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Are They Graffiti Artists or Vandals? Should They Be Able or Canned?: A Look at the Latest Legislative Attempts to Eradicate Graffiti

INTRODUCTION

Graffiti has been around for centuries.¹ However, only recently has it drawn such wide-spread attention. Private citizens and public officials are outraged and frustrated by the effort and cost associated with trying to remove graffiti. Given that graffiti costs the nation \$4 to \$5 billion a year,² it is understandable why it has been the focus of much debate. Legislators have responded by inundating the system with various solutions to the problem. Yet, despite the increased attention, graffiti still endures.

Section I of this Update takes a brief look at the background of graffiti and details the different types of graffiti and the motivations behind them. Section II examines the arguments of graffiti proponents and opponents. Section III explores the First Amendment rights of graffiti artists. Finally, Section IV analyzes the legislative and other various responses to the problem of graffiti, highlighting California's latest legislative proposal which would have permitted the caning of graffiti writers. This Update concludes by suggesting that the most effective solution in stemming the tide of graffiti is to recognize the expressive element in the writer's work through a combination of programs and laws, and balance this expression against the public's interest in keeping property free from unwanted graffiti.

I. BACKGROUND

Graffiti is defined as "an ancient drawing or writing scratched on a wall or other surface."³ However, graffiti more commonly refers to "an inscription, drawing or design, scratched, painted, sprayed or placed on a surface, without the consent of the owner, so as to be seen by the public."⁴ Graffiti has existed for several thousand years.⁵ Yet, its popularity has exploded only recently within the past thirty to forty years, appearing on both public and private property, in low-income, middle-class, and affluent neighborhoods.⁶

1. Marisa A. Gomez, Note, *The Writing on Our Walls: Finding Solutions Through Distinguishing Graffiti Art From Graffiti Vandalism*, 26 U. MICH. J.L. REF. 633, 636 n.7 (1993) (stating the Mayans of Guatemala produced graffiti dated between 100 B.C. and 700 A.D.).

2. Carl Herko, *The Writing on the Wall: Urban Graffiti's Deeper Meaning*, THE BUFFALO NEWS, Aug. 24, 1993, Lifestyles Sec., at 1.

3. RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY 579 (1991).

4. *Sherwin-Williams Co. v. City of San Francisco*, 857 F. Supp. 1355, 1358 (N.D. Ca. 1994).

5. NORMAN MAILER, THE FAITH OF GRAFFITI ch. 1 (1974).

6. Gomez, *supra* note 1, at 641 n.40.

Graffiti artists, writers, or vandals (depending on one's perspective) come from all racial, ethnic and socioeconomic backgrounds.⁷ Graffiti artists often start writing at a young age, around eight or nine years.⁸ However, few writers above the age of sixteen practice graffiti because they may be considered adults and can therefore receive severe penalties and a criminal record.⁹

Graffiti can generally be classified into three types: (1) gang graffiti; (2) tags/throw-ups; and (3) pieces. It is important to distinguish among the different types of graffiti. Each type of graffiti and its creator is driven by a different motivation. Therefore, understanding what motivates a certain creator is essential to controlling graffiti.¹⁰

First, "gang graffiti" generally consists of primitive scrawls focusing on the gang name or symbol.¹¹ Gangs use graffiti for several purposes: to mark territory, to insult other gangs, to warn away intruders, and to eulogize their dead.¹² Gang graffiti in an area may lead to increased criminal activity and violence over defacement of such graffiti by others.¹³ Gangs tend to place graffiti on areas within their own turf. Only a small portion of all graffiti is actually created by gangs. It is estimated that gang graffiti accounts for only approximately 10% of the total graffiti in some cities.¹⁴

