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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 740617

COMMONWEALTH OF VIRGINIA,
EX REL. THE ART COMMISSION,

Appellant,

v.

DAVID SILVETTE,

Appellee.

APPENDIX TO BRIEF

ANDREW P. MILLER
Attorney General of Virginia

THOMAS STEGER
Assistant Attorney General

Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

Counsel for Appellant

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VIRGINIA:

CIRCUIT COURT OF THE CITY OF RICHMOND

David Silvette — Complaintant

A-2968

vs

The Art Commission of the State of Virginia — Defendant

Floyd E. Johnson
Chairman and Secretary
303 E. High Street
Charlottesville, Virginia 22901

A PETITION FOR SEEKING A DECLARATORY JUDGMENT

Your petitioner, David Silvette, moves that this court enter a declaratory judgment to protect his rights pursuant to Section 9-6.9 of the Code of Virginia by reason of the following:

1. The complaintant, David Silvette, states that he has been adversely affected by the unconstitutional actions of the defendant.

2. In the "Rules and Procedures" of the State Art Commission, the complaintant declares part 4 (c) to be unconstitutional in that it is unlawful censorship and an infringement on the petitioner's rights to free artistic expression guaranteed by the First Amendment and acts as a prior restraint.

3. In the "Rules and Procedures", vague language gives no warning of what is expected in the way of performance. Review process is noticeably absent. Unconstitutional lack of Due Process.

FILED AND FILED
JUN 11 1973
Clerk, JR., Clerk
D. C.

Filed in the Clerk's Office the 11th day of June 1973

Your petitioner, pursuant to the privilege granted by the Administrative Agency Act of Virginia, asks for relief from the unconstitutional actions of the State Art Commission which has deprived me - an artist who appears frequently before them - of my lawful rights to free artistic expression guaranteed to me by the First Amendment.

Here is the Art Commission's duty under the Laws Relating to the Art Commission:

> In Section 9-12, "the Governor is authorized to accept in the name of the Commonwealth, gifts to the Commonwealth of works of art as defined in Section 9-10. But no work of art shall be so accepted until submitted to the Art Commission or otherwise brought to it's attention, and by it deemed worthy of acceptance."

That is all the law says.

But the Art Commission has for twenty-three years operated with a set of Rules and Procedures. In these rules, an artist, whose picture is being donated to the state, can be required - and frequently is - to alter his picture exactly the way the Art Commission orders it done. The Commission's authority to make these rules does not come from powers delegated by legislative enactment: it is assumed authority unsupported by law.

Rules and Procedures of the Art Commission:

> 4.(c) "It is important, particularly for portraits, that preliminary sketches, cartoons, color photographs or other preliminary work be submitted to the Commission before the work is completed to such an extent that changes would be difficult."

The Commission's own words, in a letter to me (August 17, 1972) define their practice of requiring artists to make changes. They write: "Members of the Commission have this right - or they can simply reject a painting." They refer me to their "Rules and Procedures" remarking: "I have underlined certain requirements." One of these requirements, Part 4 (a), requires that I submit to censorship by the Commission.

I insist that such an action represents arrogant unreasonable, arbitrary and capricious censorship of artistic expression - and is unconstitutional.

And if further confirmation is needed, the same letter adds this further definition of their power - unbridled power. I had protested their actions. The Commission has no program for considering protested decisions. They answered me; defining their actions: "its opinions must be accepted by the artist." The Art Commission has operated with this arrogant, unreviewable policy to the detriment of those artists submitting works of art for "approval". The Commission's activities finally became so oppressive and unreasonable that it reached an intolerable level.

The right to "approve or disapprove" of an art work is the sole right of the Art Commission under the law: "deemed worthy". And that phrase is so unconstitutionally vague it is undoubtedly invalid.

Old records of the Commission from it's inception in 1916 to 1932, (as a sample period) show not one instance of outright censorship and control. The Commission has reached out from a "yes" or "no" authority as written in the law. Contrary to the wording and intent of the law, and the practice of earlier Commissions, it now acts in an arbitrary and unreasonable manner to control an artist in the way he

would paint. And I have been a victim of these unreasonable repressive actions of the Commission.

Every ruling on censorship, by the Supreme Court, has knocked-out such actions as unconstitutional.

I have finally received an admission from the Chairman of the Art Commission (May 24, 1973) that, after my long insistence that what they were doing was censorship, he "supposed" this was true. Then he defended his Commission's actions as censors: " to ensure that state buildings and the works of art displayed therein are of the highest caliber".

I protest. It shows a strange concept of morality when the Commission seeks "works of the highest caliber" for the State- and in order to attain this, resorts to the evil of censorship.

So that my labeling of censorship as "evil" does not remain just an opinion from an injured party, may I quote from Mr. Justice Douglas in Bantam Books v. Sullivan: "The evils of unreviewable administrative action (in censorship) are as ancient as dictators".

Other Justices have said the same thing but not as succinctly. In fact, having written the brief before undertaking this petition, it is difficult for me not to include the judgments of great jurists - and try to put my words in as substitutes.

How can I find my own words to describe the actions of which I complain when the court in Fox v. Washington said so clearly: "A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished...violates an accused's rights under due process and freedom of speech".

Does that not describe the wrongdoing of the Art Commission? And does it not declare such actions unconstitutional?

In my brief I dwell on the "preferred position" mentioned by the Courts where matters of First Amendment Rights are endangered. In Thomas v. Collins the court said: That "preferred position" gives these guarantees a sanctity and a sanction not permitting dubious intrusions".

I am interpreting that "preferred position" to mean that strict adherence to procedure may be waived to achieve the goal of "sanctity" for First Amendment Rights. That indulgence may have to include an overlong petition from this lay petitioner.

May it be the Court's decision to act upon this unlawful action of the defendant. The illegality is seen by me to be:

1. Censorship: out by First Amendment protection.
2. Vague wording and unreviewable administrative action as a part of the "Rules"; out by Fourteenth Amendment.

This Court can end a chapter of censorship in Virginia: state operated - and state supported for twenty-three years. The harm done cannot be undone. With a new start it can be forgiven.

After weighing all the evils of censorship, Mr. Justice Frankfurter says: The ultimate reason for invalidating censorship is that it leads to timidity and inertia and thereby discourages boldness of expression indispensable for a progressive society".

.....

With the Court's indulgence I feel I must draw attention to the probable response of the defendant: a denial of this Court's jurisdiction in this case. The facts involved in such a denial go deeper than jurisdictional questions.

The petitioner has sought relief under the Administrative Agency Act. The defendant will undoubtedly tell the Court that, as the Art Commission is not a rule-making agency, it is therefore not subject to the provisions of the Act.

The Court should consider that this new interpretation (non rule-making) is only one month old, whereas for twenty-three years the Art Commission has been a rule-making agency. They formulated these rules, and first printed and distributed them to the artists, at the time of the Re-Organization Plan - with the advice and assistance of the Gernor's staff. (Records of the Art Commission in state archives.)

Ever since that time, the Commission has been officially recognized and accepted as a rule-making agency. The Commission has claimed it; and asserted it during these twenty-three years. They have exerted power using these rules as their authority. In fact it was the constant assertion and use of these rules, and the admonishment in person, and by letter (August 17, 1972) that I must obey them, which led eventually to this petition.

When my rebellion began (letter of August 17, 1972) the issue was censorship. I held that the rules were wrong because they gave such unwarranted arbitrary power to the Commission.

During the period when I was engaged in protesting the actions based on the rules, there was never any mention by the Commission that these "Rules" might be illegal. Rather there was maintenance of the "Rules" and I was directed to obey them (letter August 17, 1972).

On December 1, 1972, the minutes of the Art Commission report:

> "Various letters to and from Mr. David Silvette and the Chairman, and related correspondence, were brought to the attention of the entire Commission. The Commission supported the Chairman in his actions up to the present time and suggested he continue to seek the advice of the Attorney General".

My correspondence had been a strong denial of the Commission's right to make rules that exerted censorship on artists. The Attorney General disagreed with me; those minutes indicate. I feel sure subpoenaing the records of the Art Commission will prove this. Suddenly I was notified by letter (May 24, 1973) that the Attorney-General decided the Art Commission had no authority to make rules. That was exactly what I had been saying - and the decision I was asking for.

But the Attorney General did not stop the Commission from maintaining the rule I protested: the one giving them the right to censor artists. He limited his decision to: "it is my opinion that the Art Commission is without authority to issue subpoenas and conduct a formal hearing". (letter May 24, 1973) (I had asked for a formal hearing and the subpoenaing of witnesses) The State Art Commission, satisfied, told the press: "The Chapter is closed."

When I sought to find out whether this ruling of the Attorney General meant the end of "the Rule on censorship", I found out the Attorney General's decision was conceived by the Commission to refer only to rule-making when a hearing was requested. (letter May 24, 1973)

I was notified of that. I was also told by the Commission that it "would undertake no further correspondence with you on that subject and in that vein".

I petition this Court for a declaratory judgment (so censorship by the Art Commission will end). It is a shame the Court must settle what seemed settled. Reason indicates it should not be necessary. Necessity proves it is.

