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October 15, 1990

CONGRESSIONAL RECORD - HOUSE

H 9673

On this vote:
Mrs. Boxer for, with Mr. Denny Smith against.
Mr. HUNTER changed his vote from "aye" to "no."
Mr. NICOLS, Mr. HUTTO, and Mrs. BYRON changed their votes from "no" to "aye."

So the amendment was agreed to.
The result of the vote was announced as above recorded.

ANNOUNCEMENT OF REPUBLICAN CONFERENCE ON ROWDY

(By unanimous consent, Mr. Lewis of California was allowed to speak out of order.)
Mr. LEWIS of California, Mr. Chairman, I take this moment to indicate to the Members on this side of the aisle that there will be a Republican conference tomorrow morning in Cannon Caucus Room at 9 a.m. That is Cannon Caucus, at 9 a.m.

The CHAIRMAN. Are there additional amendments to title III?

AMENDMENT OFFERED BY MR. REGULA

Mr. REGULA. Mr. Chairman, I offer an amendment.

The Clerk reads as follows:

Amendment offered by Mr. Regula. On page 90, after line 23, add the following new section:

"Sec. 318. (a) The Chairperson of the National Endowment for the Arts and the National Council for the Arts, in making judgments of artistic excellence, shall ensure that projects supported by an award, grant, loan or other form of support provided by the National Endowment for the Arts, are sensitive to the nature of public taste. (b) Take into account general standards of decency. (c) Are subject to the conditions of public accountability, that govern the use of public money. (d) Reflect the high places achieved by the American people. (e) Are subject to the policy of fostering mutual respect for the diverse beliefs, values, and experiences of all persons; and (f) Are appropriate for a general audience."

The result of the vote will be announced the day after the amendment is made available to the Members. A statement of the funds made available to the National Endowment for the Arts for fiscal year 1993 shall be made available to the House. The funds available to the National Endowment for the Arts for fiscal year 1993 shall be subject to the policy of fostering mutual respect for the diverse beliefs, values, and experiences of all persons.

The CHAIRMAN. Pursuant to House Resolution 505, the amendment is not subject to amendment, except for a substitute, consisting of the text of the amendment of 15, as passed the House, by and if offered by the gentleman from Montana (Mr. Williams) or his designee.

The gentleman from Ohio (Mr. Regula) will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes. The Chair recognizes the gentleman from Ohio (Mr. Regula).

On this vote:
Mr. YATES. Mr. Chairman, I have a parliamentary inquiry.
The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. YATES. Mr. Chairman, the Clerk has read subsection (b) of this Act as it may be used.

The CHAIRMAN. The Chair will advise the gentleman that the word is "may."

Mr. YATES. I thank the Chair.

The Chair recognizes the gentleman from Ohio (Mr. REGULA).

The correct text of the amendment, as filed, is as follows:

Amendment offered by Mr. REGULA on page 93, after line 23, add the following new section:

"Sec. 318. (a) The Chairperson of the National Endowment for the Arts and the National Council for the Arts, in making judgments of artistic excellence, shall ensure that projects are not offensive to the American public or are not obscene, indecent, or items that would be offensive to the American public. (b) None of the funds made available by this Act may be used by the National Endowment for the Arts to finance or support any award, grant, loan, or other form of support that is obscenity, indecency, or obscene in the Federal Communications Commission v. Pacifica Foundation, 438 U.S. 727, 735 (1978)."

Mr. REGULA. Mr. Chairman, I yield myself such time as I may consume.

(Mr. REGULA asked and was given permission to revise and extend his remarks.)

Mr. REGULA. Mr. Chairman and members of the Committee, this very simply is an amendment to ensure that the $180 million provided in this bill for the National Endowment for the Arts will not be used to fund obscenity, indecency, or items that would be offensive to the American public.

I recognize that it is difficult to establish those standards, and for that reason, the amendment provides a reference to cases decided by the U.S. Supreme Court in the case of obscenity, and indecency.

The real issue here is accountability. I hope to have accountability on the Chairman of the National Endowment for the Arts and the council who are jointly responsible, in part, for funding projects.

That National Endowment for the Arts can do some great things, and they have, in sponsoring ballets, symphonies, string ensembles that travel to schools, education programs. Many of us saw what the National Endowment for the Humanities did the other night in the Civil War series, how effective these programs can be. This, of course, the Civil War series, was sponsored by the NEH.

I think during the next 12 months the National Endowment for the Arts has a very great responsibility: To gain and restore the confidence of the American public in what they do, and that to give the public accountability and assurance that the $180 million of taxpayer money that is spent by NEA will be used wisely.

The language in my amendment is designed to achieve that degree of accountability. All Members are aware of some of the things that have been sponsored by NEA that have been found to be offensive to the American public. Some of them have brought serious questions of credibility for NEA funding. Therefore, I think it is important that we do our due diligence in defending this program to all the American people.

Now, some of the great things, they have, in the past few years, things like coffee, coffee, 'tensions, 'tensions, 'tensions. The Commission went on to emphasize that the arts belong to all of the American people, and that is essentially a quote right out of the Commission report, and not only to those who benefit directly from the agency, I cannot emphasize that enough, that the arts program, the NEA programs belong to all the American people. Therefore, we need to develop standards that will give all of the people confidence in the judgments.