"Tags" and "throw-ups" constitute the second class of graffiti. Tags are stylized signatures of a writer's chosen street name or that of the graffiti crew with whom he paints.¹⁵ Throw-ups are larger names or figures written in bubble style letters, often multicolored. In addition, throw-ups tend to involve more artistic characteristics. The primary motivation of tag and throw-up writers, generally referred to as "taggers," is fame and recognition.¹⁶ Three factors are important to achieving fame: (1) quality of work; (2) quantity of work; and (3) the risk involved in applying the graffiti.¹⁷ These writers also share two secondary values: power and rebellion.¹⁸ Due to such motivations, tags and throw-ups account for a substantial portion of all graffiti. Approximately 85% of a city's graffiti can be caused by taggers.¹⁹

"Pieces" are the third type of graffiti. Pieces are detailed, multi-colored murals that range in size. They are typically larger than tags and throw-ups and may cover an entire building wall.²⁰ Pieces may be commissioned or done without

7. *Sherwin-Williams*, 857 F. Supp. at 1359.

8. CRAIG CASTLEMAN, *GETTING UP: SUBWAY GRAFFITI IN NEW YORK* 67-68 (1982).

9. *Id.*

10. Gomez, *supra* note 1, at 644.

11. *Id.* at 644 n.65.

12. *Sherwin-Williams*, 857 F. Supp. at 1361. *See also* Gomez, *supra* note 1, at 644.

13. Gomez, *supra* note 1, at 644-45.

14. *Sherwin-Williams*, 857 F. Supp. at 1361.

15. *See* Gomez, *supra* note 1, at 647.

16. Herman Wong, *Their Art Drives Them to the Wall*, L.A. TIMES, May 19, 1991, at E5.

17. *Sherwin-Williams*, 857 F. Supp. at 1360.

18. *Id.* at 1361.

19. *Id.*

20. *Id.* at 1359.

permission. Like taggers, piece artists seek fame and recognition. However, they may also be driven by other motives, such as exploring and practicing their artistic abilities, providing a means of economic support for themselves, or using their work as a forum for expressing certain societal or political beliefs. For example, Keith Haring's subway pieces represented one of the most visible attempts in recent history to broaden the public's interest in art and to bypass the network of galleries and museums by which artists have historically established their careers.²¹ Due to the skill involved and the sophistication of pieces, they account for the smallest portion of all graffiti. Approximately 5% of all graffiti is attributable to pieces.²²

It is important to distinguish between graffiti writers who are driven by artistic expression and those who are driven primarily by the desire to deface property. These differing motivations form the basis of the argument between graffiti proponents and opponents.

II. GRAFFITI ART V. GRAFFITI VANDALISM

Graffiti invokes responses ranging from hatred to artistic appreciation. These dichotomous opinions illustrate the need for balancing the cost of the vandalism against the benefit of the art to society.

For graffiti opponents, those who consider graffiti to be vandalism, *all* graffiti is vandalism regardless of a work's artistic value.²³ Graffiti opponents feel that graffiti is ugly, invites criminal activity, indicates neighborhood decay and is done by criminals who should be punished. The opponents' solution to the problem is to not only outlaw all graffiti, even when it is on private property or was commissioned, but to also punish severely all graffiti writers.

In addition, the opponents of graffiti correctly argue that graffiti is very costly to society. Both public agencies and private owners spend millions of dollars and countless hours trying to eradicate the problems of graffiti.²⁴ However, most opponents' contentions and fears that graffiti invites crime and neighborhood decay are unfounded. Much graffiti is done by non-violent groups and is present in upper-class neighborhoods as well.²⁵

Graffiti art proponents recognize that some works have extraordinary merit and deserve both recognition and preservation.²⁶ Advocates further believe "that the motivation of many writers is not to deface property, but rather to express themselves or to gain respect by the only means that are accessible to them."²⁷ Advocates urge the promotion of commissioned works or public murals and feel

21. Michael Kimmelman, *A Look at Keith Haring, Especially on the Graffiti*, N.Y. TIMES, Sept. 21, 1990, at C19.

22. *Sherwin-Williams*, 857 F. Supp. at 1359.