David Silvette

MOTION TO DISMISS

Comes now the defendant, the Commonwealth of Virginia, at the relation of the Art Commission, by her attorney, Andrew P. Miller, Attorney General of Virginia, and moves the Court as follows:

To dismiss the Petition on the ground that § 9.-6.9, Code of Virginia (1950), as amended, provides for declaratory relief to determine the validity of any rule promulgated by an agency of the State, and that the Art Commission is not an agency as defined by § 9-6.2(a) of the Code of Virginia (1950), as amended, in that the Art Commission is not authorized by law to make rules of general application or to adjudicate contested cases, and also on the ground that "Rules and Regulations" of the Art Commission, are not rules as defined by § 9-6.2(b) of the Code of Virginia, (1950), as amended, but are merely administrative guidelines solely concerning the internal management of the Art Commission, and therefore neither the Art Commission or its "Rules and Regulations" come within the purview of the provisions of § 9-6.9 of the Code of Virginia, (1950), as amended, and the Petition is therefore, improperly brought under that section.

WHEREFORE, the defendant prays that this Motion to Dismiss be granted, that all proceedings in the above-entitled action be dismissed with all costs assessed to

complainant, and for such further relief as this Honorable Court may deem proper.

COMMONWEALTH OF VIRGINIA, ex rel.
THE ART COMMISSION

By: /s/ J. Thomas Steger
Counsel

Andrew P. Miller
Attorney General of Virginia

James E. Moore
J. Thomas Steger
Assistant Attorneys General

Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

Law and Equity Court
OF THE
City of Richmond

JUDGES
ALEX H. SANDS, JR.
A. CHRISTIAN COMPTON
RICHARD L. WILLIAMS

RICHMOND, VIRGINIA
23219

CLERK
LUTHER LIBBY, JR.

September 14, 1973

Mr. David Silvette
1613 Westbrook Avenue
Richmond, Virginia 23227

J. Thomas Steger, Esquire
Assistant Attorney General
Supreme Court Building
Richmond, Virginia 23219

Re: David Silvette v. The Commonwealth of Virginia, ex rel. The Art Commission

Gentlemen:

Complainant, while ignoring the age-old maxim against self-representation, seeks by declaratory judgment an adjudication of alleged First Amendment infringements by the Art Commission. His petition has temporarily been detoured down the byways of intermediate defenses, specifically a motion to dismiss on the narrow ground that his grievance as postured is impermissible under §9-6.9 of the 1950 Code of Virginia, as amended. Complainant's standing to bring such a proceeding must be tested against pertinent language from applicable sections of the General Administrative Agencies Act (§9-6.1 to §9-6.14) and those statutes relating to the Art Commission (§9-7 to §9-12).

Contextual expunction of §9-6.2(a) defines "agency" to mean any State commission having state-wide jurisdiction authorized by law to make rules and §9-6.2(b) defines "rule" to mean any regulation of general application and future

effect affecting private rights, privileges or interests promulgated by an agency to implement, extend, apply, interpret or make specific the legislation enforced or administered by it, but does not include regulations solely concerning internal management of the agency.

The Art Commission is created by §9-7 of the Code and its authority over works of art comes from §9-12, which authorizes the Governor to accept gifts to the Commonwealth of works of art (paintings included by definition). But no work of art shall be accepted until submitted to the Art Commission . . . and by it deemed worthy of acceptance.

In administering and discharging its statutory mandate, the Art Commission caused to be published an official-looking pamphlet, in evidence as Plaintiff's Exhibit D, with the front page carrying in bold print the words "Commonwealth of Virginia" followed by the obverse side of the Commonwealth's seal entitled "Rules and Procedures of the Art Commission." Further wording on the face of the document says, "adopted January 1, 1950, revised July 1, 1967, second revision August 7, 1970."

Complainant now asserts that §4(c) of Exhibit D, which reads, "it is important, particularly for portraits, that preliminary sketches, cartoons, color photographs or other preliminary work be submitted to the Commission before the work is completed to such an extent that changes would be difficult," is an agency rule within the meaning of §9-6.2(b) and, thus, amenable to challenge by a declaratory judgment proceeding under §9-6.9 of the Code.

In prior skirmishs with complainant, the Attorney General's Office ruled that Exhibit D has only limited intramural application and, therefore, cannot be challenged under §9-6.9.

Rule 4(c) of Exhibit D completely controls the rights, privileges and interests of those, including complainant, who in exercising their artistic skills aspire to festoon the Commonwealth institutions with works of art. To give Exhibit D the restrictive construction urged by the Attorney General would frustrate the whole purpose of the General

Administrative Agencies Act. The motion to dismiss is denied and the defendant is given 20 days in which to file such other pleadings as it deems appropriate. Thereafter, the parties are requested to contact my secretary and obtain a hearing date.

The enclosed order was entered today.

Very truly yours,

Richard L. Williams

RLW/jat
Enclosure

CS139051

Virginia:

In the Circuit Court of the City of Richmond, Division 1,

THE 14th DAY OF September 19 73

David Silvette, Plaintiff

against Petition for Declaratory Judgment

The Commonwealth of Virginia, ex rel. The Art Commission, Defendant

This day came the plaintiff, in person, and came also the defendant, by counsel, upon the defendant's motion to dsmiss, and the matter was argued.

Upon consideration whereof, and for the reasons as set forth in a letter to the plaintiff and counsel of record for the defendant of this date, the defendant's motion to dismiss is hereby denied.

Entry: Richard L. Williams

September 19, 1973

The Honorable Richard L. Williams, Judge
Law and Equity Court of the City of Richmond
Richmond, Virginia 23219

Re: David Silvette v. The Commonwealth of Virginia, ex rel. The Art Commission

Dear Judge Williams:

I am in receipt of your Order dated September 14, 1973, in the above styled case, to which order the Commonwealth respectfully excepts. I shall file the Commonwealth's pleadings promptly, and then coordinate with Mr. Silvette about a hearing date.

Very truly yours,

J. Thomas Steger
Assistant Attorney General

JTS:55T4

ANSWER

Comes now the defendant, the Commonwealth of Virginia, at the relation of the Art Commission, by counsel, and answers the complaint on file herein as follows:

Defendant denies each and every allegation of the complaint.

WHEREFORE, having fully answered, the defendant prays for judgment that petitioner be not entitled to the relief sought, and that defendant be dismissed with its costs.

COMMONWEALTH OF VIRGINIA, ex rel.
THE ART COMMISSION

By: /s/ J. Thomas Steger
Counsel

Andrew P. Miller
Attorney General of Virginia

J. Thomas Steger
Assistant Attorney General

Supreme Court-Library Building
1101 East Broad Street
Richmond, Virginia 23219

NOTICE TO ADMIT FACTS

SIR:

PLEASE TAKE NOTICE that the defendant hereby requests the complainant, pursuant to the provisions of Rule 4:11 of the Rules of the Supreme Court of Virginia, and within twenty-one days after service of this Notice and for the purpose of this action only, to admit the truth of the following facts:

1. The Art Commission of Virginia was established in 1919 for the purpose of advising the Governor on the aesthetic merits of works of art and architecture prior to acceptance of them by the Commonwealth, whether acquired by gift or purchase.

2. The current statutory authority of and for the Art Commission is found in Chapter 2, Title 9, of the Code of Virginia (1950), as amended.

3. The current Art Commission consists of the present Governor, ex officio, and five members who have been duly nominated and appointed in accordance with the provisions of § 9-7 of the Code of Virginia (1950), as amended.

4. The aforesaid five nominated and appointed members of the Art Commission consist of Floyd E. Johnson, Chairman and Secretary, Lewis W. Ballou, John W. Chappelear, Jr., Jon D. Longaker, and Marie Pietri.

5. The qualifications of Floyd E. Johnson are that he has practiced architecture since 1936; is a Fellow, American

Institute of Architects; paints in various mediums; has been accepted in International Exhibit, Pittsburgh, and Biennial Exhibition, Virginia Museum (winner of Purchase Prize); has shown in numerous traveling exhibits, and has taught design and sculpture at the University of Virginia School of Architecture; is recognized by "Who's Who in American Art".

6. The qualifications of Lewis W. Ballou are that he has practiced architecture since 1927; is a Fellow, American Institute of Architects, and a member of the Richmond Art Association; has been twice accepted in Virginia Museum Biennial Show, and is the recipient of two awards at recent Valentine Museum exhibits.

7. The qualifications of John W. Chappelear are that he is a practicing architect in Roanoke, and is the Past President, Virginia Chapter, American Institute of Architects; has lectured at various colleges in the Commonwealth and his firm has been the recipient of seven design awards, both state and national.

8. The qualifications of Jon D. Longaker are that he has been Chairman, Art Department, Randolph-Macon College, since 1953; is the author of the textbook "Art, Style and History", and writes for Commonwealth Magazine on the arts, and is Art and Drama columnist, Richmond Times-Dispatch; has taught at Virginia Commonwealth University, University of Richmond, and William and Mary Extension Division; has lectured and traveled with the State Artmobile and has lectured at the National Gallery in Washington.

9. The qualifications of Marie Pietri are that she has a Bachelor of Fine Arts, William and Mary, and has interned at the Virginia Museum; is a practicing artist and sculpture, represented in many private collections and at St. Luke's Church, Richmond; has taught sculpture at the Virginia Museum.

10. No work of art may become the property of the State, by purchase, gift or otherwise, unless such work of art shall have been approved by the Governor.

11. The Art Commission may advise and counsel the Governor as to whether a work of art should become the property of the State.

12. The Art Commission may advise the Governor that it finds flaws in the artistic character of a submitted work of art.

13. The Art Commission may advise the Governor that a work of art which suffers flaws in its artistic character should not be accepted as State property.

14. In the cases where the Art Commission is of the opinion that a work of art suffers flaws in its artistic character, the artist has a right to know of the Commission's opinion.

15. In such cases, the Art Commission should inform the artist of its opinion that the work of art suffers from flaws in artistic character.