The Commission went on to conclude that the Endowment is not setting policy and making grants, adequately meeting its public responsibilities at the present time. That is the Commission saying that, that they are not meeting those responsibilities, and I hope to have, in my amendment, that is my objective in this language to give them a measuring yardstick so that we can do something else.

I want to say, to the credit of the Williams-Coleman bill, that many of the Commission's recommendations are embodied, in a large measure, in that legislation, which passed this House by a rather large margin last week. Unfortunately, the time left in this session is rather short, and one of the reasons that we need language in the appropriations bill is because we know this bill is going to be signed. It has to be signed in order to fund the Department of Interior, and so on. In the future, this legislation will be $180 million for the National Endowment for the Arts. Therefore, it is absolutely essential that there be language in the bill, that we need accountability, not only to those who benefit directly from the agency for over a year.

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October 15, 1990

congressional record — house

Mr. REAGAN. Mr. Chairman, I agree with the gentleman from Ohio.

Mr. HENRY. Mr. Chairman, will the gentleman yield?

Mr. REAGAN. I yield to the gentleman from Michigan.

Mr. HENRY. Mr. Chairman, I want to say on behalf of all the Members of the House, and quite frankly of the American public at large, the debt of gratitude we owe to the gentleman from Ohio who has worked very hard to help us approach this entire issue reasonably. His involvement in this issue goes back to last year when, working with the chairman of the committee, the gentleman from Illinois [Mr. YATES], they sought to address this issue constructively and, as you know, were ruled down on a procedural motion.

I want to say thank you because I think we are indebted for the kind of leadership we have had from the gentleman from Ohio, who has tried to balance legitimate public concerns in terms of the integrity of the National Endowment for the Arts, while at the same time being supportive of the role and mission of that agency. That has been a very hard line to walk, and the gentleman has been very firm on that.

Now, make no mistake that the issue involved before us in this. We have passed an authorization bill that the ratio of the NEA to the arts is roughly 6 to 1, overwhelmingly, in which the issues that this gentleman has fought for have been resolved in great substance, certainly to my satisfaction and I think, quite frankly, to the gentleman's satisfaction as well.

The problem before us is that the authorization bill may not make it through the conference process. The Senate has passed an authorization bill. Therefore, it is very important that we protect ourselves, as it were, in seeing that the issue is raised in the appropriation process.

There are two approaches before us. There is the language of the gentleman from Ohio [Mr. REGULA], and there is also what I understand will be a substitute. I will support the substitute. Should the substitute fail, I will offer an amendment from Ohio [Mr. REGULA], but I think we do, all of us, Republican and Democrat alike, want to express our appreciation for the kind of leadership that the gentleman has given us on this, because it has been responsible, while at the same time forcing the issue in a way which responds to the concerns of the American public, and I want to commend the gentleman.

Mr. REGULA. Mr. Chairman, I agree.

Mr. YATES. I am opposed, Mr. Chairman.

The CHAIRMAN. The gentleman is recognized for 15 minutes.

Mr. YATES. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from Ohio [Mr. REGULA] is one of my very good friends in the Congress. Over the years we have worked together on various issues and problems that concern the Appropriations Subcommittee of the Committee on Appropriations, and usually we are in agreement. On this issue, we have a very great disagreement.

In offering this amendment which the gentleman proposes to establish new grant-making standards for the NEA, I think the gentleman is totally wrong.

First let me say that the House has already spent a whole day arguing and fighting over what should be proper grant-making standards for the NEA. As a member of the Education and Labor Committee which drafted the bill worked a whole year on it, and their work culminated in the vote that took place last week in the House of Representatives.

Grant-making standards for the NEA that they have labored over for the whole year were presented to the House and approved by the House. Now the gentleman from Ohio wants to throw all that work away and to establish new standards for grant-making for the NEA, which in great measure are totally different than those approved by the legislative committee and by the House.

If the gentleman has his way, if his amendment is approved, if the standards that he sets up in his amendment become effective grant-making standards for the NEA, there will be two sets of standards that will have been approved by the House; those approved in the Williams-Coleman bill last week and those approved in the amendment of the gentleman from Ohio [Mr. REGULA], totally different.
standards. How is the NEA to be administered?

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. YATES. I am glad to yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, putting aside the merits of the gentleman's amendment for the moment, is he correct in saying that the whole thing becomes mixed up if the authorization portion of the Williams-Coleman bill enters into this? Does the gentleman agree that Williams-Coleman would be in order, aside from the merits of the Regula amendment?

Mr. YATES. Ordinarily I am opposed to the introduction of legislative bills as a part of an appropriation bill. The gentleman from Montana (Mr. Williams) is offering his bill because he believes there is a very strong possibility, as has been pointed out by the gentleman from Ohio, there is a strong possibility the Senate may not take up that legislative bill. It will have to take up an appropriations bill.

So if the gentleman from Ohio believes the Williams bill will become law, they seek to protect that possibility by making it a part of this appropriations bill.

