



## Artist tests Brookline's First Amendment mettle with sidewalk chalk

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Norah Dooley just wanted to do a public art project in Brookline, but she ended up setting a legal precedent.

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Norah Dooley just wanted to do a public art project in Brookline, but she ended up setting a legal precedent.

Her request to do "chalk art" on public sidewalks was first met with some skepticism from the town, as officials were concerned about Dooley possibly blocking public ways. There was even a question of whether or not the chalk qualified as graffiti.

Peter Ditto, director of transportation for the town of Brookline, said Dooley's was the first such request ever filed in the town.

At one point, the town sent her a message saying her project would be in violation of town bylaws and would not be allowed.

But after she contacted her attorney friend, First Amendment lawyer Michael Anderson, he wrote a letter to the town defending her right to chalk writing.

"It would be indefensible discrimination to ban a temporary chalk drawing that washed away instantly with water on the same sidewalk where the Town permits physical commercial newsracks," he wrote.

Anderson also listed past cases of chalk art that have gone through the court system, with federal courts ruling that chalk drawing is part of protected speech, the same as holding a protest sign.

He said the use of sidewalk chalk has been a hot issue in First Amendment law, possibly because of the use of chalk during the Occupy protests in various cities.

The debate has pitted those who think the use of chalk does not constitute defacement because it can be washed off, and those who believe chalk writing is interfering with the use of sidewalks and allowing it gives graffiti users free reign.

Perhaps the most extreme enforcement of chalk writing happened in San Diego, where a man was arrested and went to trial for 13 counts of defacement after writing protest messages outside a bank. He was acquitted earlier this month.

After Anderson's letter was sent to the town, it was reviewed by Town Counsel Jennifer Dopazo Gilbert, who gave Dooley the go-ahead, but with a number of agreed-upon restrictions.

They included the requirements that Dooley not obstruct the path of travel, and leave at least 4 feet of travel space at all times, that the chalk not leave a permanent mark on the sidewalk, and that the work be limited to the brick pavers on Harvard Street, from Beacon to Green streets.

The town only approved the work for the time between 4 and 8 a.m., on Thursday, July 18.

Even though Dooley wished she could perform her art at any time — and she strongly believes it is her right to do so — she saw the decision as a victory, and so did Anderson.

"The town did the right thing," said Anderson. "We don't intend any criticism."

Dooley said executing the project was her First Amendment right.

"It's our sidewalk," she said, adding that someone against the project could just take a bucket of water to it and wash it away. "That is the nature of impermanent chalk art."

She used the Homeland Security tagline of “If you see something, say something” in her chalk project, as well as quotes from presidents, dead and alive. One example: “To sin by silence when they should protest makes cowards of men,” from Abraham Lincoln.

“If true security comes from justice, if you see something that’s unjust or wrong, you need to say something” she said.

Dooley lives in Brookline and has four daughters. She did the project to celebrate her 60th birthday.

“I like the idea of spontaneous art,” she said. “I like the idea of getting people to exercise their own artistic and expressive side.”

She commended Brookline for giving her the thumbs up for her project.

“They could have easily shut me down,” she said.

Anderson does work on First Amendment issues for dissenting organizations such as labor unions.

One big case he worked on dealt with the private ownership of public sidewalks. It involved the Venetian Casino in Las Vegas, which technically owns the sidewalk that runs along it. The Venetian argued it could control who it wanted on the sidewalk and who it didn’t.

Nonetheless, Anderson successfully argued that the casinos are essentially giving up the easement on the sidewalks to public passage, and that the Venetian and the state’s transportation department agreed to keep the sidewalks open for public passage, and therefore, public participation.

He called sidewalks the “only public space left in America.”

Dooley hopes to do more chalk projects in the future. One of her ideas is to write the Bill of Rights from one end of Harvard Street to the other.

She likes to refer to her work as a “poor girl’s Jenny Holzer,” referring to the New York-based artist who is mostly known for projecting words onto public spaces.

Dooley has executed similar works in the past in Central Square in Cambridge and in Athol.

“I am glad that the town officials acted responsibly to recognize my free speech rights, rather than requiring us to go to court,” said Dooley.