23. Gomez, *supra* note 1, at 650 (emphasis added).

24. *See id.* at 654 n.102. *See also* National Paint & Coatings Ass'n v. City of Chicago, 45 F.3d 1124, 1126 (7th Cir. 1995), *cert. denied*, 115 S. Ct. 2579 (1995).

25. *See* Wong, *supra* note 16, at E1.

26. *Id.*

27. Gomez, *supra* note 1, at 652.

that some offenders should be given an art education as a part of their rehabilitation.²⁸

These competing viewpoints give rise to opposing legal theories regarding the constitutionality of anti-graffiti legislation. Those who view graffiti as art believe that it falls within the protection of the First Amendment, while those who view graffiti as vandalism think its protection is wholly outside the First Amendment.

III. FIRST AMENDMENT CONCERNS

A. First Amendment Theory

The First Amendment of the United States Constitution states that "Congress shall make no law . . . abridging the freedom of speech . . ." ²⁹ However, the right to this freedom is not an absolute right to say or do anything that one desires. In determining whether to afford speech protection, courts must balance the government's interest in regulating such expression against the promotion of a free marketplace of ideas and individual self-expression.³⁰

The protection of speech is also a fundamental right. In *Palko v. Connecticut*,³¹ the United States Supreme Court characterized protection of speech as a "fundamental" liberty in part because "our history, political and legal," recognized "freedom of thought and speech" as "the indispensable condition, of nearly every other form of freedom."³² As a "fundamental" right, the First Amendment guarantee of free speech has been "incorporated" through the Fourteenth Amendment to apply to state actions as well.³³ One rationale for why freedom of expression is afforded such special protection is the "self-fulfillment" theory,³⁴ which "emphasizes the value of free speech in promoting individual self-expression and self-realization."³⁵

However, not all types of speech are afforded the same level of protection. The Supreme Court has categorically excluded certain "well defined and narrowly limited classes of speech" from the First Amendment.³⁶ The various cate-

28. Richard Roeper, *CTA's Fantasy Life Won't Erase Graffiti*, CHI. SUN-TIMES, Sept. 23, 1992, at 11.

29. U.S. CONST., AMEND. I.

30. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 308 (1984) (hereinafter *CCNV*).

31. *Palko v. Connecticut*, 302 U.S. 319 (1937).

32. *Id.* at 326-27.

33. *Duncan v. Louisiana*, 391 U.S. 145, 148 (1968).

34. GERALD GUNTHER, *CONSTITUTIONAL LAW* 998 (12th ed. 1991).

35. *Id.*

36. *See Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942) where the Court held:

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order

gories of speech can be viewed as if on a sliding scale. At one end, receiving no judicial protection, is speech that is of slight social value, such as child pornography and obscenity. At the other end, receiving a high degree of protection, is speech that has a high degree of ideological content, such as political speech. Defining what constitutes the middle ground has been a somewhat problematic area for the courts. Examples of the types of speech that are afforded an intermediate level of protection include commercial speech,³⁷ indecency³⁸ and symbolic speech.³⁹ Since graffiti writers choose to express themselves through actions rather than words, graffiti would fall under the realm of symbolic speech.

1. Symbolic Speech

Symbolic speech encompasses actions or conduct "which have as their primary purpose the expression of ideas."⁴⁰ Since freedom of speech encompasses more than spoken words, symbolic speech can also be afforded protection under the First Amendment.⁴¹ Since graffiti is a form of symbolic speech, graffiti could potentially be afforded First Amendment protection.

The Supreme Court has articulated a two-part test for determining whether conduct possesses sufficient communicative elements to trigger First Amendment protection.⁴² Under this test, known as the *Spence* test, the conduct must have (1) the "intent to convey a particularized message" and (2) "the likelihood must be great that this message would be understood by those who viewed it."⁴³

The Supreme Court has held conduct such as draft card burning,⁴⁴ sleeping in a park⁴⁵ and nude dancing⁴⁶ to constitute symbolic speech. Once conduct is deemed to constitute symbolic speech, the Supreme Court, in *O'Brien*, held that the symbolic speech may be regulated if four requirements are met: (1) the regulation was within the constitutional power of the government; (2) the regulation

and morality.