Mr. GEKAS. What I am actually asking, Mr. Chairman, I am in a dilemma. I supported the Williams-Coleman substitute.

Mr. YATES. So did I.

Mr. GEKAS. I do want, though, to allow the Regula amendment to have a full debate and vote on its own merits.

I am asking whether the chairman is willing to relegate that to the debate alone on its merits, or is he going to support the offering of the Williams-Coleman amendment?

Mr. YATES. I would point out to the gentleman that there is a full debate on the Regula amendment. The Rules Committee allotted 15 minutes to the gentleman from Ohio (Mr. Regula) and 15 minutes to me as a full debate, and we are taking that now.

Mr. GEKAS. I understand that, but the gentleman does not oppose the Williams-Coleman amendment?

Mr. YATES. I voted for it, I will say to the gentleman.

Mr. GEKAS. We all did. We support it here, even though it violates the rule.

Mr. YATES. I think we all have supported it here, because this bill becomes a vehicle for its passage, in all probability.

Mr. GEKAS. I thank the gentleman. I just wondered about the mix-up of the procedures.

Mr. YATES. If I may return to the question of the Regula amendment, Mr. Chairman, the guidelines that he cites, that he lists, are not only unconstitutional, but in a number of respects, they are so vague as to be valueless.

Take a look at his standards. He uses the term "general standards of decency." What are general standards of decency which he requires to be taken into consideration by the NEA in making its grants?

He also requires that the grants take into consideration the fact that they may become viewed by a general audience. Does that mean that a general audience may consist of children in that respect, and must the grants that are approved establish as standards those that are applicable and fitting for children?

Mr. REGULA. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the public-private school is an example. If it is a public school, then it is standards of uniformity; whereas in a private school, where the people pay themselves, they make a lot of choices in the way that school program is constructed.

I think the big difference here is that in one instance it is public money and the Congress says Congress shall appropriate and therefore it has accountability. The first amendment addresses the rights of individuals if they are using their own private money.

Mr. YATES. Mr. Chairman, the difference between the gentleman's amendment and the Williams-Coleman bill is essentially a difference in what is needed for standards of grants. The gentleman from Ohio believes that there ought to be content restriction. What an artist can paint, what he should paint has been the thrust and the hallmark of a totalitarian country, not the United States of America. Like the Soviet Union, for example; I was reading from the Post the other day a review of the exhibition now taking place at the National Art Gallery.

This is what a review by Hank Bur­chard said. He says:

Obscene art goes on open display Sunday at the National Gallery. Kazimir Malevich's paintings and drawings are not only wholly without redeeming social value, they tend to disturb the peace, corrupt youth and endanger this country.

This at the National Gallery. Then he goes on to say:

This is the considered judgment of one of the 20th century's most influential art critics, Joseph Stalin. The 170 works to be shown in the East Building were suppressed in the 1930's by Stalin's order, ending the career of one of the 20th century's most influential artists. Following Stalin's death, Malevich didn't end up in Siberia is that he died in bed before the thought police could get around to him.

Content restriction? Our atmosphere is one of freedom, not of content restriction.

Mr. CARR. Mr. Chairman, will the gentleman yield?

Mr. YATES. I yield to the gentleman from Michigan.

Mr. CARR. I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman is correct in opposing this particular amendment. The gentleman from Ohio is a good friend of us all, and I know he means well, but I think this amendment is going to lead to a lot of constipated thinking if not a lot of litigation.

These are not standards, Mr. Chairman, these are platitudes, but they could form a cause of action by any group dissatisfied with anything in the arts community to literally close museums around the country.

It says in this amendment:
The chairperson of the National Endowment for the Arts shall ensure that projects supported by an award, grant, loan or other form of assistance by the National Endowment for the Arts.

We all know that the National Endowment gives grants to museums, helps them with their administrative expenses, helps them with their expenditures and they must put some kind of an exhibit in their museum that would fall some one person's test, somewhere in America, create a lawsuit, totally tie up the Endowment, totally tie up the museum and that is what amendment says is its goal, to ensure that all members of the public have access to art funded by the program.

I think it is going to restrict access. Furthermore, I think it needs to be pointed out that the definition of indecent that it seeks to apply, specifically the Federal Communications Commission versus the Pacifica Foundation really attempt to apply a broadcast standard that the court would fall within the amendment's funding. That is wholly inappropriate for what we are trying to do here.

I urge a "no" vote on the Regula amendment if indeed it is not substituted.

Mr. YATES. Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The gentleman from Illinois (Mr. YATES) has 2 minutes remaining.

The Chair will advise that the gentleman from Ohio (Mr. REGULA) will close debate.

Mr. YATES. Mr. Chairman, I yield 2 minutes to the gentleman from Mississippi (Mr. WHITTEN).

(Mr. WHITTEN asked and was given permission to revise and extend his remarks.)

Mr. WHITTEN. Mr. Chairman, this matter came up in the Committee on Appropriations over very simple language which was in the report, saying that none of this should be done. If the language had been accepted, it would have not been subject to amendment and it has been turned over to the chairman of the NEA to determine whether these things happen along with a remedy if they did.

