL OF PERCENT-FOR-ART LEGISLATION IN FLORIDA

Florida is another state where pending legislation seeks to repeal public art funding. As originally enacted in 1979, Florida's art legislation was a percent-for-art law requiring one-half of one percent of the cost of the building to be spent on art.⁶² However, in 1991, the law was changed to its current form which limits the total amount that can be spent on art to \$100,000 and requires that the money be spent only on art

work to be displayed inside public buildings.⁶³ On February 2, 1993, Florida Senator Gary Siegel introduced Florida Senate Bill 108 which seeks to repeal the requirement that each appropriation for construction of a new state building in Florida include up to \$100,000 for the acquisition of art to be placed on public display in the building.⁶⁴

Two factors appear to be responsible for the Florida bill. The first factor is the general concern with spending public money on art when it is desperately needed in other areas such as housing and education. Siegel explained to a local newspaper that what prompted him to file the Bill was the \$485,000 Orlando spent on a work which consisted of a 62-foot light.⁶⁵ He said this money could have been "put [into] the infrastructure [of] ... a low-income housing project for less money."⁶⁶ Instead of using public money, Siegel would rather seek private donors for public art projects.⁶⁷

The second factor appears to be distaste on the part of certain public officials for specific existing public works which were funded with state money. For example, in describing the \$485,000 work mentioned above, Siegel said it was a 62-foot light which could have been put together in anybody's garage.⁶⁸ His comment suggests not only the price of the work, but also its nature, motivated his criticism. Perhaps if the work had been a painted mural in the hallway of a state building, he would have thought it was money well spent.

In fact, it was the controversy regarding a \$21,000 sculpture which sits in the front of the Florida Department of Law Enforcement (FDLE) Building which motivated the 1991 revision of the percent-for-art statute to works displayed inside a building and limiting the amount of funding to \$100,000.⁶⁹ The director of the FDLE has been trying for three years to get rid of the sculpture which he describes as tobacco leaves on top of some sticks.⁷⁰

As in New Jersey, it appears that budgetary constraints provided the impetus for the proposed repeal of Florida's public art funding statute. However, it does not appear Florida's program has been as popular as New Jersey's. The adverse opinion of certain public officials regarding some of Florida's public art projects has also resulted in the whittling down and possible repeal of the statute.

IMPACT OF THE REPEAL OF NEW JERSEY'S PERCENT-FOR-ART LEGISLATION

In the twenty-eight years since the NEA's creation, the arguments made in favor of public funding for art have not changed drastically.⁷¹ Specifically, the public interest in promoting the arts continues to enter the debate over public funding of art. Such interests include the educational value of art, preservation of a cultural heritage, and the accessibility of art in light of

rising cost of artistic undertakings. These interests are reflected in a recent nationwide survey released on February 16, 1993 entitled *The Importance Of Arts And Humanities To American Society* commissioned by the National Cultural Alliance.⁷² The survey revealed that 73% of the public agreed that public support for the arts should not be curtailed, even during times of economic recession.⁷³ More than 80% agreed that the arts and humanities contribute to the economic health and well-being of society, provide a sense of cultural stability for children, and make communities a better place to live.⁷⁴ In addition, 59% agreed that without public support the arts and humanities would only be available to the wealthy.⁷⁵

These figures demonstrate the importance of the arts to the public. However, many respondents of the survey cited lack of time and financial concerns as real obstacles to their enjoyment of the arts.⁷⁶ One form of art which can be viewed by all with little effort and free of charge is the public art they encounter while passing through public buildings and plazas. Repeal of the Arts Inclusion Act will diminish the role of public art in public buildings, closing this one important avenue for public participation in the arts in New Jersey.

In addition, the repeal could have a negative impact on the New Jersey artistic community. In 1990, approximately 60 to 75% of the commissions under the Act had gone to New Jersey artists.⁷⁷ It is possible that many of the artists chosen to execute projects under the Act in the past may seek commissioned work elsewhere. However, there are other reasons for artists to continue to stay in New Jersey and contribute to its artistic community. According to Tom Moran of the Council, many art students from the several art schools in the area stay in New Jersey and many people come to New Jersey because of its proximity to the art market (New York). Furthermore, he believes that New Jersey has a strong collection of regional museums.⁷⁸