16. The artist, if he chooses, may alter his work of art to the satisfaction of the Art Commission.

17. The State imposes no criminal penalty on the artist if he chooses not to alter his work.

18. If an artist desires, he should be able to learn of the Art Commission's possible criticism of his work in its preliminary stages.

19. Paragraph 4c of the "Rules and Procedures" of the Art Commission reminds the artist of the importance of submitting preliminary work.

20. Paragraph 4c does not compel an artist to submit preliminary work.

21. Paragraph 4c does not bar an artist from submitting completed work.

22. Complainant has never complied with Paragraph 4c.

23. Complainant has never been compelled to comply with Paragraph 4c.

24. Failure to comply with Paragraph 4c does not prohibit complainant from painting anything he chooses.

25. Failure to comply with Paragraph 4c does not bar complainant from submitting completed paintings to the Art Commission.

26. Complainant has had completed works of art accepted by the Art Commission, notwithstanding the fact that he has not complied with Paragraph 4c.

COMMONWEALTH OF VIRGINIA, ex rel.
THE ART COMMISSION

By: /s/ J. Thomas Steger
Counsel

Andrew P. Miller
Attorney General of Virginia

J. Thomas Steger
Assistant Attorney General

Supreme Court-Library Building
1101 East Broad Street
Richmond, Virginia 23219

Virginia

In the Circuit Court of the City of Richmond, Div. 1.

DAVID SILUETTE
COMPLAINANT

v

THE COMMONWEALTH OF VA EX REL
THE ART COMMISSION
DEFENDANT

REPLY TO NOTICE TO ADMIT FACTS

a distinguished judge, the late Henry T. McKemore, who was sitting for a portrait to me, was asked by me: What is the hardest part of being a judge?"

His reply has bearing here: "Listening to a lawyer argue at great length on material that has no bearing on the case - to impress his client that he is really working hard in their interest."

With that memorable comment instructing me on what is happening, I say "yes" to all the questions in "Notice to admit facts" except those listed below. To Numbers 14, 15, 16, 17, 18, 22 + 23 I say they are in dispute and for the judge to answer.

David Siluette

Certificate

I certify that on the 19th day of October 1973 I delivered to the office of Mr. Reger, Asst Attorney General, a copy of this answer to "Notice to admit Facts."

Harold Ribnetto

Circuit Court
OF THE
City of Richmond

RICHARD L. WILLIAMS
JUDGE

COURTS BUILDING
1001 EAST BROAD STREET
RICHMOND, VIRGINIA 23219

January 16, 1974

Mr. David Silvette
1613 Westbrook Avenue
Richmond, Virginia 23227

J. Thomas Stoger, Esquire
Assistant Attorney General
Supreme Court Building
Richmond, Virginia 23219

Re: David Silvette v. The Commonwealth of Virginia, ex rel. The Art Commission
File No. A-2968

Gentlemen:

This matter is before the court on petitioner's declaratory judgment proceeding for a determination of his right as an artist to have his work considered for acceptance by the Commonwealth of Virginia without any First Amendment violations by the Art Commission. The defendant's preliminary motion to dismiss was overruled by letter dated September 14, 1973 and, thereafter, it filed defensive pleadings, request for admissions and a brief in support of its position. Petitioner has supplemented his original filings with additional sketches, cartoons, books and other writings (all of which have been incorporated into the record as plaintiff's exhibit 10), the net effect of which was not to challenge the professional qualifications of the incumbent members of the Art Commission to serve in their appointed role, but to challenge their authority to shape his final work product by official rules and procedures that when literally enforced could amount to acts of censorship.

Since the validity of a restraint on First Amendment rights depends in large measure on the particular

circumstances of each case, it is necessary to recount in some detail the facts giving rise to petitioner's grievance.

As a professional portrait artist, he is commissioned from time to time by private patrons to commemorate a subject by a portrait. After the work is completed and accepted by the commissioning patron, it is offered to the Commonwealth of Virginia to be permanently exhibited in one of its institutions. The Governor of the Commonwealth is authorized to accept in the name of the Commonwealth works of art only after such work of art is submitted to the Art Commission and by it deemed worthy of acceptance. Code of Virginia of 1950, Section 9-12. The Art Commission, in administering its functions, has published rules and procedures (exhibit D) that among other rules contains the following provision which seems to be the operating language that triggered petitioner's suit:

> "It is important, particularly for portraits, that preliminary sketches, cartoons, color photographs, or other preliminary work be submitted to the Commission before the work is completed to such an extent that changes would be difficult."

In applying this provision to petitioner's work, the Art Commission orders changes based upon his preliminary tender and petitioner feels coerced into complying for fear that failure to do so will result in ultimate rejection of his finished work by the Commission under §9-12.

The question to be answered is whether the preliminary coercive effect of Rule 4C is violative of petitioner's First Amendment rights. No complaint is voiced about the Art Commission's right to reject one of his portraits.

The law seems settled that statutes, ordinances and State sanctioned rules and procedures which tend to exert a prior restraint on First Amendment guarantees are constitutionally impermissible. Near v. Minnesota, 283 U.S. 697. That such protection is applicable to all methods of expression seems equally well settled. Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495. To avoid a constitutional violation, a restraint of First Amendment rights must find justification in some overriding public interest and any legislation

restraining the rights must be narrowly drawn to correct only the evil to be guarded against. No suggestion is made by the defendant of any overriding public interest that is protected by Rule 4C and its entire justification is pitched on the administrative need for internal controls to regulate the Art Commission's operations.

The broadness of 4C allows the Art Commission to shape the work of a submitting artist to conform to the aesthetic likes and dislikes of the Commission members with no apparent procedure for review of its actions. Such unbridled authority puts the artist in a position of coerced submission to avoid ultimate rejection and is a direct restraint on his freedom of expression.

The Attorney General suggests that in a donor/donee relationship, the Commonwealth, like any other donee, has an absolute right to decline to accept a gift. While this may be true in a general sense, the Commonwealth cannot use race, sex or ethnic background as a criteria for determining donor eligibility nor can it use waiver of First Amendment guarantees as a condition for determining donor eligibility.

Mr. Steger is requested to submit an order declaring that the Art Commission does not have the right to apply Rule 4C as a condition to considering portraits as gifts to the Commonwealth. This ruling does not affect the Art Commission's right to apply Rule 4C in situations where the Commonwealth is a contracting party with the artist.

Very truly yours,

Richard L. Williams

RLW/jat

ORDER

This cause came on to be heard on the application of petitioner David Silvette for declaratory judgment pursuant to § 9-6.9 of the Code of Virginia (1950), as amended, for the purpose of determining whether Rule 4c of the "Rules and Procedures of the Art Commission" violates the rights of the petitioner under the First Amendment to the Constitution of the United States, and the Court having examined, heard and duly considered the pleadings, exhibits, documents and arguments of the respective parties, and having made its findings of fact and conclusions of law, it is

ORDERED AND DECREED:

1. The Art Commission shall not apply Rule 4c of the Rules and Procedures as a condition to considering portraits submitted as gifts to the Commonwealth;

2. This Order shall not be construed to prohibit any artist, or donor of a work of art, from voluntarily submitting a work of art, tendered as a gift, in any stage of development or completion, to the Art Commission for its review and opinion, nor shall this Order be construed as prohibiting the Art Commission from making a full and frank criticism, commentary and opinion of the artistic character of a work of art, tendered as a gift, any stage in which it is submitted, nor from suggesting changes in such a work, or stage thereof, and reconsidering a work or stage so altered.

3. This Order shall not affect the Art Commission's right to apply Rule 4c in situations where the Commonwealth of Virginia is a contracting party for a work of art, nor shall it affect the provisions of Chapter 2, Title 9 of the Code of Virginia (1950), as amended.

Enter: 2/1/74 /s/ Richard L. Williams
Judge

Seen and objected to:

/s/ David Silvette

January 24, 1973

MOTION TO VACATE OR MODIFY JUDGMENT

Comes now the Commonwealth of Virginia, ex rel. the Art Commission, by counsel, and moves this Court as follows:

1. To rehear and vacate the judgment entered herein on the grounds that there has been no actual controversy between the parties since defendant has continually asserted through the course of this matter that its "Rules and Procedures" are not requirements and that the ensuing arguments over whether or not they would violate complainant's rights if they were requirements, have been merely academic.

2. In the alternative, if this Court believes that there is an actual controversy, to modify the judgment entered herein by taking jurisdiction of this matter under the provisions of § 8-578 of the Code of Virginia (1950), as amended, rather than under § 9-6.9, on the grounds that defendant believes that this Court did not decide the question of whether the Art Commission is an agency for the purpose of Title 9, Chapter 1.1 (Administrative Agencies Act), but instead entertained jurisdiction under this Act for the sole purpose of allowing complainant a forum, and that the question aforementioned may be answered in the negative or not answered at all and still complainant would have a forum under § 8-578; and further, defendant would acknowledge and concede proper venue in this Court under § 8-579, and that apart from the modification for jurisdiction, the judgment may remain unchanged.

3. To temporarily stay and vacate the judgment entered herein until the foregoing motion to vacate or to modify is disposed of.

