

A  
Modest Proposal  
by C Drew

Give us our  
First Amendment Rights  
to Survive by  
our ART

### **This crime?**

I am the person arrested for selling art for \$1 on State Street but later charged with a 1<sup>st</sup> class felony for audio-recording my own arrest. I am still being prosecuted for this ... this crime? Why am I willing to risk my freedom so some unknown artists can sell their art in the streets and in the parks of a city that doesn't care for them or for myself at all? Please, don't feel sorry for me! Laugh and shout the word freedom. I am happy to be fighting this fight. I am proud of my actions. I feel free. I am not ashamed of their felony.

### **Art is speech!**

Art is speech. Artists polish their speech by perfecting their art. The word "communication" could be substituted for speech but because the First Amendment uses the word speech, so do I. There are many forms of art but all art involves communication and is considered speech in terms of this essay and by the full meaning of the First Amendment, in my opinion. Sometimes art's effect is explosive and dangerous to those in power. When you add up the sum of all the art/speech activity in a society you have culture. Culture develops self-identity and self-identity gives meaning to our lives. Many forces attempt to define what our lives mean, what our history means, what cleans our teeth whitest or what our rights are or are not. They often do so to attempt to control our future allegiances and actions.

Artists may be categorized into thematic art collectives, hip-hop culture, pop culture, Western culture, Mid-eastern culture, and on and on. Cultures can clash. Many human beings are willing to fight and die for their various culture's existence. In a diverse democracy we need to learn to be tolerant of the many cultures that make up our society. Cultural clash does not have to be physically violent in an open society. Physical violence most often occurs when one culture attempts to use law or force to suppress other cultures in order to shove their cultural attitudes down someone else's throat. The Free Speech Artists' Movement goal is to make Chicago more friendly to artists to open up opportunities to any artists wishing to make a living by selling their art in public. This is the single best way to support all of Chicago's cultures – by allowing the creators of culture – the artists – basic grass-root opportunities, as is their right under the First Amendment. That is why I happily risk my freedom, to support the multi-cultural expressions of Chicago's many artists.

### **Street Art – The Foundation of an Urban Cultural Ecosystem**

Street art activity and street vending in general are the grass-roots of an economic ecosystem. This low level economic activity is capable of feeding many at a subsistence level. It acts, where it is found alive and well, as a stabilizing system, an economic safety net, and in the case of art, also as a complex social-intellectual engine pumping up the volume of any local marketplace of ideas and culture. Street art culture in a healthy urban cultural ecosystem is the algae of urban intellectual ferment.

Street artists and First Amendment vendors attract an audience in public and do not have to ask permission of any curatorial committee or social gatekeeper to present their ideas. No up-front costs or unattainable overhead expenses should prevent them from participating. This is the very essence and experience of freedom. It allows the beginner to grow and develop and provides a cushion for the unemployed during hard times. I have seen artists who might have succeeded with their art, if they had a place to sell it directly to the public, give up after a bout with hard times. Street art cultural opportunities allow such artists to survive by selling their art. Street art cultural opportunities, open air art markets, free for artists to participate, are a critical social safety net for any urban arts "cultural marketplace of ideas" to reach and maintain its full potential.

The lively activity of many artists and thinkers provides inspiration to an enlightened public in this intellectual ferment. Take artists out of the public and this ferment slows down. This is exactly why the

First Amendment protects art and speech in public. The legal meaning of the First Amendment phrase “make no law abridging freedom of speech” has come to mean – “write laws to limit speech least so as to encourage as much speech as possible.” That's just what the Free Speech Artists' Movement wants.

Let's take a single narrow example of how the absence of street art activity affects cultural activity overall. The percent of the public who seek out art in galleries or art openings in Chicago, is low – very low. The managers of cultural institutions can blame the public for this or blame their salesmanship. I blame the fact that artists have been run off the streets of Chicago. The street artist reaches the public directly – grabbing people's imaginations as they walk by. Street artists apply the full force of their creative personalities to the task of selling art and create art appreciation where often little existed previously. Some of street artists' converts go on to attend openings at formal art galleries. This is just one contribution street artists make to urban culture. Street artists' collective activity contributes, like a social catalyst, to the overall cultural activity of an urban area.