In spite of the possible long term impact of the repeal on the public and the artistic community, the short term and intended effect from the state legislature's perspective is to create state budgetary savings. These savings will result from the cancellation of arts inclusion projects already approved by the State House Commission and currently in the development stage, as well as from reduced appropriations to the Council as a whole.⁷⁹ Under the provisions of the Bill, the State House Commission's approval of any expenditures for the inclusion of fine arts in state buildings granted on or after July 1, 1992 would be rescinded.⁸⁰ As of December 31, 1992, there were a total of 26 arts inclusion projects in the development stage at 18 sites throughout New Jersey with a combined cost of \$1,363,751.⁸¹ Interestingly, the Bill itself does not provide for the return of the funds provided for these projects either already expended or for funds which

have been allocated but not yet spent.⁸² According to the New Jersey Office of Legislative Services ("OLS"), "if all funds allocated for approved arts inclusion projects are returned to the various [state] funding sources,⁸³ rather than reallocated to other building construction costs, then a savings of \$1,363,751 would be realized for fiscal year 1993" by the various state funding sources.⁸⁴

Further, state budget savings will come from a reduction in the annual appropriations to the New Jersey State Council on the Arts.⁸⁵ According to the OLS, the Council's current \$526,000 appropriation may be reduced by an amount commensurate with the Council's reduced responsibilities in no longer administering the arts inclusion projects.⁸⁶ The Bill does not indicate whether public money will be available for maintaining the art work which has already been created through the percent-for-art legislation if the Bill is passed.

Whether cutting the percent-for-art program is justified by the budget savings to the state is presently unclear. In spite of budgetary constraints across the country, it does not appear that other states (apart from Florida) have followed New Jersey in cutting percent-for-art programs. In fact, on the municipal level, many percent-for-art programs, such as those in Sacramento and Seattle, are currently active.⁸⁷ Furthermore, new methods for funding art, such as New York's proposed taxes on admission to various arts performances and movies, are emerging.⁸⁸

CONCLUSION

The proposed repeal of New Jersey's Public Building Arts Inclusion Act will offer the state some savings by cutting funding for arts inclusion projects. Whether these savings are justified depends on whether public art is viewed as an important element in New Jersey's state buildings. At least one public survey indicates that art is important to the public. The repeal of the Arts Inclusion Act will result in a diminished presence of art in public buildings, and therefore, will frustrate one convenient and affordable means of offering art to the public.

Sheldon K. Hardy

1. JEFFREY L. CRUIKSHANK & PAM KORZA, *GOING PUBLIC: A FIELD GUIDE TO DEVELOPMENTS IN ART IN PUBLIC PLACES* 9 (1988).

2. *Id.*

3. *See infra* notes 25-34 and accompanying text.

4. 1978 N.J. Laws 1117.

5. Between 1978 and 1990, 104 projects have received funding under the Act. Patricia Malarcher, *New Jersey Q & A: Tom Moran; Acquiring Art to Show in Public Spaces*, N.Y. TIMES, February 18, 1990, at 12NJ, 3. Furthermore, the Council was honored in 1989 by the National Endowment of the Arts as a model agency. Nicole Plett, *Arts Council at 25: Pride and Anxiety*, N.Y. TIMES, October 6, 1991, at 12NJ, 1.