Dated February 15, 1974

Respectfully submitted,

COMMONWEALTH OF VIRGINIA, ex rel.,
THE ART COMMISSION

By: /s/ J. Thomas Steger
Counsel

Andrew P. Miller
Attorney General of Virginia

J. Thomas Steger
Assistant Attorney General

Supreme Court-Library Building
1101 East Broad Street
Richmond, Virginia 23219

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

DAVID SILVETTE, Complainant,	)	
v.	)	No. A-2968
THE COMMONWEALTH OF VIRGINIA ex rel., THE ART COMMISSION, Defendant.	)	

ORDER TEMPORARILY VACATING AND SETTING ASIDE JUDGMENT

The motion of defendant to vacate or modify judgment having been filed herein, and it appearing that complainant has been notified thereof and of the date and time of hearing below; it is hereby ordered:

1. That said Motion to Vacate or Modify Judgment be set down for hearing on February 25, 1974, at 12 o'clock noon.

2. That the judgment entered herein on February 1, 1974, be temporarily vacated and set aside until said motion is disposed of.

Enter: Alex H. Sands Jr., 2-15-74
Judge

I ask for this

Circuit Court
OF THE
City of Richmond

RICHARD L. WILLIAMS
JUDGE

COURTS BUILDING
1001 EAST BROAD STREET
RICHMOND, VIRGINIA 23219

March 8, 1974

J. Thomas Steger, Esquire
Assistant Attorney General
1101 East Broad Street
Richmond, Virginia 23219

Re: Silvette v. The Art Commission

Dear Mr. Steger:

After further consideration of this matter, I have concluded that my earlier rulings should stand. Accordingly, the enclosed order vacating Judge Sands' order of February 15, 1974 and reinstating my order of February 1, 1974 was entered today. The objection of the parties is noted.

Very truly yours,

Richard L. Williams

RLW/jat
Enclosure

cc: Mr. David Silvette
1613 Westbrook Avenue
Richmond, Virginia 23227

CS139051

Virginia:

In the Circuit Court of the City of Richmond, Division 1,

THE 8th DAY OF March 19 74

David Silvette, Plaintiff

against Order

The Commonwealth of Virginia, ex rel
The Art Commission, Defendant

Upon motion of the defendant to vacate or modify the judgment order entered in this cause on February 1, 1974, and the matter having been argued by counsel, it is hereby ORDERED that the aforesaid motion be denied and that the judgment order of February 1, 1974 shall stand in full force and effect.

Entered: Richard L. Williams

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

TO: The Clerk of the Circuit Court
of the City of Richmond.

Counsel for the Commonwealth of Virginia ex rel. the Art Commission, defendant in the above-styled cause, hereby gives notice of appeal from a final order entered herein on March 8, 1974, and sets forth the following assignments of error:

1. The Court erred in failing to dismiss the cause on the ground that this cause did not present an actual, justiciable controversy.

2. The Court erred in denying defendant's motion to dismiss, which was made on the ground that the Administrative Agencies Act did not confer jurisdiction on the Court to hear this cause.

3. The Court erred in holding that Paragraph 4C of the "Rules and Procedures" of the defendant Art Commission adversely affects complainant's rights under the First Amendment to the Constitution of the United States.

A statement of the facts of the case will be filed.

COMMONWEALTH OF VIRGINIA ex rel.
THE ART COMMISSION,

By: /s/ J. Thomas Steger
Counsel

Andrew P. Miller
Attorney General

Gerald L. Baliles
Deputy Attorney General

J. Thomas Steger
Assistant Attorney General

Supreme Court-Library Building
1101 East Broad Street
Richmond, Virginia 23219

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND, DIVISION I

DAVID SILVETTE,

Complainant,

v.

Civil Action
No. A-2968

THE COMMONWEALTH OF VIRGINIA ex rel.,
THE ART COMMISSION,

Defendant.

STATEMENT OF FACTS AND INCIDENTS OF TRIAL

1. The Complainant is David Silvette, 1613 Westbrook Avenue, Richmond, Virginia 23227.

2. The defendant is the Art Commission of the Commonwealth of Virginia.

3. Complainant proceeded without attorney.

4. The defendant's attorney is Thomas Steger, Assistant Attorney General, Office of the Attorney General of Virginia.

5. Complainant commenced this action by filing a Petition for Declaratory Judgement, which was served on Floyd Johnson, Chairman and Secretary of the Art Commission on June 18, 1973.

6. The petition stated complainant's cause of action as follows:

a. The Circuit Court of the City of Richmond had jurisdiction to hear the cause pursuant to § 9-6.9 of the Code of Virginia (1950), as amended.

9. In September 1973, defendant's motion to dismiss was heard before the Court. The sworn testimony introduced by the parties is summarized as follows:

a. For the defendant: Mr Louis Ballou stated that he is a member of the Art Commission, and had been for approximately 20 years. He had participated in the adoption of the "Rules and Procedures" (def. ex. 1), which he gave to the Court and stated that their purpose was to inform artists and architects as to how they might make submittals. He stated that the "Rules and Procedures" were not intended as regulations having the force and effect of law. Making specific reference to 4C thereof, he stated that it was intended to emphasize the importance of the opportunity for review of preliminary sketches of an artist's proposed work. If an artist avails himself of this opportunity he would learn of possible criticism of the Art Commission at a stage when he could more easily take such criticism into account. But, the artist is not compelled to tender preliminary sketches and may choose to submit only the finished work. Mr. Ballou said that finished works are judged on their aesthetic merits, without regard to the fact that preliminary sketches were not tendered. If the Art Commission is not satisfied with a work, but believes that it could be

rendered satisfactory if certain changes were made, the work is approved with the condition that the changes will be made. He also said that Mr. Silvette, the plaintiff, normally submitted only finished works and that they had never been disapproved on the basis that preliminary sketches had not been tendered. On several occasions, however, the Art Commission was not satisfied with the finished work and either requested him to make changes or conditioned approval of the work on the basis that changes be made. The conditional approval is given in lieu of outright disapproval. If outright disapproval is given, with no understanding as to what changes the Art Commission believes are needed, the artist then must return to another meeting if he wishes to resubmit. If conditional approval is given instead, the artist may return to his studio, make the changes as discussed, and have the painting presented to the appropriate State institution. (Pl. ex. 10)

b. For the complainant: Mr. Silvette stated that he was a professional artist of long standing, and that he was frequently commissioned to paint portraits of important state personages, which were intended to become State property. If a

private patron commissioned the portrait, Mr. Silvette's contract would include a provision or understanding that Mr. Silvette would not expect payment for his work if the State did not accept the work. Mr. Silvette has appeared before the Art Commission, in order to submit his work, on numerous occasions. His work had not been rejected. He stated, however, that the practice of requesting or specifying changes in his finished works, which the Art Commission had engaged in for an extended period of time, constitutes an arbitrary and unreasonable means of controlling and censoring the artist. He stated that he has a right to express himself in his work as he thinks best. What the Art Commission may consider artistic flaws are actually deliberate expressions of his own artistic judgment. The Art Commission may accept or reject his works, but if they inform the artist that certain changes in the work would be necessary in order to meet the satisfaction of the Art Commission, this is illegal control and censorship of the artist. Mr. Silvette also emphasized the perferred position which the First Amendment gives to art as well as to other activities. He gave to the Court a set of folders,

which contained correspondence between himself and the Art Commission, pamphlets which he had prepared explaining his position, excerpts from Art Commission minutes and copies of certain legal decisions. (Pl. ex. 10)

10. The Court overruled the motion to dismiss, stating in a letter that 4c of the Rules and Procedures completely controlled the rights, privileges and interests of artists who aspire to give the Commonwealth works of art. The Court stated that to give the "Rules and Procedures" the restrictive construction urged by the Attorney General's Office would competely frustrate the purpose of the General Administrative Agencies Act. Accordingly, he took jurisdiction under that Act. Defendant excepted to this decision by letter of September 19, 1973.

11. Defendant denied the allegations of complainant's petition on September 20, 1973.

12. Counsel for defendant served a Notice to Admit Facts on complainant on October 17, 1973, containing 26 statements regarding the qualifications of the members of the Art Commission and the application of 4c. Complainant admitted 19 statements and disputed 7 statements.

13. A meeting was held in Court on November 20, 1973, without testimony, to settle the issues. In addition to the statements admitted in the Notice to Admit Facts, it was agreed that the State imposes no criminal penalty if the

artist does not alter his work to satisfy the Art Commission. Complainant stated his position that the Art Commission could approve or disapprove a work, when submitted as a gift, but contended that the Art Commission could not tell the artist why it was not satisfied with a work or tell the artist what changes were necessary or requested to satisfy the Art Commission's opinion of the work, because to do so would transgress upon the artist's freedom of expression under the First Amendment. The Court permitted counsel for defendant to file a final brief on the case by December 20, 1973.

14. The defendant filed its brief by December 20, 1973.

15. The Court issued a memorandum decision in a letter dated January 16, 1974, stating that 4c was a direct restraint on the artist's freedom of expression. The Court requested counsel for the Art Commission to submit an order declaring that the Art Commission does not have the right to apply 4c as a condition to considering portraits as gifts to the Commonwealth. The ruling would not affect the application of 4c in situations where the Commonwealth is a contracting party.

16. On February 1, 1974, an order was entered to that effect, but neither prohibiting voluntary submittal of preliminary sketches nor prohibiting full criticism, commentary and opinion nor prohibiting suggestions and reconsideration of works changed on the basis of those suggestions.

17. Defendant moved to vacate or modify the judgment, and to temporarily vacate the judgment on February 15, 1974. On this date an order was entered temporarily vacating and setting aside the order of February 1, 1974.

18. The Court heard arguments on the motion to vacate or modify on February 25, 1975. On March 8, 1974, the Court ordered the motion be denied and that the order of February 1, 1974, stand in full force and effect.