After listening to both sides here, I do not believe either side wants the problem settled. They would not have anything to talk about. But my proposal was defeated because assurances were given that this would be taken care of when this bill was considered.

Now let me point out to you, and I support the Regula amendment, and I have talked to the gentleman from Montana (Mr. WILLIAMS) about this. Our appropriations are already tied up, which up the Congress. As chairman of the committee, I offered a resolution to let us operate to October 20. The leadership talked me into 5 days. The second resolution also went to the 20th and the leadership got me to go to the 12th and that was noted. The third CR went to the 20th and the other body changed it to the 19th—this Friday—and now we are about to close the Government again.

So let me tell you, and I am not going to call any names, but if you think you have to vote on the amending bill in an appropriations bill and run the risk of tying up the Congress in view of the Senate and the Senate amendments and the Senate rules or lack thereof, you are just fixing to tie the country into a knot.

I tried to get my friend from Montana to offer his amendment. I do know I was assured when the amendment was read that this matter would be taken care of on the floor.

If you put this legislative committee bill in the appropriations bill, it will be the first time I remember seeing such a thing done on the floor in my lengthy experience in Congress. But if you do it, you are going to be responsible for tying up the country because of the Senate, you know who the people are and you know what they will do under the rules.

This has to do with Federal funds. When this matter was before our Appropriations Committee, as one of the subcommittee chairmen, I offered the following language:

National Endowment for the Arts

The Chairman of the National Endowment for the Arts is charged with the responsibility of seeing that Federal grants or other Federal funds be used for the purpose of authorizing and supporting or financing any indecent, anti-religious, or obscene picture, play or writing.

The Committee recommends that any organization or person violating these guidelines shall be obligated to return all Federal funds under the control or such organization or person to the Endowment.

The appropriate committees of Congress shall be notified on all such actions.

This language, if adopted, would have solved this problem, for it went to the report, which was not amendable in the House and would have let the NEA Chairman, Mr. Frohnmayer, make the determination.

Chairman Frohnmayer has agreed to do his part to keep the bad situation from recurring, as did my amendment.

Therefore, the subcommittee reversed its position and Mr. WILLIAMS defeated the amendment on a committee vote by the subcommittee members who gave assurances that continuing the Interior bill under the terms and conditions of the fiscal year 1990 bill, the current law, would prohibit such actions for the duration of the continuing resolution.

When the Interior bill was before the committee, the Regula amendment was offered but withdrawn upon agreement that all would work to make his amendment in order on the floor. My letter to the Rules Committee asked that his amendment be made in order, and the rule reported from the Appropriations Committee made the Regula amendment in order.

The amendment by Mr. WILLIAMS was made in order in a second rule after the business of the House was concluded last Thursday and after we had gone home—and was not in response to my request for a rule on behalf of the Committee on Appropriations.

Mr. Chairman, this is a most serious disruption of House procedures and particularly under present conditions, where the continuing resolution expires Friday of this week, and in view of the report that the President will close down the Government—unless we meet his demands.

STATUS OF APPROPRIATIONS

Mr. Chairman, I repeat the statement I made to my committee today in connection with our revised 302(b) subdivision which was approved.

I'm proud of our committee. We have done our work. I have pointed out time and time again that our financial situation is not the fault of our committee. Since 1943, the total of our bills has been $173 billion below the President and Congress, and our progress this year has held up, despite our readiness to act.

The final sequester report would be in force today except for the continuing resolution. It would substitute a sequester of $152.5 billion in budget authority to reduce outlays by $83.3 billion. This is a 31.6 percent reduction in nondefense discretionary spending and a 34.5 percent reduction in military spending.

Reductions of one-third would be catastrophic. The existing continuing resolution expires Friday, the 19th. The budget resolution conference report adopted last week contained reconciliation instructions to the appropriate legislative committees that may result in sequestration being set aside for the year. That conference agreement also changed the 302(b) allocation to the Appropriations Committee from what was provided in the deemed House-passed resolution we have been operating within since June 19.

Before we is a revised 302(b) subdivision which has been discussed at the staff level and through the staff with subcommittee chairmen. We are moving our bills in the House and conference to conform to these levels.

Here is our situation: The continuing resolution expires midnight Friday.

The House has passed 11 bills and will pass the Interior bill today—for a total of 12. The legislative calendar will be up on Wednesday. The Senate has passed nine bills and is considering DOD today. We have appointed conferences on eight bills and expect to appoint on Labor-HHS later today. We have concluded conference on two bills.

Another continuing resolution will likely be required. Our success in getting it through Congress and into law will depend on what is happening on the reconciliation bill.

Once again, the committee will have to work hard to get our work done. I hope we will not see the Government
Mr. REGULA. Mr. Chairman, I want to quote from the report to Congress by the Independent Commission, because constitutional issues have been raised, and the very serious five lawyers testifying before the Commission from the University of Chicago, Columbia, Harvard, and two private law firms, and they had an agreement, unanimous, that there is this language. There is no constitutional obligation on the part of the Federal Government to fund the arts. That is a policy decision to be determined by Congress based upon its views as to whether it is useful and wise for the Federal Government to play a role in the arts funding process.