6. A.B. 1726, 205th N.J. Legis., 1st Reg. Sess. (1992).

7. *Id.*

8. CRUIKSHANK & KORZA, *supra* note 1, at 5.

9. Pub. L. No. 89-209 at § 5, 79 Stat. 845, 846-9 (1965).
10. Note, *Standards for Federal Funding of the Arts: Free Expression and Political Control*, 103 HARV. L. REV. 1969, 1970-72 n.8 (1990).
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. CRUIKSHANK & KORZA, *supra* note 1, at 9.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* at 27.
22. *Id.*
23. The federal government is most notably involved through the General Services Administration's Art-in-Architecture program and the NEA's Art in Public Places Funding category through the Visual Arts Program. CRUIKSHANK & KORZA, *supra* note 1, at 27. Between 1968 and 1988, over 518 art-in-public-places projects in 47 states and the District of Columbia had received NEA matching funds. *Id.* at 5.
24. *Id.*
25. *Id.*
26. *Id.* at 23.
27. *Id.* at 27.
28. Other states with similar statutes include Minnesota, MINN. STAT. § 16B.35; Montana, MONT. CODE ANN. § 22-2-401; New Mexico, N.M. STAT ANN. § 13-4A-1 to 13-4A-11 (1978); South Dakota, S.D. CODIFIED LAWS ANN. § 1-22-10; Utah UTAH CODE ANN.. § 9-6-401.
29. COL.. REV. STAT. ANN. 24-80.5-101(3)(a)(I) (West Supp. 1992).
30. COLO REV. STAT. ANN. 24-80.5-101(d) (West Supp. 1992).
31. *Id.*
32. ME. REV. STAT. ANN. tit. 27, § 453.
33. *Id.*
34. *Id.*
35. A.B. 1726, 205th N.J. Legis., 1st Reg. Sess. (1992); N.J. STAT. ANN. § 52:16A-29 to 52:16A-34 (West 1978).
36. N.J. STAT. ANN. § 52:16A-31(a) (West 1978).
37. *Id.* at § 52:16A-31(b).
38. *Id.* at § 52:16A-31(c).
39. *Id.* at § 52:16A-31(b).
40. *Id.* at 52:16A-32(a).
41. *Id.* at § 52:16A-32(a). "Principal User" is defined by the statute as the person or entity who will have principal administrative responsibility for the utilization of a proposed public building or the person or entity with authority to designate who shall have such administrative responsibility. *Id.* at § 52:16A-30(e).
42. *Id.* at § 52:16A-32(b).
43. *Id.* at § 52:16A-33.
44. *Id.* at § 52:16A-33(b).
45. *Id.* at § 52:16A-33(c).
46. *Id.* at § 52:16A-32(b).
47. *Id.* at § 52:16A-34.
48. *Id.*
49. Nicole Plett, *In Segal's Campus Sculpture, a Call for Compassion*, N.Y. TIMES, April 29, 1990, at NJ12, 1.
50. *Id.*
51. Patricia Malarcher, *'Public Art' Finding a Place in the State*, N.Y. TIMES, November 8, 1987, at NJ11, 16.
52. *Id.*
53. *Id.*
54. *Id.*
55. Philip Good, *A Sculpture is Created with the Blind in Mind*, N.Y. TIMES, October 23, 1988, at NJ12, 20.
56. *Id.*
57. *Id.*
58. A.B. 1726, 205th N.J. Legis., 1st Reg. Sess. (1992)..
59. Allan Parachini, *States' Arts Support Off \$30 Million*, L.A. TIMES, February 4, 1991, at F1.
60. *Id.*
61. Plett, *supra* note 5.
62. *Id.*
63. *Id.*; FLA. STAT. ch. 255.043 (1991).
64. S.B. 108, Fla. Reg. Sess. (1993).
65. Lucy Morgan, *Sure it's Art, but is it Worth Tax Money?*, ST. PETERSBURG TIMES, January 21, 1993, at 1B.
66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. See *supra* note 8 and accompanying text.
72. Kathleen O'Steen, *Public Arts Funding Has Wide Support in Survey*, DAILY VARIETY, Feb. 17, 1993, at 3. The National Cultural Alliance is a coalition of 41 humanities and arts organizations representing 15,000 cultural institutions across the country. The survey was funded by the Getty Grant Program.
73. *Id.*
74. Melinda Bargreen, *Proof Abounds that Arts are Vital to Life in Seattle*, SEATTLE TIMES, February 21, 1993, at L1.
75. *Id.*
76. *Id.*
77. Malarcher, *supra* note 5.
78. *Id.*
79. Legislative Fiscal Estimate to N.J. Assembly, No. 1726, January, 1993. The development stage involves a situation in which the contract with the selected artist was being negotiated or the art work and artist was being selected. *Id.*
80. *Id.*
81. *Id.*
82. *Id.*
83. The funding sources for these construction projects vary and include funds obtained from general obligation bonds issued by the state or bonds issued by independent state agencies with authority to issue bonds. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*
87. See *Redmond Artist to Unveil Mural of Diverse Photos*, SEATTLE TIMES, January 29, 1993, at B3; Deb Kollars, *Art Puzzles, Enchants the Public Downtown*, SACRAMENTO BEE, February 5, 1993, at B1.
88. A.B. 6741, 215th N.Y. Gen. Assembly, 1st Reg. Sess. (1993); A.B. 6925, 215th N.Y. Gen. Assembly, 1st Reg. Sess. (1993).