19. Defendant filed its Notice of Appeal and Assignments of Error on April 3, 1974.

COMMONWEALTH OF VIRGINIA ex rel.,
THE ART COMMISSION

BY: /s/ J. Thomas Steger
Counsel

Date: May 17, 1974

Complainant (Date)

/s/ Richard L. Williams 5/21/74
Judge (Date)

"MARBLE DUST" ON THE FRAME!

GIFT

COLLEGE OF WILLIAM AND MARY

Portrait of Mrs. Philip Wallace Hiden

Mr. Allan D. Jones, artist, presented this portrait which he had painted from photographs and from another portrait which he previously painted of Mrs. Hiden. He stated that the portrait is to hang in the Earl Gregg Swem Library.

The Commission approved with the suggestion that the light value of the linen border between the portrait and the frame be lowered or subdued. Mr. Jones agreed to replace this border accordingly.

Mathematics - General Classroom Building

President Paschall and Mr. Robert English, representing the College, and Mr. Hubert L. Jones representing Wright, Jones and Wilkerson, Architects, appeared before the Commission and explained that due to a shortage in appropriation, it will be possible to build only a portion of this building at the present time but that they hope to get additional funds to finish the balance in the not too distant future.

Preliminary drawings were resubmitted showing a method of construction of the two lower stories of the building and providing for the additional floors when funds are available.

The Commission approved.

Men's Dormitories

President Paschall and Mr. Robert English, representing the College, and Mr. Hubert L. Jones representing Wright, Jones and Wilkerson, Architects, presented working drawings Nos. 1 to 12, inclusive, dated August 1966, consisting of a site plan, floor plans, elevations and details.

The Commission approved.

UNIVERSITY OF VIRGINIA

GIFT

Portrait of Dean Charles C. Abbott

President Edgar F. Shannon, Jr., Mr. Frederick Nichols, and Mr. Werner K. Sensbach presented the above-noted portrait, painted by Mr. Edmund Archer, which was commissioned by a group of Alumni and the Board of Visitors, and which will be hung in the Graduate Business School.

The Commission voted approval of the portrait, with the suggestion that the light triangle in the upper right-hand corner be toned down, and the highlight of the white hair be subdued slightly.

MORE "MARBLE DUST"

ANOTHER SERIOUS ATTACK OF "CENSORIOUS EXTREMIS"

COLLEGE OF WILLIAM AND MARY

Mr. Thomas E. Thorne, Head of the Fine Arts Department of the College, submitted the following works of art:

(1) Portrait of Mrs. Cressett by Mary Beale

This is a 17th century portrait, in its original frame, which belongs to Mr. Thorne and which he proposes to give to the College. He is uncertain as to where it will hang, but thinks it is possible that it may be added to the teaching collection in the Fine Arts Building.

The Commission approved the acceptance of the portrait.

(2) Portrait of Bathhurst D. Peachy, deceased

This portrait was painted by Captain Ledyard Towle, artist, and has been offered to the College by Mrs. Peachy. Mr. Peachy was an alumnus of the College of William and Mary.

The Commission voted that the portrait did not have sufficient artistic merit to warrant its acceptance.

(3) Portrait of Alf J. Mapp, deceased

GIFT

This portrait has just recently been completed by the artist, Carlton Neal, and was painted from photographs.

The members of the Commission made the following comments:

(a) The hand resting on the book should be toned down.

(b) The leg on the right-hand side of the painting should be enlarged.

(c) The background around the head should be lightened.

(d) The area between the table and the subject's right leg should be eliminated.

Mr. Thorne stated that he would pass these comments along to the artist, and it was agreed that the portrait would be resubmitted to the Commission after these adjustments have been made.

(4) Portrait Bust of Mme. Olivier, by Houdon

Mr. Thorne showed photographs of this marble bust which is now in New Jersey. It is to be given to the College by Mr. and Mrs. Randolph Ruffin.

The Commission unanimously approved the acceptance of this bust by the College.

DEPARTMENT OF WELFARE AND INSTITUTIONS

Pre-Release Center

Presenting this project was Mr. James M. DiFrancesco, of the Bureau of Engineering for the Department of Welfare and Institutions.

Materials submitted for consideration were a site plan, outline plan of buildings and elevations, four sheets thereof dated October 1969, also brochures of metal buildings and color samples of materials proposed to be used.

The Commission approved, and stated further that submission of working drawings would not be required.

GIFT

VIRGINIA COMMONWEALTH UNIVERSITY -- Health Sciences Div.

Portrait of Dr. Simpson

The portrait of Dr. Richard L. Simpson, retiring Professor at the School of Dentistry, was presented by the artist, Mr. David Silvette.

The Commission requested minor changes in the area of the glasses and in the lower right-hand portion of the painting.

Mr. Ballou agreed to view the changes at the pleasure of the artist, as presentation of the portrait is scheduled for early December.

Subject to the above comments, the Commission approved.

THE ART COMMISSION

MINUTES OF THE MEETING OF THE ART COMMISSION
HELD IN RICHMOND, VIRGINIA

May 6, 1966

Members present: Misses Marie Pietri and Mary F. Williams, Messrs. Louis W. Ballou and A. Edwin Kendrew, Chairman.

Absent: Mr. Floyd E. Johnson

Mrs. Margaret C. Miller acted as Secretary.

VIRGINIA ASSOCIATED RESEARCH CENTER

Addition to Laboratory and Instruction Building

Mr. D. L. Strange-Boston, representing Marcellus Wright & Partners, Architects, presented working drawings Nos. A-1 to A-10, dated May 6, 1966, for the above-noted project.

The Commission approved.

MEDICAL COLLEGE OF VIRGINIA

GIFT

Portrait of Dr. Ernst Fischer

Col. John H. Heil, Jr. of the Medical College and Mr. Hans Gassman, artist, presented a progress study of the above-noted portrait, and stated that it would be helpful to have the members of the Commission view the portrait in this preliminary state, before its completion.

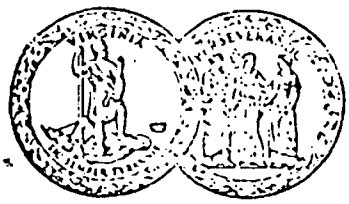
The members of the Commission made a number of comments, centering chiefly on composition. Mr. Gassman said these would be very helpful as work progresses to complete the portrait.

Col. Heil and Mr. Gassman expect that the final painting will be ready for submission at the June meeting of the Commission.

MR. GASSMAN IS A REFUGEE ARTIST DRIVEN OUT OF GERMANY. HE KNOWS AND RESPECTS ORDERS AND THEIR PENALTIES. THIS IS THE ONLY CASE I KNOW WHERE AN ARTIST TRULY OBEYED THE IMPOSSIBLE "RULE" OF TRANSPORTATION [illegible]

IN KENDREW
AN AND SECRETARY
BUILDING, WILLIAMSBURG

COMMONWEALTH OF VIRGINIA



MEMBERS
MILLS E. GODWIN, JR., GOVERNOR
LOUIS W. BALLOU, RICHMOND
FLOYD E. JOHNSON, CHARLOTTESVILLE
A. EDWIN KENDREW, WILLIAMSBURG
MARIE PIETRI, RICHMOND
MARY F. WILLIAMS, LYNCHBURG

THE ART COMMISSION

MINUTES OF THE MEETING OF THE ART COMMISSION HELD IN RICHMOND, VIRGINIA

January 5, 1968

Members present: Miss Mary F. Williams and Mr. Floyd E. Johnson, Acting Chairman; also, Mr. A. O. Budina and Mr. L. G. Hillquist, members pro tem.

Various staff members from the Division of Engineering and Buildings attended the meeting intermittently during the day.

Mrs. Margaret C. Miller served as Secretary.

Members absent: Miss Marie Pietri and Mr. Louis W. Ballou, on account of illness.

MINUTES OF LAST MEETING

The minutes of meeting held December 1, 1967 were approved.

GIFT

PORTRAIT OF LT. GOV. MONTAGUE

Mr. David Silvette, artist, submitted this portrait which he had been commissioned to paint by Mrs. Charles Beatty Moore of Toddsbury in Gloucester County. He had painted the portrait from an old tin-type and had attempted to conform to the style of other portraits of the period - 1860.

He stated that the portrait had been given to the State by Mrs. Moore and will be hung in some appropriate location in the Capitol.

The Commission approved the portrait, subject to the elimination of two background streaks on the right side and one on the lower left.

EXHIBIT D
RLW

COMMONWEALTH OF VIRGINIA

RULES AND PROCEDURES

of the

ART COMMISSION

Adopted
January 1, 1950
Revised
July 1, 1967
Second Revision - August 7, 1970

THE ART COMMISSION
RULES AND PROCEDURES

1) LAWS

Laws may be found in the Reorganization Provisions of the Code of Virginia, 1948, Chapter 2, Paragraphs 9-7 to 9-12 1964. c. 234.

2) MEETINGS

a. Regular

Regular meetings will be held on the first Friday of each month, in Richmond, unless a change is deemed necessary by the Chairman in consultation with other members of the Commission.

b. Special

Special meetings may be called at the request of any member, after it has been determined that a quorum may be expected.

c. Executive

Executive meetings may be held when deemed advisable.

d. Inspection

Inspection trips to sites of structures or works of art may be made, if deemed advisable, by the Commission as a group, or delegates may be appointed for the purpose. The action of any one or more delegates must be ratified by the Commission as a whole.

e. Notices

Notice of meetings, with a tentative agenda, will be sent in advance to all members, and to the Division of Engineering and Buildings.

f. Minutes

Minutes of the deliberations and decisions of the Commission shall be prepared by the Chairman or Secretary and recorded in a loose-leaf binder. A copy of such minutes shall be forwarded to each member, including the Governor, to the Division of Engineering and Buildings and to the Director of the Budget. Relevant excerpts from the minutes will be forwarded to those who have made submissions.