37. *See* *Central Hudson Gas v. Public Serv. Comm.*, 447 U.S. 557 (1980) (holding that commercial speech, if it concerns a lawful activity and is not false and misleading, is subject to intermediate scrutiny).

38. *FCC v. Pacifica Found.*, 438 U.S. 726, 743 (1978) (holding that even First Amendment protected language may be prohibited in contexts where it is especially offensive).

39. *United States v. O'Brien*, 391 U.S. 367, 377 (1968) (holding that symbolic speech may be regulated if a sufficiently important governmental interest can be justified by incidental limitations on First Amendment freedoms).

40. BLACK'S LAW DICTIONARY 1449 (6th ed. 1990).

41. *Id.* *See also* *Cohen v. California*, 403 U.S. 15 (1971) (holding that the wearing of a jacket bearing the legend "Fuck the Draft" was protectable First Amendment speech).

42. *Spence v. Washington*, 418 U.S. 405, 411 (1974).

43. *Id.*

44. *O'Brien*, 391 U.S. 367 (1968) (draft card burning held to be symbolic speech).

45. *CCNV*, 468 U.S. 288 (1984) (sleeping in a park in connection with a demonstration constituted symbolic speech).

46. *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991) (nude dancing held to be symbolic speech).

furthered an "important or substantial" governmental interest; (3) that interest was "unrelated to the suppression of free expression"; and (4) the "incidental restriction" on First Amendment freedoms was "no greater than is essential to the furtherance" of the governmental interest.⁴⁷ This so-called *O'Brien* test subjects symbolic speech to intermediate scrutiny.⁴⁸

Courts have also held that artwork may constitute symbolic speech for First Amendment purposes.⁴⁹ The freedom of speech protected by the First Amendment has been interpreted "to embrace purely artistic as well as political expression . . . unless the artistic expression is obscene in the legal sense."⁵⁰ Expression in the visual arts falls within the intellectual freedom protected by the First Amendment.

2. Public and Non-Public Fora

Consideration must also be given to whether this speech occurs within a public or private forum. Public places are historically associated with the exercise of First Amendment rights.⁵¹ Streets, sidewalks and parks are a few examples of traditional public forums.⁵² Other sites, such as schools and libraries, are considered semi-public forums.⁵³ For the most part, expression is generally tolerated when performed in both traditional public and semi-public forums.⁵⁴

Where the expression takes place in a public forum, the regulation must not only be content-neutral, but also must not close adequate alternative channels for communications.⁵⁵ In addition, it must be narrowly tailored to serve a significant governmental interest.⁵⁶

Where the expression occurs on private property, the court applies a less stringent test.⁵⁷ The regulation must be content-neutral and not close adequate alternative channels for communications.⁵⁸ However, it need only bear a rational relationship to a legitimate governmental end.⁵⁹

47. *O'Brien*, 391 U.S. at 377.

48. *Id.*

49. *Serra v. United States GSA*, 847 F.2d 1045, 1048 (2d Cir. 1988).

50. *Piarowski v. Illinois Comm. College*, 759 F.2d 625, 628 (7th Cir. 1985).

51. *See Hague v. Committee for Indus. Org.*, 307 U.S. 496 (1939).

52. *United States v. Grace*, 461 U.S. 171, 176 (1983).

53. *Grayned v. Rockford*, 408 U.S. 104 (1972) (schools held to be semi-public forum); *Brown v. Louisiana*, 383 U.S. 131 (1966) (libraries held to be semi-public forum).

54. *See Hague v. Committee for Indus. Org.*, 307 U.S. 496 (1939); *United States v. Grace*, 461 U.S. 171, 176 (1983); *Grayned v. Rockford*, 408 U.S. 104 (1972); *Brown v. Louisiana*, 383 U.S. 131 (1966).

55. *CCNY*, 468 U.S. 288, 293 (1984).