Mr. Chairman, I think they address that question clearly. I think the chairman of the Committee on Appropriations, the gentleman from Mississippi [Mr. Wirths] has made the point that the procedure here is going to create real problems in the conference, and I would hope that we will not approve the substitute to my amendment at this point.

Mr. WEISS. Mr. Chairman, first I would like to stress our opposition, as I did during consideration of the rule on this measure, to including authorizing language in an appropriations bill. As I understood it, authorizing committees and appropriating committees have different responsibilities-authorizing committees make legislative decisions and authorizing committees make funding decisions. I would like to think we could stick to the regular procedures.

The Regula amendment is not only inappropriate for an appropriations bill, but also unnecessary and unconstitutional. The Regula amendment has two parts. The first part needlessly restates provisions of the National Endowment for the Arts reauthorization bill the House passed just 4 days ago. The requirement that funding be sensitive to the nature of public sponsorship, take into account general standards of decency, and be subject to the oversight of public accountability that govern the use of public money—have already been covered in the reauthorization language. Why must we rehash these vague requirements?

Whereas the first section of the Regula amendment is utterly unnecessary, the second section is utterly unconstitutional. This section prohibits the NEA from funding art that the agency determines is "obscene" or "indecent." Obscenity/but obscenity must be determined in a court of law, based on community standards. By requiring the NEA to make the determination of obscenity, and not the courts, the amendment deprives applicants of their due process rights, violating the first amendment.

Just 4 days ago, this body overwhelmingly rejected the Rohrabacher amendment to the NEA reauthorization bill which also required the NEA to make the determination of obscenity. The House is not alone in its opposition to such a requirement. The President's Independent Commission on the National Endowment for the Arts, that Commission's legal advisors, and the Senate Committee on Labor and Human Resources all rejected proposals that would forced the NEA, and not the courts, to determine what is and is not obscene.

Despite the fact that we have already cast our votes on these issues, I guess we need to do it again to make ourselves clear. I urge my colleagues to vote to maintain the integrity of the U.S. Constitution and defeat the Regula amendment.

Mr. FAZIO. Mr. Chairman, after months of work on a compromise agreement, the chairman and the ranking member of the authorizing committee have developed sufficient reforms to address many of the perceived problems with the NEA.

The Williams substitute will preserve the tradition of artistic excellence in the NEA, while stating that the NEA may not fund obscene art—obscenity is without artistic merit and is not protected speech.

Many of the Regula provisions have been included in the reauthorization bill—the NEA must be sensitive to the nature of public sponsorship, greater accountability by the Endowment for grant awards, and advisory panels will reflect diverse cultural and artistic viewpoints.

Regula's amendment, like Rohrabacher's, requires prior restraint and places the Government in the role of judge and jury—Williams' leaves the determination of what is obscene to the courts, the traditional and appropriate venue for such a task.

Including the definition of indecency as defined by FCC versus Pacifica is very dangerous. This is a broadcast standard, not one which has been applied to works of art. One can have a right to go to a museum, attend an art show, watch a play, or listen to music. The standard for indecency under Pacifica is intended for radio and television broadcasts, medium which traditionally have required stricter regulation.

The language requiring that work must be "appropriate for a general audience" would be extremely difficult to interpret: would only landscapes be safe?

The reauthorization bill approved by the House yesterday reaffirms our nation's support for the arts, and support the Williams-Coleman substitute—a fair and reasonable remedy.

Mr. CONTE. Mr. Chairman, I rise in opposition to the Regula amendment, and in support of the Williams-Coleman substitute. Let me just make it clear from the beginning that in addition to my objections to the Regula amendment, I oppose obscenity and indecency. I do not approve of the few grants that are used by proponents of NEA restrictions to illustrate a so-called problem. Those projects were in bad taste, and whether or not they were technically obscene or indecent, I felt they should not be federally funded.

But that's history, and besides it's not the real issue in this debate. No one wants to use scarce Federal funds to fund pornography, obscene art or indecent projects. The real challenge in this debate is identifying a problem, and crafting a solution that addresses that problem in the most fair way. The Regula amendment, in my opinion, misses that challenge in several respects, especially when the amendment is evaluated in light of recent NEA reforms and in light of action taken by the House just today.
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However, Mr. Chairman, once the Committee on Rules did decide to allow the amendment of the gentleman from Ohio (Mr. REGULA), then it was clear that, unless mine was also offered, many of us have conducted for 1½ years to this matter would be for naught, and, moreover, important, the 5 hours of debate and vote that the House considered, I believe, 2 legislative days ago, would be more.

Mr. Chairman, I recognize this is a very unusual method, asking that we in this substitute to the amendment of the gentleman from Ohio (Mr. REGULA) a place in total the legislation which the House passed reauthorizing the National Endowment for the Arts, the National Endowment for the Humanities and the Institute for Museum Services, but with the amendment I ask that all of that legislation be placed upon this appropriation bill.