3) PRESENTATION

a. Appointments — Agencies or institutions having matters requiring the approval of the Art Commission shall communicate directly with the Chairman, indicating the nature of the submission, whether it be schematic or preliminary drawings, or other matters. Those requesting reviews will be notified of the time and place at which they can make their submission.

b. Representation — Agencies or institutions, having arranged for a submission to the Commission, shall send one or more official representatives to the meeting, in addition to the architect, artist or sculptor. These representatives shall be familiar with the matters presented, and qualified to answer questions which might be raised by the Commission.

c. Records — A presentation shall include a written statement indicating the institution, the project title, the names of those in attendance at the meeting, and, in the case of architectural projects, the dates and numbers of drawings exhibited, and models, photographs or other pertinent exhibits.

d. First submittal — The first submittal of a project to the Art Commission may be made in very simple form, i.e. schematic drawings (site plan, floor plans, elevations and sections) of sufficient clarity for the Commission to understand the objectives of the planning.

e. Second submittal — The second submittal shall be made during the design development phase and shall include complete preliminary drawings and rendered perspectives if deemed necessary for design interpretation. The Commission may require detailed presentation of spaces open to the general public, such as auditoria, reception areas, etc. Samples of materials proposed to be used shall be required at this time, and in some cases models may be required. The second submittal shall be supported by statements from the Governor's Office and the sponsor, indicating that the project is estimated not to exceed the appropriation therefor.

f. Construction Documents — It will not be necessary to submit a project in the Construction Document phase, unless required by the Commission because of major changes or other unusual circumstances.

g. Capital Outlay

Capital Outlay and Capital Improvement projects shall be submitted as outlined in the "Manual for the Planning and Execution of Capital Outlays", obtainable from the Division of Engineering and Buildings. It is understood that the Division of Engineering and Buildings will advise the Owner, through a written form, a copy of which will be forwarded to the Art Commission, of authorization to present a project to the Art Commission for consideration.

4) WORKS OF ART

a. Works of art intended for public display at State institutions must have the Commission's approval, except for those which are to be displayed on a temporary basis not exceeding a period of two years.

b. Submissions shall be made to the Commission at the regular meetings; should such submission present a hardship, arrangements may be made to have one or more members of the Commission visit the location of such objects, or the Commission may consider the submission of models, detailed drawings, photographs or cartoons which might prove sufficient for final action.

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c. It is important, particularly for portraits, that preliminary sketches, cartoons, color photographs or other preliminary work be submitted to the Commission before the work is completed to such an extent that changes would be difficult.

O TEXT IS
TED LIKE THIS →

d. Designs to be executed in metal should be submitted before casting or welding.

e. To ensure final approval by the Art Commission prior to any dedication, a preliminary submission should be made a full two months in advance.

f. State art museums may acquire works of art without consulting the Art Commission, providing such works have not been previously rejected by the Commission.

5) HISTORIC DOCUMENTS

Historical or educational objects such as paintings or sculpture may be accepted by State institutions, but shall not be displayed in a public room without the Commission's approval, except on a temporary basis, not to exceed two years.

6) DECISIONS

Acting for the Governor, the Commission shall send, in writing, to the agencies and institutions concerned, its decisions on matters brought before the Commission.

7) AMENDMENTS

These procedures, except where defined by statute, may be amended, added to or repealed in whole or in part, at a regular meeting by a majority vote of the members present, subject to the approval of the Governor, provided the notice of the meeting to all members includes an announcement of any such proposal.

Adopted by the Art Commission of the State of Virginia August 7, 1970

Linwood Holton, Governor

Louis W. Ballou

Louis A. Oliver

Marie Pietri

Mary F. Williams

Floyd E. Johnson, Chairman

AUGUST

IRGINIA COMMONWEALTH UNIVERSITY:

Portrait:

A portrait of Dr. Paul Larson, proposed to be hung in the Pharmacology Department, and painted by Mr. David Silvette, was presented.

The Commission requested that Mr. Silvette lighten the hands and papers in the foreground, in order to achieve less contrast between the head and the foreground.

Mr. Longaker is to be asked to view the alterations.

IT IS CUSTOM TO LET "ARTIST MEMBERS" (2) CHECK ART WORKS — ARCHITECTS (3) CHECK BUILDINGS } ALL 5 THEN VOTE

OLD DOMINION UNIVERSITY:

Life Science Building:

Present for submission of Schematics for this project were Dr. Harold Eickhoff, Mr. Fred Haddock and Mr. Larry Burrows representing Old Dominion University, and on behalf of the architects Mr. A. Ray Pentecost Jr. and Mr. Joseph Fry.

Items submitted for review included a site plan and floor plan, five sheets in all.

It was noted that the entrance door was not in the same scale as adjacent panels; the relation to other structures was questioned and photographs of adjacent buildings was requested. It was requested that the window treatment be re-studied.

OF ARTIST MEMBERS —

Motion was made and carried to approve the schematic concept of the plan and to request that the elevations be re-studied and re-submitted.

LONGAKER WAS ABSENT —

ONLY MISS PETRI WAS PRESENT AT AUGUST MEETING.
SHE ROSE TO THE OCCASION MAGNIFICENTLY — AND DID NOT LET THE RESPONSIBILITY GET HER DOWN —
AND, IN VOTING, THE 3 ARCHITECTS SIDED WITH

COPY

1613 Westbrook Avenue
Richmond, Virginia 23227

Dear Floyd,

Have you talked to Jon Longaker as you told me you would? I've had no word from him about coming to see the Larson portrait.

Naturally I want him to know exactly what went on at that Commission meeting before he comes to my studio.

Jon has, in the past, expressed doubts to me about the procedure of requiring artists to make changes in matters that are historically their right--and I wish him to hear from the Commission itself about the ultimate in such action--and be told of my statement that I would make the changes "under protest" and that I repeated this twice.

What else could I do when the stated reason given for silencing me was "although when it is a question of aesthetics there is room for argument, aesthetics has nothing to do with design."

With that being the rule given for cutting off my rights, if I were Jon, and heard about this rule from the victim, I'd be tempted to disbelieve such a statement was ever made by a commission member and that any artist was required to abide by that rule.

Jon could be tempted to question his 26 year knowledge of me and my integrity. So, let me know after you have spoken to him--and I am sure it will come out alright.

Cordially,

David Silvette

August 14, 1972

Please keep this letter in your file.

COMMONWEALTH OF VIRGINIA

LINWOOD HOLTON, GOVERNOR

FLOYD E. JOHNSON
CHAIRMAN AND SECRETARY
303 E. HIGH ST.
CHARLOTTESVILLE 22901

LOUIS W. BALLOU
530 E. MAIN ST.
RICHMOND 23219

JOHN W. CHAPPELEAR, JR.
606 STATE & CITY BLDG.
ROANOKE 24011

JON D. LONGAKER
RANDOLPH-MACON COLLEGE
ASHLAND 23005

MARIE PIETRI
WOODVILLE 22749

THE ART COMMISSION

August 17, 1972

Mr. David Silvette:
1613 Westbrook Avenue
Richmond, Virginia 23227

Dear Mr. Silvette:

This will acknowledge receipt of your letter of August 14 setting forth your objections to the action taken at the August 4 Art Commission meeting, in connection with your portrait of Dr. Paul Larson. You were requested to make certain alterations in the painting, the changes to be viewed by Mr. Longaker at your studio in order that approval (should that be his decision) could be conferred immediately so you would not be obliged to wait until the next regular meeting. This courtesy has been extended to you a number of times in the past.

You state that Mr. Longaker has expressed to you doubts about the procedure requiring artists to make changes. This is his personal opinion; as a duly appointed delegate he and all other members of the Commission have this right - or they can simply reject a painting.

I enclose a copy of the laws relating to the Art Commission (the small leaflet) and a larger pamphlet setting forth the rules and procedures. Our records indicate you have been sent these, but perhaps you have mislaid them. I have underlined certain requirements which, for your convenience, we

Mr. Silvette

August 17, 1972
Page 2

have frequently overlooked.

May I point out that any time an artist or architect undertakes a commission for a State project, he is (or should be) aware that this project must be approved by the Art Commission acting in its capacity as advisors to the Governor. These members have been appointed by the Governor for this purpose and because they are trained and knowledgeable in their respective fields. It hardly seems necessary to add that the judgment of aesthetic matters does leave room for argument, but if a commission of this nature is to fulfil its obligation to the Governor and the Commonwealth of Virginia its opinions must be accepted by artists and architects undertaking State work.

I will contact Mr. Longaker and ask that he not go to your studio and instead request that you re-submit the Larson portrait at the September 8 meeting. We will advise you later of the exact time.

Sincerely yours,

Floyd E. Johnson
Chairman

cc: The Governor
The Honorable T. Edward Temple
Messrs. Ballou, Chappelear and Longaker
Miss Pietri

Enclosure
FEJ/aj

BECAUSE I PROTESTED SEPT.

I WAS TOLD TO BRING PORTRAIT BACK - AS FIRST PRESENTED - FOR RE-CONSIDERATION!

VIRGINIA COMMONWEALTH UNIVERSITY HEALTH SCIENCES DIVISION:

Portrait, Dr. Paul Larson

Mr. David Silvette, portraitist, presented the painting for the second time, at the request of the Commission.

A motion for approval failed for lack of a second.

PRESENT THIS TIME, LONGAKER STOOD BY ME!

Motion was made and carried that the artist be asked to modify the painting, in his own way and in light of the discussion, in order to grade the lighting from the head to the lower portion so the contrast between the head and the remainder of the painting will not be so obvious.

The artist agreed to this modification.

THE PORTRAIT, WITH PERMISSION OF ART COMMISSION HAD BEEN PRESENTED TO COLLEGE AT EXERCISE WHICH COULD NOT BE POSTPONED - AND I WAS IN NO POSITION TO FIGHT TO THE END WITHOUT EMBARRASSING MY CLIENT!

DEPARTMENT OF WELFARE AND INSTITUTIONS:

Hanover School for Boys: Dining Hall and Central Storage: Preliminary

Present for this submission were Mr. James M. DiFrancisco on behalf of the Department of Welfare and Institutions and Messrs. William W. Moseley and James H. Hening Jr., architects for the project.

Eight sheets of drawings including site plans, floor plans, elevations and section, as well as perspective views were exhibited.

The Commission approved the Preliminaries and the exterior materials samples (with further consideration to be given to the wood color) and waived submission of working drawings unless there are major changes.

VIRGINIA COMMONWEALTH UNIVERSITY:

Master Site Plan: Revision

Present for submission of the proposed revision were Dr. Warren W. Brandt, President, VCU, and Dr. Roger L. Smith, Vice President for Planning and Operations, VCU.

OCTOBER

Seashore State Park: The Commission approved, subject to the elimination of mechanical ventilators and the substitution of louvred ventilators at either end of the building.

Douthat State Park: The Commission approved, subject to the elimination of mechanical ventilators and the substitution of louvred ventilators at either end of the building.

Hungry Mother State Park: The Commission approved the concept of the amphitheater and the bridge. Several suggestions were made in connection with the proposed lighting on the bridge.

VIRGINIA COMMONWEALTH UNIVERSITY:

Portrait:

Mr. David Silvette presented the portrait of Dr. Paul Larson incorporating changes requested by the Commission at an earlier meeting.

The Commission approved.

NOW, WITH MY OBLIGATION TO CLIENT FINISHED, I GOT OUT MY GUNS.. AND... NOW I AM IN COURT

GEORGE MASON UNIVERSITY:

Maintenance Building: Working Drawings

Present for this submission were Dr. Lorin A. Thompson and Mr. J.I. Gurfein representing George Mason University and Mr. Samuel A. Anderson III on behalf of the architects, Glave Newman Anderson.

The Commission approved the drawings as submitted, waived further submission unless there are major exterior changes and requested that color samples for the window frames be submitted.

COPY

1613 Washington Ave
Richmond, Va
Apr 24, 1973

A-58

Mr. Floyd Johnson
Chairman: Va State Art Commission,

Dear Mr Johnson,

I hereby request a hearing before the Art Commission to establish my rights and privileges which have been adversely affected by the rules and regulations of the Art Commission.

The authority for this request comes from the General Administrative Agencies Act 9-6.1 and 9-6.10.

The stated reason for this request is to establish that the rules and regulations of the Art Commission, as written and carried out - are an unconstitutional abridgement of my right to free artistic expression, and are actually acting as censorship of artistic expression not permitted under the First Amendment. They are illegal - and therefore should be removed in so far as they constitute the illegal repressive force I have described.

Names of witnesses you are to subpoena will follow.

Very truly, [illegible]

COPY

1015 Westover Hill
Richmond, Va
Apr 26, 1973

A-59

Mr. Floyd Johnson
Chairman: Va Art Commission

Dear Mr. Johnson,

As my witnesses to establish that unconstitutional acts of censorship have been committed by the State Art Commission, I request that you subpoena the following witnesses to appear at the hearing I requested in another letter of this date:

Mr. James J. Kilpatrick
Woodville, Va. 22749

Mr. Virginius Dabney
14 Tapoan Road Richmond, Va

Mr. David Tennant Bryan
C/o Richmond Newspapers, 4th St, Rd. Va.

Dr. Robert J. Harris
Prof. of Const., University of Virginia

Dr. John Wasserman, Archivist, Va State Library

Mr. Sydney Lewis, 2601 Monument Ave, Rd, Va

Mrs. Sydney Lewis, 2601 Monument Ave, Rd. Va

Mr. John Cook Wyllie, C/o U. of Va Library

Mr James Brown, Va. Museum of Fine Arts

Mr. Pinkney Near, Va Museum of Fine Arts

Mrs. William M. Hudley, Chairman VCAH

(PAGE 11)

Dr. Thomas Malone, Univ. of Virginia
Dr. Robert Alley, U of Richmond, Rd. Va.
Dr. Myron Berman, 3330 Grove Ave, Rd. V.
Dr. Wm. H. Higgins, Jr. 3540 Floyd Ave, Rd, Va
Mr. Glenn Yates, Jr., Portsmouth, Va
Mr. Edmund A. Reynolds, Jr. 1015 E. Main St
Richmond, Va
Mr. Keith Fowler, Va. Mus. of Fine Arts
Mr. Edmund Archer, 13 S. Foushee St, Rd, Va
Mr. Julian Bainford, Mary Wash. College Fredericksb
Mr. Marcellus Wright, Jr. 100 E Main St Rd. Va
Mr. D.W. Hardwicke, 6620 W. Broad St, Rd. Va
Mr. E. Tucker Carlton, 206 E. Cary St, Rd. Va.
Mr. Maurice Bonds, V.C.U. art school, Rd. Va
Miss Theresa Pollak, 3912 Stuart Ave, Rd. Va
Mr. Martin Thalheimer Jr. 830 E. Main St, Rd. Va
Dr. Dabby Brown, English Dept, Univ. of Richm
Mr. John M. Jennings, Va. Historical Soc., Rd, V.
Kensington + Boulevard
Dean Bozzerman, Architectural School
Univ of Virginia

These witnesses should be notified they can answer by deposition, I will send you copies of my detailed case against the commission. Transmit to them when you decide we are ready.

Sincerely yours

ADD OTHER NAMES TO LIST, INCLUDING DR. SHANNON AFTER I FOUND THE CLIPPING IN FOLDER 9

Commonwealth of Virginia

ANDREW P. MILLER
ATTORNEY GENERAL
M. HARRIS PARKER
CHIEF DEPUTY ATTORNEY GENERAL
RENO S. HARP, III
GERALD L. BALILES
DEPUTY ATTORNEYS GENERAL
DONALD F. MURRAY
JOSEPH W. HAIRFIELD
ADMINISTRATIVE ASSISTANTS

OFFICE OF THE ATTORNEY GENERAL
SUPREME COURT BUILDING
1101 EAST BROAD STREET
RICHMOND, VIRGINIA 23219
703-770-2071

WILLIAM P. RAGWELL, JR.
A. R. WOODROOF
WILLIAM H. PHILLIPS
SALLY T. WARTHEN
JAMES E. KULP
HENRY H. HARRIS, JR.
WALTER A. MCFARLANE
C. TABOR CRONK
VANN H. LEFCOE
STUART H. DUNN
RICHARD K. C. SUTHERLAND
THEODORE J. MARKOW
WILLIAM T. LEHNER
WILLIAM G. BROADDUS
DANIEL E. ROGERS, II
JOHN W. CREWS
D. PATRICK LACY, JR.
ROBERT E. SHEPHERD, JR.
GILBERT W. HAITH
BURNETT MILLER, III
DAVID T. WALKER
LINWOOD T. WELLS, JR.
WILBURN C. DIRLING, JR.
WALTER A. MARSTON, JR.
WILLIAM A. CARTER, III
KAREN C. KINCANNON
CHARLES K. TRIBLE
THOMAS W. BLUE
ROGER C. WILEY, JR.
LAWRENCE E. BLAKE
JAMES C. MOORE
FRANCIS A. CHERRY, JR.
ROBERT P. DOHERTY, JR.
ASSISTANT ATTORNEYS GENERAL

May 10, 1973

The Honorable Floyd E. Johnson
Chairman, Virginia Art Commission
303 East High Street
Charlottesville, Virginia 22901

Dear Mr. Johnson:

At your request, I have reviewed Mr. David Silvette's letter of April 26, 1973, in which he requests a formal hearing pursuant to the General Administrative Agencies Act for the purpose of establishing " ... that the rules and regulations of the Art Commission, as written and carried out, are an unconstitutional abridgment ... " of his right of artistic expression. Mr. Silvette would also have the Art Commission subpoena numerous witnesses for the hearing which he requests.

For the sake of convenience, I am enclosing a copy of the General Administrative Agencies Act for your inspection. The hearing requested by Mr. Silvette is the "formal hearing" described in §§ 9-6.10 through 9-6.12 of the Virginia Code, comprising a portion of the General Administrative Agencies Act. Not every State agency has recourse to the provisions of the General Administrative Agencies Act to provide formal hearings upon demand.

As used in the General Administrative Agencies Act, the word "agency" is defined by § 9-6.2(a) to mean " ... any State department, commission, board or officer, having Statewide jurisdiction, authorized by law to make rules or to adjudicate contested cases. ... " The Art Commission is without authority of law to make rules or adjudicate contested cases as those terms are defined in § 9-6.2(b) and (c) and, as a consequence, the Art Commission is not an "agency" within the meaning of § 9-6.2(a). It is true that

the Art Commission has a printed pamphlet which contains its "rules and procedures", but these can be regarded only as guidelines or procedures by which the Commission chooses to conduct its business rather than as rules having the force of law such as those promulgated by a State agency having such authority. Consequently, it is my opinion that the Art Commission is without authority to issue subpoenas and conduct a "formal hearing".