The existence of art scenes, where artists gather and support each other while collectively promoting their art, allow many more artists to thrive at a basic economic level – the first level – the street level of opportunity. In an open society the artist is free to build an audience from the entire public or any small portion of the public that they can communicate their artwork to, by working on the streets and in the public parks. Thus, a robust street arts culture effectively contributes to the freedom artists experience in an urban area. Once this street-arts-freedom culture is established other artists region-wide are attracted to this energy. The culture of street art begins to feed on itself and grow. This growth of street art sales and the infectious creative energy of the artists, feeds every other arts institution in the cultural ecosystem above it. Your opinions/insights on this are requested to extend this paper into a dialogue ( <http://groups.yahoo.com/group/Art-Patch-Project> ).

### **First Amendment Case Law on Selling Art/Speech in Public & Chicago's Grass-Roots Art Reality**

In a nut shell, First Amendment case law interprets the phrase “make no law abridging the Freedom of Speech” to mean, if a law is passed that limits speech (art) there must be a very important need for the law. The law should be narrowly tailored to meet that need (ex: if the reason is the safety of the pedestrian then a narrow law would be to leave 7' for the public to walk on a sidewalk and be 10 feet away from any doorway). The law should not be broadly written limiting speech (art) greatly (ex: no selling of speech (art) in the downtown or in any alderman's ward that doesn't want it). Also, if speech (art) is limited, the speakers (artists) are to be provided an ample alternative to exercise their speech rights as judged from the point of view of the speaker (artist).

One other very important fact of First Amendment case law that many citizens and artists alike don't understand is this often repeated statement. “It is well settled that a speaker's rights are not lost merely because compensation is received; a speaker is no less a speaker because he or she is paid to speak.” This means if it is legal to give art away at a spot – it should be legal to sell it at the same spot. If I don't block foot traffic while giving the art away, then I shouldn't block traffic selling it either. If traffic, the City's reason for the law, is not affected differently by my giving the art away compared to when I sell it, then there is no constitutional reason why I should not be allowed to sell my art at that spot.

Once the foundational layer of a cultural ecosystem is destroyed it is difficult to bring it back. Street arts culture has been destroyed in Chicago. Speech is being lost wholesale. One of the most laughable lies that the City tells about why they need to discourage artists from selling in public is that, if the City doesn't have these laws and policies, artists will swell the sidewalks and parks with activity and no one will be able to walk safely down the streets. In reality, it takes time and great effort to rebuild street art activity. Because street art activity has been (unconstitutionally) discouraged by law in Chicago in the

last 15 years both the public and the artist base have lost a culture of street art. The public is not used to meeting artists on the street and artists are not practiced in creating viable street art businesses.

Today in Chicago the public ignores the lone artist who attempts to use a speech permit to sell art and after acting alone for some time the artist gives up. If Chicago eliminated the peddlers license requirement tomorrow for artists to sell art it would take a major effort by artists to create viable street art scenes in all but a few great locations. This is because street art activity is the foundational part of a cultural ecosystem based on the interactions of the public and artists over time. Just like any business that takes a standard minimum of two years to develop a customer base, re-building any given art scene will require a similar gestation period. Artists developing a street-art ecosystem will have to invest their time and effort over a length of time to get interactions with the public (conversations and sales) going. The peddlers license requires artists to pay \$165 upfront to buy their rights that may not be made back for some time as artists get started. Street Art Culture in Chicago is dead and this explains why the “speech permit” (see below) locations are not utilized. This creates a massive chilling effect on an ambitious artist's initiative to attempt to build an art scene of one.

### **Unconstitutional Laws! Speech Permits?**

How is the peddlers license unconstitutional and what are speech permits?

The Chicago peddlers license was written for non-speech items like umbrellas and socks. It was written broadly to protect established businesses and to deny street vendors access to large portions of Chicago where economic opportunities abound. Aldermen add to the peddlers license prohibited districts through “aldermanic privilege.” If an Alderman proposes a change only in his ward, it is passed unanimously. Two Aldermen have barred vending in their wards completely. Barring vendors this way is only constitutional if it applies only to the sale of products **not** protected by the First Amendment. It is only a privilege to sell non-speech items in public. Privileges can be licensed and regulated freely by the government under our constitution, speech can't. Speech is not a privilege. Speech is a right.

Speech is a right and is protected under the First Amendment. When the City Council added speech to the peddlers license they took artists' First Amendment rights away and treated speech like a privilege - not a right. This destroyed what street art culture existed in Chicago at that time. This is not the only way the city has shredded street art culture in Chicago, just the most outrageous. Then again, the complete ban on artists selling art in all the City's public parks is arguably as bad or worse.