56. LAWRENCE TRIBE, *AMERICAN CONSTITUTIONAL LAW* 992 (2nd ed., 1988).

57. *Id.* at 982.

58. *Id.*

59. *Id.*

B. First Amendment Theory Applied to Graffiti

Not all types of graffiti should be afforded First Amendment protection. Graffiti placed on private property without the consent of the owner would not be protected. In such instances, the government has a strong interest in preventing someone from damaging another's property. Any regulation seeking to advance this goal would likely survive a rational basis type analysis. On the other hand, graffiti which occurs on public property or permissively on private property may be subject to protection depending on the nature of the regulation.

Since graffiti involves conduct rather than verbal expression, the First Amendment analysis must proceed under the realm of symbolic speech. Murals or pieces often communicate social or political statements and are highly artistic.⁶⁰ In addition, pieces often reflect a sense of cultural pride.⁶¹ Thus, murals and pieces satisfy the *Spence* test because they intend to express ideas, and those viewing this type of graffiti understand that the writers are intending to convey certain messages.

Since murals and pieces arguably fall within a protectable category of speech, the asserted government interests in prohibiting these types of graffiti must next be analyzed under the appropriate level of scrutiny. The Government's two main interests at stake in prohibiting graffiti are protecting the defacement of property and preventing "visual blight." The Supreme Court has held that a city's pursuit of aesthetic objectives constitutes a significant governmental interest.⁶²

Although murals and pieces arguably constitute speech under the First Amendment, the government also has substantial interests in prohibiting these types of expression. Whether the graffiti will be afforded protection depends on the method used to restrict the expression. Only regulations which are content-neutral, further a substantial governmental interest and do not close alternative channels for communication will be upheld.⁶³

IV. LEGISLATIVE RESPONSES

In recent years, numerous and varied solutions have evolved in an attempt to control the graffiti problem. While some private citizens have sought to promote graffiti art, legislators have primarily focused on intensifying the penalties for graffiti vandals. The methods of penalty can generally be classified into three categories: criminal, civil and other.

60. See Kimmelman, *supra* note 21, at C19 (discussing how Keith Haring's subway art often focused on AIDS awareness issues).

61. Lynn Van Matre & Peter Baniak, *Question of Mural Integrity*, CHI. TRIB., Mar. 26, 1995, sec. 2, at 1, 4 (discussing the symbolism of murals in Latino neighborhoods).

62. *Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 805 (1984).

63. See *CCNV*, 468 U.S. 288 (1984).

A. Criminal Remedies

Graffiti vandalism is primarily prosecuted under criminal mischief, malicious mischief, intentional destruction of property or criminal trespass statutes.⁶⁴ Due to the young age of the offenders and the persistence of graffiti, a variety of unique punishments have been imposed and tested. The latest legislative attempt to control graffiti involves a “get-tough” approach using caning to punish graffiti vandals. A handful of states, with California leading the way, are considering caning legislation.⁶⁵

1. California’s “Caning” Legislation

California Assembly Bill 7 (“A.B. 7”) provides that “any minor who is adjudged a ward of the juvenile court for an act of defacing public or private property may be punished by paddling.”⁶⁶ The bill would allow judges to order up to ten paddle strikes, with a half-inch thick wooden paddle, in the courtroom, for an act of graffiti.⁶⁷ The spanking would be administered by a parent if the vandal is a minor.⁶⁸ If the parent’s paddling is unsatisfactory to the court, the bailiff would take over.⁶⁹

In January of this year, the Assembly Appropriations Commission, by a vote of eleven to six, approved the bill.⁷⁰ Although the bill later failed to pass a vote of the full Assembly, California’s caning legislation advanced farther than similar legislative efforts.

