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November 14, 1975

STATEMENT OF SUZANNE SHEPPARD
IN OPPOSITION TO
H.R. 7216
(A BILL TO AMEND AND EXTEND THE NATIONAL FOUNDATION
ON THE ARTS AND HUMANITIES ACT OF 1965)

Subcommittee on Select Education
of the
House Committee on Education and Labor

Mr. Chairman, and Members of the Subcommittee:

Thank you for inviting me to testify on H.R. 7216. I oppose the very principle of government art subsidies. My testimony will consist of two statements of my reasons for opposing these subsidies; the first is from my remarks at a hearing of the California State Legislature's Joint Committee on the Arts; the second is the argument I delivered at the trial of my suit against the California Arts Commission. These two statements will show that it is precisely because I am an artist that I oppose government subsidies for the arts.

I.

TESTIMONY BEFORE CALIFORNIA LEGISLATURE'S
JOINT COMMITTEE ON THE ARTS
September 24, 1974

I'm an artist, and I am here to speak in opposition to state support of the arts.

Every individual has a right to think for himself - to express his own mind, to make his own choices and to act according to his own judgment. No one has a right to violate this right.

I urge you to consider the injustice of state subsidies for the arts. Subsidies, as you know, require tax money. Taxation for the arts means: involuntary patronage of the arts. Every man has a right to choose for himself whether or not he wishes to support any form of art or any particular work of art. The state has no right to make these decisions for him. The state has no right to violate his freedom of choice.

And I have no grounds to demand that the state tax anyone for my support. No one forced me to become an artist; no one should be forced to pay my way. If people don't like my work, or cannot afford it, they have a right not to buy it. But taxation for the arts violates this right. A state has no right to make artistic choices for the individual; and no artist has reason to claim that his artistic freedom requires the denial of another man's freedom of choice.

As legislators, you know that the state must account to the taxpayers for the way it spends their money. In order to justify its subsidies for the arts, the state must have reasons for the selections it makes. This means that the state is obliged to establish standards of artistic merit, and it cannot justifiably support an artist who does not satisfy its standards. When evaluating the merit of a work of art, the state has to consider the work's content. Its content expresses a theme or viewpoint. This means that the state grants official endorsement to the ideas expressed or implied in the art it subsidizes.

This is crucial to bear in mind: A government with power enough to endorse ideas has power enough to silence them - and that is the essence of censorship.

State support of the arts, then, is unjust - and it achieves the exact opposite of its alleged purpose: Instead of supporting the arts, it undermines the very foundation on which the arts depend: Freedom.

When a man is forced to pay taxes for the arts, he is denied his right to act according to the judgment of his own mind. State support of the arts costs a man his liberty of conscience.

This is an unspeakable price for anyone to pay.

II.

ARGUMENT BEFORE THE SUPERIOR COURT IN

SUZANNE LEFRANC SHEPPARD v. CALIFORNIA ARTS COMMISSION
May 20, 1975
San Francisco, California

(Please note: As the plaintiff in this case, I challenged the constitutionality of government art subsidies. For the record, the Court ruled, on August 27, 1975, that these subsidies are in the public interest.)

ARGUMENT

Introduction

May it please the Court. The question I have brought before the Court is whether or not state support of art is within constitutional limits. I intend to show that by the very nature of art, its support by government will necessarily and unavoidably conflict with First Amendment guarantees.

My argument is in three parts: First, I will demonstrate that when the state supports an artist's work, it thereby endorses his personal philosophy. In order to substantiate this point, I will show why an artist's personal philosophy is an integral and inseparable part of his work. Second, I will explain how the state's support of another artist impairs my own livelihood as an independent artist. Finally, I will support my contention that the terms of the "establishment" clause of the First Amendment apply to the arts and prohibit their support by government.

I.

When the state supports an artist's work,
it thereby endorses his personal philosophy.

I shall begin by observing a self-evident fact: Every man is limited in the amount of work he can accomplish in his lifetime. Thus, no artist can ever compose every possible combination of musical notes, nor paint everything there is to paint, nor choreograph every conceivable expressive movement. If he is to create anything at all, he must limit the possibilities for each artistic work to a manageable number. The progress of his work is marked, therefore, by an on-going concern for what to include and what to omit.

My point is this: To make the choices which satisfy his expressive intent, an artist has only one immediate source of guidance: His judgment of what is important; that is, his personal code of values. Thus, with every decision he makes as to what to include and what to omit, an artist's work reflects his values and thereby expresses his view of what gives life meaning. In so doing, of course, an artist's work entails philosophical implications.

It is no accident, therefore, that aesthetics is classified as a branch of philosophy. This classification simply reflects the fact that art belongs to the realm of men's struggle to find and express the meaning of human existence. But an artist's creation is not a philosophical treatise; it is not designed to evoke the cold blade of analytical reason. It is an impassioned statement whose persuasive power is addressed to men's emotions. Through his work, the artist says - in effect: "This is what life means to me. This is what is important." And whether he says this explicitly or implicitly, the artist expresses his personal convictions, not with the neutrality of a reporter, but with the assertiveness of an advocate.

So it is that an artist's personal philosophy becomes the very soul of his work - the core of its meaning. And so it is that when the state supports an artist, it thereby and unavoidably endorses the artist's philosophy.

In so doing, the state commits an act of ideological favoritism - totally at odds with the spirit of this country.

II.

The state's support of another artist impairs my own livelihood as an independent artist.

My government's endorsement of another citizen's personal philosophy relegates my standing as a citizen to second-class status - reason enough to object to state support of the arts; but, as I will now show, my government's endorsement of another artist's personal philosophy relegates my standing as an artist to second-class status.

As an artist, I have literally staked my career on my own philosophical convictions - for this reason: When I offer my work for sale, it is my view of life which gives my work its meaning; and what my work means to a potential buyer will determine the degree of his interest in it. Thus, my personal philosophy constitutes the ultimate selling-point of my work.

Since my philosophy is the source of my livelihood, any use of state power which effectively impugns my philosophy will thereby undermine my livelihood. If the state openly and explicitly opposes my view of life, then it forecloses my opportunities as an artist; if the state implicitly disapproves of my view - which is the case when it endorses another artist's work - then it threatens foreclosure of my opportunities. To one whose livelihood depends on freedom of expression, the mere threat of its removal is damage enough. But I am not subject under Chapter 1143 to threat alone. As I said in my complaint, at page 2 - quote:

"Said statute enables defendant to grant to selected artists the funds, influence and authority of the State, thereby giving said artists an immediate competitive advantage over plaintiff...In effect, said statute allows defendant to establish a privileged class of artists, and compels plaintiff to bear - now and in the future - part of the costs of maintaining their competitive advantages over her." - Close quote.

To that statement, I would add only the following: Where art is subsidized, it is not just artists who get the funds, influence and authority of the state. Above all, it is their personal philosophies which are so preferentially endowed.

III.

The terms of the "establishment" clause apply to the arts and prohibit their support by government.

In defense of my rights, I wish now to offer points and authorities to substantiate the following point: that the "establishment" clause prohibits the government's support of the arts for the same reason and purpose that it prohibits government's support of religion. I shall demonstrate that governmental support of any personal creed, and not just of any religious creed, is constitutionally prohibited - and therefore, no artist's work, advancing as it does his particular philosophy, may be supported - and thereby endorsed - by government.

There is substantial authority to support the conclusion that the term "religion" in the "establishment" clause embraces all personal views on the meaning of life - and not just religious versions of these views.

First, I offer the following opinion from Flaska v. State (177 P2d 174, cited at page 237 by 16 Am Jur 2d) - quote:

"The language of a constitution is not to be limited to the precise things considered therein, but it should embrace other things of the same general nature or class..." - Close quote.

If this principle of construction be observed, then the scope of the "establishment" clause logically extends beyond religion to embrace the arts, which express personal views on the very same issue dealt with by religion: The meaning of life.