The peddlers license is a prior restraint on speech. If you do not have \$165 to pay for one or if you have an outstanding debt to the City, you can't get a peddlers license which prevents you from exercising your speech rights from the get-go (a prior restraint). The peddlers license is broadly written. It bars speech in broad tracts of Chicago without providing any but the most meager and illegally constructed alternatives.

### **History**

Artists were added to the peddlers license in 1994. Daley followed the lead of NYC Republican Mayor Giuliani. The artists of NYC fought boldly in court and won all their speech rights back. Artists didn't fight back in Chicago. The medicinal marijuana t-shirt sales people fought for their First Amendment rights in Chicago in 1995. All they wanted was to sell their t-shirts at the Taste of Chicago. That is about all they got. Their law suit, Ayres v Chicago, resulted in creation of the “speech permit” in 1999.

In Ayres v. Chicago, the court discovered that the prohibited districts were broadly defined and therefore violated the First Amendment. So the City created 10 speech permit corners, four around

Grant Park for festivals and six in the Loop. They called this an ample alternative to make up for the way the peddlers license prohibited districts violate artists' speech rights. A person who buys a peddlers license may apply each month for a speech permit by submitting all the designs they hope to sell for review. The speech permit is good only for the corner it is issued for and only for one month. An artist must resubmit each month and all designs must be submitted a month ahead of time. Therefore, no topical statements are allowed by the provisions of the ordinance. If Daley does something outrageous today, the earliest you could sell your art commenting on it is a month later. In a month all public interest in a topical issue has evaporated. How in the United States of America could eliminating topical speech be a constitutional speech regulation?

Only five people are accepted per corner per month. This regulation means only thirty people can apply in the entire City (4 fest corners have no traffic except during festivals). It guarantees that there will rarely be more than 1-3 people per corner even if it is booked each month because no artist is going to be on the corner 24/7. When more than five apply per corner the Department of Business Affairs is to hold a lottery (behind closed doors) to select the 5 lucky winners. Talk about total control to pick their favorite five people! And if you don't like the results – you can come back next month and try again – ha-ha... This your is freedom?

The fact is nobody uses this farce of an alternative. These speech corners in no way offer an ample alternative for the three pages of broadly written prohibited districts defined in the peddlers license. However, these speech corners might be an interesting point of attack for artists who wanted to organize to demonstrate artist-power in Chicago.

### **So What – Who Cares?**

In Chicago there is not one single art scene where artists can sell their art to survive that is free from excessive fees and curatorial roadblocks. Even the blues musicians are gone from public in Chicago. It should be illegal to confiscate a musicians guitar or a graffiti artist's notebook. Our street arts tradition is lost. The constitution is in tatters. When I go out in the public to print art-patches much of the public avoids me as if I were a homeless person asking for money. They equate the sale of art with the homeless because the homeless have won their First Amendment rights to ask you for a dollar. But the homeless artist can't legally sell you a portrait on a paper plate in the Loop for that same dollar because that is a crime. For the most part – my activities of selling art is criminalized by the peddlers license in the parts of Chicago where it would be possible for me to develop a viable street art presence. The City and the State are presently cooperating to complete the task of criminalizing me for my arts activity by prosecuting me for a 1<sup>st</sup> class felony (4-15 years in State prison) from when they arrested me for selling art for \$1 on State Street. What is their reason for the felony - because I audio-recorded my own arrest. Interestingly, the eavesdropping law they are using to prosecute me is also a violation of our First Amendment right to gather information in public.

The appreciation of art in public is at a low ebb. People do not expect to see or to relate to artists in public under these conditions. Why does the public stand for this? They take it because the don't know what they are missing anymore. It happened without any announcement. The media never did its job. The artists were threatened and arrested and no one covered it in Chicago media. Artists were not organized. Now its our living history.

When I talk to artists about their rights to sell art, many are unaware of their First Amendment rights and few desire to build an audience in public. The most important reason is they see no successful examples of artists selling art in public in Chicago. So the public has lost interest in street artists and artists have lost interest in street level art activity.

The street arts ecosystem is gone. One lawyer told me, “they've cut artists' balls off in Chicago and artists are living like that.” What he meant was “they took artists' rights away and artists accept that now.” What remains is a stunted grass-roots arts infrastructure where the flame of independent culture is hidden in many isolated private locations struggling to maintain minimal levels of public involvement. A street arts culture helps community arts groups promote themselves and provides opportunities for their volunteer artists to survive while they help out to build community arts institutions reflecting diversity. An additional part of the isolation that independent community art groups endure is a result of not being able to post their notices on the poles and public locations. This law changed in the late 1990's forcing some of us on to the Internet. We still need that public forum of light poles and traffic sign poles for communicating with our local patrons and backing our Facebook pages up in real-space. Artists need to be able to post art in public. Local businesses needs the same thing. Community organizations especially need this forum – the streets. Street communication has been taken away from us in Chicago! We are poorer for it.