Assemblyman Mickey Conroy (R-Orange Co.) first introduced the bill in 1994. The measure was inspired by Singapore’s caning of American teenager, Michael Fay, for graffiti vandalism. This incident sparked a fervor of heated debate in the United States. At the time, the majority of Americans disapproved of the use of such measures.⁷¹ Today, however, there is growing support for such aggressive action.⁷² Many cities and states are reviving their interest in such

64. Most states have criminal or malicious mischief statutes. *See, e.g.*, 720 ILCS 5/21-1,-3 (1996) (“A person commits an illegal act when he: (a) knowingly damages any property of another without his consent . . .”); CAL. PENAL CODE §§ 594, 594.1, 594.5 (1995) (“(a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own . . . is guilty of vandalism: (1) Defaces with graffiti or other inscribed material . . .”). Some cities have adopted their own vandalism ordinances. *See, e.g.*, CHICAGO, ILL. MUN. CODE §§ 8-4-060, 8-4-120 (1992).

65. The other states considering caning legislation include New York, 1995 N.Y. A.B. 3804, and Tennessee, S.B. 380.

66. 1994 CAL. A.B. 7

67. *Id.*

68. *Id.*

69. *Id.*

70. *Panel Sends Paddling Bill to Assembly*, L.A. TIMES, Jan. 26, 1996, at B5.

71. Deborah Quinn Hensel, *Breaking Cycle of Violence; Parents Risk Abuse with Some Methods of Disciplining Kids*, HOUSTON POST, May 13, 1994, at A23 (stating the results of a poll by Time Magazine and CNN that showed 46% of Americans approved of the caning of Michael Fay in Singapore).

72. Eric Adler, *America the Punitive; Across the Land, Vengeance is a Popular Idea - But Does* <http://via.library.depaul.edu/jatip/vol6/iss2/5>

measures.⁷³

Caning legislation raises the issue of the constitutionality of corporal punishment.⁷⁴ Such legislation is an extreme approach to handling the graffiti problem. The deterrent effect which this type of punishment will have is questionable.⁷⁵ In addition, this type of legislation may actually result in the commission of more graffiti as publicity-seekers rush to claim the media attention such a sentence would bring.

2. Other Punishments

Other punishments imposed on convicted graffiti writers, either by order of state statute or through the court's discretion, include: imprisonment, fines, community service and the revocation of the offender's drivers license.⁷⁶ Of all the criminal sanctions available, community service sentences appear to have gained the greatest acceptance. Judges are more likely to impose community service as a sentence rather than jail time or fines.⁷⁷ Imposing community service as the punishment allows the writer to experience first hand how much time and effort is required to remove unwanted graffiti. Community service also serves two of society's goals in dealing with the graffiti problem: removing the graffiti and reducing the associated costs.

B. Civil Remedies

The foundation for civil causes of action is to recover the costs of the damage done to property. There are few civil causes of action available, and most are based on trespass and nuisance theories.⁷⁸ Despite the lower burden of proof required for civil actions, the burden is still often difficult to prove and impractical due to the cost of litigation. For instance, an action in civil trespass gives a property owner a civil claim against a writer to recover the costs of the damage.⁷⁹ In order to succeed in this action, the owner must be able to prove that the writer was on his or her property.⁸⁰ Unless the owner has caught the offender in the act, this will be difficult to establish. Even if the owner is successful in

it Really Benefit Our Society?, K.C. STAR, Feb. 4, 1996, at G1 (stating that dread over rising crime and the insecurity of the political and moral course of the country have led to the frightening trend of the desire for harsher punishments).

73. *Id.* (stating that New Hampshire Republican Representative Philip Cobbin is now pushing a bill to make public bare-bottom paddling legal for kids convicted of vandalism).

74. Eric Bailey, *Conroy Proposes Paddling Graffiti Vandals*, L.A. TIMES, May 13, 1994, at B1 (stating that Supreme Court Justice Antonin Scalia said in a talk in San Francisco that he believes caning is constitutional).

75. *Corporal Stupidity*, S.F. CHRON., Jan. 11, 1996, at A22 (arguing that violence begets violence and that humiliation is hardly an effective way to change behavior). See also Adler, *supra* note 68 (stating that experts insist caning does virtually nothing to curb crime or alter behavior).