I want to say to the chairman of the House Committee on Appropriations, the gentleman from Mississippi (Mr. WHITTED) that I understand and am not entirely in disagreement with his concern that we are going to weigh down this extremely important appropriation bill. I agree with him that this is not a good process. I do only it in these extraordinary circumstances because I do not want to see the work of our committees and the work that this House does to accomplish just a few days ago for naught.

I am not going to belabor the matter. Let me just suffice it to say that, if the amendment of the gentleman from Ohio (Mr. REGULA) had been accepted, and I suppose it, it would have extraordinarily confused the grant-making process as conducted by the peer review panels, and the national board and the Chairman of the National Endowment for the Arts. The House, I am hopeful, will, with the same vote that it accepted the Williams-Coleman amendment, now adopt the same.

Mr. Chairman, this is the identical language, with no changes, and I remind the House that this will then place this legislation on two legislative tracks. The first track is that which we passed just a legislative day or so ago when we accepted the Williams-Coleman amendment. The second track will be to place that identical language in this Interior appropriations bill. That will assure, I hope, that the will of the House reaches the President's desk and becomes law.

Mr. Chairman, I reserve the balance of my time.

Mr. REGULA. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. HENRY).

Mr. HENRY. Mr. Chairman, the gentleman from Ohio (Mr. REGULA) is correct in this amendment, and it is particularly gracious of him that he would yield to me since I am supportive of this amendment, and he gave me his time. I think that indicates, however, the shared spirit here of one way or another addressing this issue to the fullest and to the best of our ability, and to that extent I do appreciate the gentleman yielding.

However, Mr. Chairman, I want to say, while I rise in support of the amendment, because I am incorporated in the authorization bill, as unusual as it is, that it is the smoothest way to address the issue given where we find ourselves in relationship to the Senate.

I want to rise in defense of some of the objections that were raised earlier relative to the language of the gentleman from Ohio (Mr. REGULA). Obscenity under the law has a very specific legal meaning under Miller versus California, and, even under that specific meaning, it is very difficult because of the community standards aspect of the standard. The Miller versus California standard, quite frankly, does not fully encompass and cover every case. I think, in very context of being sensitive to the nature of public sponsorship and public accountability that governs the use of public money; some comments have been made suggesting reference to the Pacific case in terms of indecency is inappropriate.

What should be understood is that those of us who have suggested this have done so by way of putting some limitations, and restrictions and guidelines on the decency standard to insure that we would respond to some of those concerns which have been raised: What does indecency mean? What does indecency mean? That is so we could give some broad parameters through which the council and its director could make prudent judgments.

I think, related in that light, I think it shows a good deal of sensitivity. I do not find the language of the gentleman from Ohio (Mr. REGULA) to be irresponsible, but I do believe the best way we could proceed at this point in time is by supporting the substitute, and I again thank the gentleman from Ohio (Mr. REGULA) for yielding to me.

Mr. COLEMAN. For what purpose does the gentleman from Missouri (Mr. COLEMAN) rise?

Mr. COLEMAN of Missouri. Mr. Chairman, I have 5 minutes that was yielded to me, and I yield myself those 5 minutes.

(Mr. COLEMAN of Missouri asked and was given permission to revise and extend his remarks.)

Mr. COLEMAN of Missouri. Mr. Chairman, I rise in support of the Williams-Coleman substitute to the amendment of the gentleman from Ohio (Mr. REGULA). I do so for the same reasons that the gentleman from Montana (Mr. WILLIAMS) does.

... (Continued.)
Mr. Chairman, the House has just been through a rather difficult process of coming to grips with this issue. I think we spent 7, or 8 hours on the floor the other day doing this, and people, I think, are being called upon to now switch their votes or change their votes. It is really tough on Members having to face this issue, and it was a crucial issue. It was probably one of the most difficult ones we faced this year. I would rather not have to force Members to do with issues that are not in our proposal, so it is not just a Robson's choice here. There are indeed the case. Words that are shocking in another. Coming out over the airwaves is one thing. Going to a home really without one's permission. For example, if certain indecent remarks are coming across that broadcast, children may hear them. It is not the intention of the parents that way. But the radio happens to be turned on, or the television happens to be turned on, and the parent is out of the room.

Because of that, the FCC has ruled that works that are indecent have to be tightly restrained by FCC regulations. What the gentleman from Ohio [Mr. REGULA] would do is place that standard of indecency where it was not intended, and that is he would overlay it on the selection process of the National Endowment for the Arts.

Mr. Chairman, one can quickly see both the confusion and mischief that that would bring. The Supreme Court itself has never allowed the FCC standards to be applied beyond broadcasting. For example, it has specifically found that those standards do not apply to books or magazines or photographs. That is the reason to turn down the Regula amendment.

The reason to support the Williams-Coleman substitute, which is the bill that will occur, is simply to keep alive the process of last the year and a half, and to place on the appropriation bill, which may be the only vehicle with regard to the National Endowment for the Arts, the National Endowment for the Humanities, and the Museum Service, the only vehicle that ever reaches the President's desk for signature.