Take street art culture away and the gatekeepers of culture gain even more control. Today artists of color are selected by and exhibited at all major cultural institutions. However, community controlled arts groups that are devoted to a single ethnic group still have great trouble finding funding. Small independent arts groups run by artists devoted to nurturing emerging artists also find difficulty surviving beyond the elbow-grease level of volunteer staffs.

In Chicago the cultural gatekeepers are in control. There is not one single art scene where local artists can sell their art to the public and build an audience as emerging artists at the grass-roots level. I have observed artists for twenty years at the Uptown Multi-Cultural Art Center, a non-profit art center I helped found in 1987. Artists struggle to make a living from their art in Chicago and often give up in frustration. The first level of audience building opportunities have been destroyed by laws that discourage art and culture at the street and public park level. This is a violation of our First Amendment right to survive and build our audiences in public. It is cultural repression.

Art Fairs rent back public space to artists for a few days at prices (\$150-\$400) that skim the profit off the top of the artists sales and thereby build their for-profit ventures off the backs of artists who attempt to make a living in public. **This is cultural share-cropping.** The fact that street/park alternatives for selling their art are legally denied artists encourages them to consider cultural share-cropping (working in art fairs). Most artists succeed only in promoting their presence through art fairs and eventually give it up as unprofitable and too much work. Others battle for a few prestigious gallery positions as captive artists in service to the whims of wealthy patrons. Still others seek to promote themselves online but find that without a public presence their traffic and success is greatly limited.

There is no alternative to a vibrant street arts culture reaching out to involve new audiences in arts and culture, whether it is an individual artist developing his/her audience or the City as a whole developing a local market for arts and culture. Artists' rights are being violated. Chicago's arts community is stunted.

### **Art is the Solution.**

Artists have created a way we can help change Chicago's unfriendly attitude toward artists. The Art Patch Project is a win-win, non-violent, community-art pathway to change. We are on a slow but determined path toward educating the public – beginning with the youth – by marching the art of many local artists (a growing number) around the legal walls that bind us until these laws crumble. We are accepting designs from artists which we print on cotton patches. We add the artist's title, contact

information and our free-speech issue website address on each art-patch. We give away art-patches in all their variety in public .

Young and old alike are wearing or displaying art-patches. The public is being introduced to many artists they would never be aware of otherwise. These are the artists the public is missing. That is our message – that the artists on the patches are not able to be seen in public. When the public begins to realize the many artists they are missing in public – they will be able understand why the policy of denying Chicago's artists their First Amendment rights is misguided. In the long term we are increasing awareness of artists rights to sell art in public using the Art Patch Project. This builds the foundation for real change.

The Art Patch Program is combined with our intent to sue Chicago over its violations of our First Amendment rights. These effective actions are why the City and State are trying to stigmatize me as a criminal. The level the City is willing to go to prevent us from succeeding is a measure of just how important the changes we ask for are.

I am willing to risk my freedom for future opportunities for artists. Our collective freedom – the right to create art scenes through which many artists can survive - is worth it. Don't let their threats scare you away. Take a stand. Feel free!

### **What Can You Do?**

Artists can help make Chicago more friendly to artists by submitting a single graphic black and white design to the Art Patch Project. In exchange we will promote you, your art and your website/email address far and wide. Submitting artists need not be limited to Chicago based artists. You can promote links to our website, facebook page and help establish a discussion of artists rights at our yahoo group (see below)

Love freedom. Love art. Love Chicago.

**In Chicago?** Help out Wednesday's and Sundays when we teach a free screen print workshop. Students and volunteers help print the art we give away. 1630 W Wilson Avenue. Wednesday from 2-7pm and on Sunday, 3-6pm.

### **Contact**

Art Patch Project at [umcac@art-teez.org](mailto:umcac@art-teez.org), 773-561-7676 <http://www.art-teez.org>

Free Speech Artists' Movement: <http://www.Facebook.com/FreeSAM>

Street Artist Adventures: <http://www.c-drew.com/blog>

E-mail comments to [Art-Patch-Project@yahoogroups.com](mailto:Art-Patch-Project@yahoogroups.com)

Or Join our yahoo groups at <http://groups.yahoo.com/group/Art-Patch-Project>