76. Gomez, *supra* note 1, at 666.

77. *Id.* at 668 n.133.

78. *Id.* at 671.

79. *Id.* at 671.

80. *Id.*

his suit, he may experience further difficulties in collecting the monetary damages, such as having to collect fines or damages from a vandal from a disadvantaged background who is unable to pay the fines.⁸¹

C. Other Solutions

Due to the impracticalities of most criminal and civil remedies, legislators and other groups, such as transit authorities and neighborhood associations, have devised different, more creative answers to the graffiti problem. Such solutions developed out of many citizens' frustrations over the growing problem of graffiti and tend to place more emphasis on preventing graffiti vandalism, instead of punishing it. Some examples of solutions to reduce the graffiti problem include: regulating the sale of graffiti instruments (spray paint and wide markers); forcing property owners to pay for graffiti removal; developing and using graffiti-resistant materials on buildings; enforcing curfew restrictions for minors; focusing efforts on immediate cleanup; and using murals and commissioned works both to promote and prevent graffiti art.⁸²

Of these alternative methods, using murals and commissioned works to promote and prevent graffiti art deserves special mention. Such programs have proven effective in reducing the costs associated with graffiti.⁸³ The murals discourage vandalism because such works are respected by other writers, who see themselves as artists as well and would not deface another's work of art.⁸⁴ Such programs also give graffiti writers a positive outlet for their work.

Both public agencies and private citizen groups have implemented programs which cover up unwanted graffiti with murals or commissioned works.⁸⁵ For instance, the Chicago Transit Authority ("CTA") developed a program which provides spaces for writers to legally display their work and compete with other writers for prizes.⁸⁶ The monetary awards include one-semester scholarships to local art schools and the opportunity to paint more murals.⁸⁷ However, for many graffiti writers, the real prize is the freedom to express ideas and gain the admiration of other street artists.⁸⁸ It is estimated that the contest has already saved the CTA more than \$3 million in cleanup costs.⁸⁹

Those writers who seek notoriety will, if given the opportunity, be motivated

81. *Id.* at 669.

82. *See id.* at 675-96.

83. *Id.* at 693-96. *See also* Jeff Favre, *CTA Contest Gives Spray-Paint Artists a Place to Display Their Work Legally*, CHI. TRIB., June 2, 1994, at N1 (stating that cleaning costs are reduced because murals or commissioned works discourage "tagging").

84. Jeanette Almada, *Loyola Beach Neighbors Stem the Tide of Decay*, CHI. TRIB., Dec. 9, 1994, at N1.

85. *Id.* *See also* Favre, *supra* note 83.

86. Favre, *supra* note 83.

87. *Id.*

88. *Id.*

89. *Id.*

to do commissioned works rather than vandalize.⁹⁰ This solution strikes the delicate balance between protecting the writer's freedom of expression and recognizing the public's interest in keeping areas free from graffiti. The programs give writers a viable and legal alternative outlet for their artistic expression.

CONCLUSION

Murals and pieces are a form of expression and are highly artistic. The expression of one's political or social concerns through permissible graffiti is consistent with the purpose of the First Amendment. Graffiti writers, most of whom are children, have few alternative channels of communication. No program or law will provide an effective solution to unwanted graffiti unless it accounts for these considerations. The use of harsher methods, such as caning, to deter graffiti does not strike a balance between the need to protect the expression of graffiti artists and the promotion of the useful arts on the one hand, and the cost and destruction to society caused by graffiti vandalism on the other.

Programs that provide legalized space and encourage commissioned works address these concerns. Private property owners should be permitted to commission graffiti pieces for placement on their property. Public or abandoned property should be considered for potential art space. By providing an outlet for artistic expression and a forum which showcases writers' works, the incentives to vandalize are removed. More importantly, such programs are one of the few solutions to the graffiti problem to show highly successful results.

Lori L. Hanesworth

⁹⁰ Gomez, *supra* note 1, at 696.