Mr. Chairman, I want to say finally that again I think this is a bad process. I believe that the gentleman from Illinois [Mr. YATES] and the gentleman from Michigan [Mr. CARR] and the gentleman from Missouri [Mr. WARRREW] are right. Indeed, to oppose this process, I would have preferred, I will say to them and to Members, that the Committee on Rules had never allowed the Regula amendment to be offered. But once it was offered, I felt compelled on behalf of the Members of this House, who overwhelmingly supported the Williams-Coleman amendment, as the new reauthorization of the National Endowment for the Arts, the other Endowment, and the Institute as well, I felt compelled on their behalf to offer this.

Mr. Chairman, I reserve the balance of my time.

Mr. REGULA. Mr. Chairman, I yield myself such time as I may consume.

Mr. WILLIAMS. Mr. Chairman, I think we have had discussions of the question of using the FCC case as a standard of the definition. I would point very carefully to the language. It says, "or indecent as the term is used in the FCC."
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Mr. Chairman, I have already expressed my opposition to the rule which allowed authorizing legislation in an appropriations bill. It goes against established procedures, especially considering that the House already passed an authorization for the National Endowment for the Arts [NEA].

I recognize that Mr. Williams and Mr. COLEMAN came up with this substitute to try and ward off efforts, such as the Rohrabacher amendment, which would constitutionally tie the hands of the NEA. I appreciate their courageous work in attaining a compromise. However, I did not vote for the Williams-Coleman substitute when the House passed it during the reauthorization of the NEA. If it were freestanding I would vote against it now. But, clearly, it is preferable to the Regula amendment. And on that basis alone I urge its adoption.

This substitute includes provisions that pose serious problems for our country's artistic and cultural future. Such provisions include those increasing the percentage of NEA grants that go directly to state art agencies and those that impracticably revise the peer review process.

Most troubling, the substitute sets new standards for judging grant applications violating the first amendment.

The Williams-Coleman substitute requires that in establishing application procedures and regulations, the NEA Chairperson ensure that "artistic excellence and artistic merit are the criteria by which applications are judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public."

These amorphous requirements are unconstitutional vaguely. What "standard of general decency" will be used? How can one determine whether a particular work of art is within "general standards of decency" or respects "the diverse beliefs and values of the American public?"

That language requires the repayment to the Federal Treasury of any grant that a court may find obscene. That language calls for a complete and immediate oversight over the entire application process. It applies the Miller test of obscenity to the question of what is obscene.

I think Members are going to have an extremely difficult time tonight if after voting by a margin of 382 to 42 for the Williams language to now vote no on it, some 2 to 3 legislative days ago this House voted by a margin of 382 to 42 in support of the language that is now embodied in the substitute.

That language requires the repayment to the Federal Treasury of any grant that a court may find obscene. That language calls for a complete and immediate oversight over the entire application process. It applies the Miller test of obscenity to the question of what is obscene.

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would endanger by gambling the Senate will take an authorization bill in an appropriations bill.

Mr. REGULA. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois (Mr. Hyde).

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, I think the Regula amendment is excellent. I do commend the gentleman from Missouri (Mr. Coleman) for their amendment. It is certainly better than the bill as originally conceived, but I do not see why anyone should be surprised that the gentleman from Ohio (Mr. Regula) wants to tighten up the accountability and deny funds for obscene and indecent art.

Public funds should be used for public purposes, and some of the alleged art, and we have heard it until we are sick, was an affront and is an affront to the sensibilities of the overwhelming majority of American taxpayers. The object of the Montana amendment was to prevent the distribution to the public of pornographic photos, to illustrate Christianity by Serrano, to object to the use of public funds extracted, coerced from taxpayers for child pornography seems to me is entirely opportune. It just seems to me to force taxpayers to pay for art that you cannot display on the floor of this room before the body of the people, that newspapers will editorialize in favor of but dare not print on the pages is just too much. It is carrying the emperor's clothes too far, and it seems to me the rest of the 85,000 works of art that were funded by the National Endowment are not vanilla art. They just do not happen to be indecent or obscene.

We are easily intimidated by the arts establishment, the elite who make these decisions. But when they pick this artist to fund and this artist not to fund, it is really wrong. Congress has a duty to the people we coerce the money from to see that their money goes for appropriate public purposes.

It seems to me the gentleman from Ohio (Mr. Regula) does not happen to be indecent or obscene. The amendment would not have to endorse the language chosen by the chairperson to make grants be made explicit in legislation." I think that the Regula amendment does that.

Second, it recommends as follows: "The Independent Commission recommends that in order to carry out his responsibilities more effectively the chairperson be given more authority and more choices." And I think the Regula amendment does that, and it provides a standard.

I want to say that I think the gentleman from Montana (Mr. Williams) and the gentleman from Ohio (Mr. Coleman) did good work as far as it went. I think they worked hard in trying to get a good authorization bill. After the Rohrabacher amendment failed the other day, and I voted for that, then I voted for Williams-Coleman as the best choice that was available at that time, because we should not have an authorization of NEA and NEH without standards, and I say this: the NEA and NEH should have standards. In the Williams-Coleman amendment they adopted a number of good procedural recommendations that I think are very important for the long haul. It is a 3-year authorization.