Sincerely yours,

C. Tabor Cronk

C. Tabor Cronk
Assistant Attorney General

CTC:56F2

Enclosure

COPY

1615 Westwood Ave
Richmond Va
May 18, 73

A-64

Dear Mr. Johnson,

Thank you for your invitation to appear at an "informal hearing of the Commission."

Consider: The Attorney General has already decided that the Rules and Procedures that you have been using are inoperative because you are without authority to make rules. Therefore when you make new procedural directions, you are forbidden to make "rules" that have any effect on the artists or the arrestees.

Since it was these unlawful "rules" which you used to impose outright censorship of artistic expression upon the artists — and you can no longer do that — there is no reason for a hearing to discuss that which you are forbidden to do.

I thank you for your courtesy but see no point in holding such a hearing

Sincerely,

COPY TO
GOV. HOLTON MR. TEMPLE

COPY

1613 Westbrook Avenue
Richmond, Virginia
May 19, 1973

Mr. Floyd Johnson
Chairman, State Art Commission

Dear Mr. Johnson,

Will you send me immediately a copy of the Art Commission "Rules and Procedures" which set forth requirements for an artist who is to submit his work to the Commission or specified in section 9 - 12 of the Laws Relating to the Art Commission. If you do not have a printed copy in stock, send me a photo-copy from your personal file-copy.

I want the copy of "Rules and Procedures" which is legally in force of this date: May 19, 1973. Note this date!

If Mr. Cronk is right, you are unable to answer this request because you have no "Rules" now. If he is wrong, you must grant me an official hearing and subpoena my witness.

If you fail to answer this request for your "Rules" operative as of May 19, 1973, I will take legal steps to force you to send the current operative rules to which I am entitled as an artist who consistently has matters coming before your commission. There is certainly no reason Mr. Cronk can give you why you can refuse this request.

Therefore, I expect a copy (photo-copy if necessary) of the legally operative "Rules and Procedures" of the Art Commission in force on May 19, 1973 - at once!

Naturally I will accept a letter from you explaining there are no legally operative "Rules" now - and I will realize you cannot send me what does not exist. If you do send me that letter - instead of the "Rules" - you are sending me the death - warrant of art censorship by your commission.

Sincerely yours,

David Silvette

cc: Governor Holton
Attorney General Miller
Mr. T. Edward Temple
Mr. Tabor Cronk

LINWOOD HOLTON
GOVERNOR

COMMONWEALTH OF VIRGINIA
OFFICE OF THE GOVERNOR
RICHMOND 23219

May 23, 1973

Mr. David Silvette
1613 Westbrook Avenue
Richmond, Virginia

Dear Mr. Silvette:

Thank you for sending Governor Holton a copy of your May 19 letter addressed to Mr. Floyd Johnson.

Sincerely,

Alexander G. Gilliam, Jr.
Special Assistant

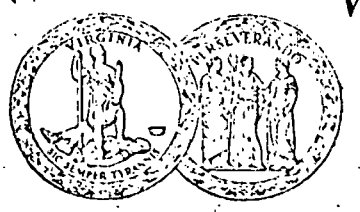
AGGjr/csm

NWOOD HOLTON, GOVERNOR

OYD E. JOHNSON
CHAIRMAN AND SECRETARY
3 E. HIGH ST.
ARLOTTESVILLE 22901

UIS W. BALLOU
0 E. MAIN ST.
CHMOND 23219

COMMONWEALTH OF VIRGINIA



THE ART COMMISSION

JOHN W. CHAPPELEAR, JR.
606 STATE & CITY BLDG.
ROANOKE 24011

JON D. LONGAKER
RANDOLPH-MACON COLLEGE
ASHLAND 23005

MARIE PIETRI
WOODVILLE 22749

May 24, 1973

Mr. David Silvette
1613 Westbrook Avenue
Richmond, Virginia 23227

Dear Mr. Silvette:

This will acknowledge receipt of your letter of May 18, your letter of May 19 and copy of a letter to Governor Holton dated May 18.

You raise so many and such complicated questions that I hesitate to try to answer them. After all, I am not a lawyer.

First, I was not aware that the Attorney General had, as you state, "decided that the Rules and Procedures...are inoperative", and find it difficult to believe he made such a statement. Perhaps you are confusing the two pamphlets issued by the Art Commission. I enclose a copy of each; the small leaflet contains the Laws as enacted by the General Assembly. Please note that these are quite clear and direct in stating that works of art shall be submitted to the Art Commission prior to acceptance by the state.

The second and larger leaflet, which carries no legal weight is a laymen's attempt to interpret the procedures for making submissions to the Commission. Naturally, our "Rules and Procedures" are not rules having the force and effect of law

and, of course, are not operative as such, but these "Rules and Procedures" were never intended as such, but rather were intended merely as a statement of the manner in which the Commission wishes to conduct its business. These have been most helpful, especially to persons making presentations for the first time.

If you will read the "Rules and Procedures" carefully, I think you will realize that we do not adhere to them too strictly, and in fact for your convenience have oftenwaived certain provisions. I believe other members of the Commission concur that strict adherence to these suggested procedures would cause a bottleneck in many instances. Consider: an architect or an artist submits a project which is almost but not quite up to the standards of the Commission. Suppose this hypothetical project would meet the Commission's standards if minor alterations were agreed on. I am quite aware that our only legal course is to advise the Governor to reject the project. Shall we do this and require a month's delay for re-submittal?

You object to what you call censorship and I suppose that by definition of that word, and philosophically, the Art Commission is a censoring body. However, the purpose of the Commission is simply to insure that state buildings and the works of art displayed therein are of the highest calibre.

In sum, may I say that our procedures have worked efficiently and with dispatch for a number of years. I have complete faith in the objective judgment of the members of the Art Commission. We will, of course, welcome any constructive changes to our procedures which you might suggest, and I renew my prior invitation to you to appear before the Art Commission for this purpose. However, I will

undertake no further correspondence with you on this subject in the present vein. We have neither the time nor the funds to reply to your many requests. If you wish further information, or wish to see our files, under the "Freedom of Information Act" you are entitles to review and copy our records either in the Governor's Office, the State Library or the Art Commission office, during normal business hours. Should you wish to do this please make an appointment in advance as we have no regular hours. The office and files are located two miles south of Keene, on Route 713. We have no copying equipment in the office, therefore you will have to bring whatever equipment you will need.

Very truly yours,

Floyd E. Johnson (aj)

Floyd E. Johnson
Chairman

Enclosures (2)

cc: The Honorable T. Edward Temple
C. Tabor Cronk, Esq., Assistant Attorney General
Members of the Art Commission

FEJ:aj

1013 W. Cathedral Ave
Richmond Va
23227
May 26, '73

Dear Mr. Johnson,

Your letter of May 24, 1973 fails to answer my question: What are the Rules of the Commission concerning the practice of censorship of art works submitted to it under the Laws Relating to the Art Commission — the Rules in effect subsequent to May 19, 1973?

You state in paragraph 3 that you were "not aware that the Attorney General had, as you state, decided that the Rules and Procedures are inoperative" and you "find it difficult to believe he made such a statement".

Then in the very next paragraph you state that "naturally our Rules and Regulations are not duly having the force and effect of law, and, of course, are not operative as such."

Unfortunately your further explanations are equally contradictory and do nothing to clarify the question that must still be answered: What are

the "Rules" that are operative as of May 19, 1973.

You say you feel that I seek further answers by going into your minutes rather than the fact that your minutes are all prior to May 19, 1973 when the status of your "Rules" was "totally" clarified by the Attorney General. To me, he totally defined the illegality of your censorship. To you, he did not. To the Governor, who is required to enforce the law I have addressed a request to tell me what "law" he is enforcing since you have given me an unsatisfactory answer as to what "law" you are upholding now.

It matters me that you have marched away from your affronted duty and state! "We have neither the time nor money to reply to your many requests." My fight is for freedom — and freedom cannot be subverted in America because officials don't have "time or money".

Prior to the Thanksgiving Recess of this litigation he would release funds from his discretionary account so that a agency could promulgate its rules pertaining properly addressed to them when they concern constitutional rights to freedom (in the very state we have freedom every hour)

When you consider that it is highly possible that Mr. Cooke is wrong about his decision that my suit is an agency not required to give a "formal hearing" (he admits the possibility) you may find you will have to ask the Lower for additional funds if I decide to deal this ruling in accordance with the Administrative Agency Act. And since the designated Court is not granted to pass on the constitutionality of any agency's acts when called upon to do so, merely filing a brief may convert you in a great expenditure of time and money.

As Tom Crosby knows, I have never as fine cards I can play to achieve my goal. And that goal is not annihilating the Commonwealth's activities of the Art Commission; it is ending them conclusively - and for all time! Have your views of our activities is of no importance - and of your not following in your May 24 letter is of no concern to me.

I am dealing with a concrete case of outright cowardly of activities of persecution by the State of Virginia. Tom Crosby is its agent.

I know; Mr. Crosby knows; and soon the Governor will know that it is going to end as I predicted it from my first step. The only question is the means..

Yours sincerely

David Rubiette

copy to
- Mr. Tom Crosby.
- Rev. Leonard Kelly
- if Mr. Crosby chooses to send them the additional letter