Further support for construing the "establishment" clause to embrace all personal philosophy may be found in the case of Milwaukee Co. of Jehovah's Witnesses v. Mullen (cited in 16 Am Jur 2d at page 235). In its opinion, the court said - quote:

"The meaning of constitutional guaranties never varies: it is the scope of their application which must expand or contract...some degree of elasticity thereby being ordered, not to the meaning, but to the application of constitutional principles." - Close quote.

The application of the "establishment" clause is obviously directed toward governmental neutrality where the advancement of personal belief is concerned. But clearly, the state's endorsement of an artist's philosophy is not an act of ideological neutrality.

One may still ask, however: If the "establishment" clause embraces the arts, then why doesn't it mention them?

Mr. Justice Jackson addressed himself directly to the intent behind the wording of the First Amendment; in his opinion in Douglas v. Jeannette (63 S Ct at 888) he said - quote:

"It may be asked why then does the First Amendment separately mention free exercise of religion?...It was to assure religious teaching as much freedom as secular discussion, rather than to assure it greater license, that led to its separate statement..." - Close quote.

From Mr. Justice Jackson's observations on the "free exercise" clause, one may draw the following inference: The "establishment" clause gives religion separate mention, not as a gesture of governmental hostility toward religion, but as a guarantee to all citizens of any persuasion that our government will take no position whatsoever on matters touching individual conscience.

If this is the meaning of the "establishment" clause - and in logic and justice there can be no other - then the arts, which promulgate the personal philosophies of their creators, are constitutionally denied governmental support.

Conclusion

At the beginning of my argument regarding the scope of the "establishment" clause, I contended that our government is prohibited from supporting the arts for the same reason and the same purpose that it is prohibited from supporting religion. My argument would not be complete if I neglected to stress that reason and purpose. I shall bring the whole point of my argument into sharp relief by offering three brief excerpts - two from 36 ALR 3d 1256, and one from my complaint.

In 36 ALR 3d 1256, at page 1260, the following comment is made about the "establishment" clause as it applies to religion - quote:

"It has been suggested that the underlying rationale of the rule has been to prevent the use of public property in such a manner as to connote governmental sponsorship of religious beliefs, with the attending result that persons who do not share these beliefs might feel that their own convictions were stigmatized or officially deemed less worthy than those awarded the appearance of official government endorsement." - Close quote.

In my complaint, at page 4, I said - quote:

"Said statute thereby grants to defendant the power to determine which ideas, as well as which artists, will or will not merit and receive the promotion, support - and therefore, the endorsement - of the State. In effect, said statute is the secular equivalent of the State's adoption of an official creed, to which plaintiff does not subscribe, but for which she is compelled to pay support." - Close quote.

At page 1273 of 36 ALR 3d 1256, the following comment is made about the case of Lowe v. Eugene (36 ALR^{3d} 1249) - quote:

"...the court concluded, the government has no business placing its power, prestige, or property at the disposal of private persons or groups either to aid or oppose any religion, and the majority, no matter how pure its intentions, has no right under our system of government to exert its political muscle to gain a preferred place for its testimony to its religious beliefs." - Close quote.

It is evident that recent Court decisions have recognized how demeaning it is for government to require a citizen's involuntary support for the advancement of someone else's beliefs. Even greater, then, is the injustice, when such use of governmental power can impair that citizen's livelihood.

Your Honor. According to 36 ALR 3d 1256, at page 1260, the Court's test of the "establishment" clause is whether or not there exists any governmental purpose to advance or inhibit religion. It is my contention - and the point of my argument - that the test of the "establishment" clause logically and justly embraces the question whether or not there exists any governmental purpose to advance or inhibit the arts.

Thank you, Your Honor.

Mr. Chairman, and members of the Committee:

Undoubtedly, you have been told by many witnesses that the arts will perish without government subsidies. If it be the survival of the arts (and artists) that you are truly concerned with, then leave them alone.

So long as men are free - free to choose and express their own personal values - the arts will live. Involuntary patronage of the arts is an insidious enslavement of the individual to his government. If you approve the measure now under consideration, by endorsing an extension of the National Foundation for the Arts, you will effectively reject the principle of individualism which has distinguished this country from dictatorships everywhere.


Suzanne Lefranc Sheppard