Let me make it clear that the issue today is the procedure, not the substance, and in substituting Williams-Coleman I think we are creating a real procedural procedure, not the one I support an award, grant, loan or other form of support that is obscene, and then setting up legal standards for it. Miller versus California for indecent is doing the same thing, is not too far stretched. It is not an abuse of the local arts councils. It is really a vote in favor of standards, in favor of decency, against obscenity that I am sure your voters, the people who pay these taxes support.

So I support the Regula amendment and I do not support reinserting and swallowing up the Regula amendment by the gentleman from Washington (Mr. Coleman), but I support the amendment by the gentleman from Montana (Mr. Williams).
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(Mr. DICKS asked and was given permission to revise and extend his remarks.)

Mr. DICKS. Mr. Chairman, I rise in very strong support of the Williams-Coleman amendment. I think this is the right course to take. The House has worked its will on this legislation.

Mr. CONTE. Mr. Chairman, I rise in support of the Williams-Coleman substitute, and in opposition to the Regula amendment.

The substitute offers an exciting, well-though-out approach, which regulates and time-lines the grantmaking process for the National Endowment for the Arts. It addresses the concerns of NEA critics primarily in two ways. First, the substitute makes procedural reforms in the grantmaking process. Second, it establishes a clear prohibition against funding of obscene art.

The substitute completely revamps the grant application process, requiring detailed applications and periodic reporting. It structures the panel review process, requiring lay persons and geographic balance on the panels. The substitute assures that ultimate funding decisions and ultimate accountability rests with the Chairperson of the NEA. These reforms address the problems that have arisen over the past few years when the application process and granting procedures were not adequately assure accountability.

And, for those who are concerned about obscenity in the arts, and that includes myself, the substitute makes it clear that constitutional prohibitions against obscenity apply to the NEA. The substitute states in law that obscenity is without artistic merit, is not protected speech, and shall not be funded by the NEA. I know of no stronger restrictions that can seriously harm existing constitutional scrutiny.

The Regula amendment, on the other hand, is not exacting or precise. It is at best an approach to the problem that has serious constitutional infirmities. The independent commission report, on page 65, points to this problem:

"While Congress has broad powers as to how to expend public funds, it may not do so in a way that the Supreme Court has said is "aimed at the suppression of dangerous ideas."

The Regula amendment bans indecent art, which for the most part, is protected speech. These deficiencies could, in the end, result in the end in the end in the end. Congress and the House of Representatives, view the Constitution, provide no restrictions on NEA grantmaking processes.

Mr. Chairman, I urge Members to stick with the reforms mandated in the Williams-Coleman amendment. They provide constitutionally sound restrictions on the NEA which are enforceable and realistic. Vote yes on the substitute amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Montana [Mr. WILLIAMS] as a substitute for the amendment offered by the gentleman from Ohio [Mr. REGULA].

The question was taken; and the Chairman announced that the ayes appeared to have it.
Mr. REGULA. Mr. Chairman, I move to strike the last word.

Mr. Chairman, just to clarify the parliamentary situation, my amendment has now been amended by William-Coleman and the next vote will be on Regula, as amended by William-Coleman.

A vote "aye" will send the appropriations bill, with $180 million for the NEA, to conference with the Williams-Coleman language as part of the bill.

A vote "no" would send the appropriation bill to conference with no restrictions, with no content restrictions as a matter of fact.

While I would prefer the Regula language, I think it is important that we have a vote. Therefore I propose to vote "no" on the next vote.

Mr. YATES. Mr. Chairman, I move to strike the next to the last word.

Mr. Chairman, I would like to tell you that I am from the gentleman from Ohio [Mr. REUSS].

I agree with the chairman of the Appropriations Committee that this bill to conference and hopefully come out with a strong bill both on the appropriation as well as the authorization.

Mr. YATES. Mr. Chairman, I move to strike the next to the last word.

Mr. Chairman, I would like to tell you that I am from the gentleman from Ohio [Mr. REUSS].

I agree with the chairman of the Appropriations Committee that this bill to conference and hopefully come out with a strong bill both on the appropriation as well as the authorization.

Mr. REUSS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—aye 342, noes 58, answered "present" 2, not voting 31, as follows:

[Roll No. 462]  
AYES—342

[Names of members voting "aye"]

[Names of members voting "present"]

[Names of members voting "no"]

Mr. PEASE and Mr. BEILENSON changed their vote from "aye" to "no."

Mr. SCHROEDER changed her vote from "no" to "present."

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

Mr. YATES. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I yield such time as he may consume to the gentleman from Florida [Mr. NELSON].

Mr. NELSON of Florida. Mr. Chairman, I thank the gentleman from Illinois [Mr. YATES] for this opportunity to engage in a colloquy.

Mr. Chairman, I would like to bring to your attention the Apollo 11 launch umbilical tower, which was used to send the first human to the Moon.

Because of its historical significance, and the proposed listing of the tower in the National Registry as national significant, it would seem appropriate that the National Park Service consider making the site a national monument to man's race to the Moon.

Mr. YATES. Mr. Chairman, I go back to the balance of my time.

AMENDMENT OFFERED BY MR. PRENZEL

Mr. PRENZEL. Mr. Chairman, I offer an amendment.

The Clerk read as follows: