Arts, Humanities, and Museums Amendments: Reports with Minority Views (1990): Report 04

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Restrictions Removed on Arts Funding

A year after lawmakers first prohibited the National Endowment for the Arts (NEA) from underwriting projects that could be considered obscene, sadomasochistic or homosexual, the ban was dropped. Instead, Congress empowered the NEA chairman in 1990 to ensure that grants were made on "general standards of decency and respect for the diverse beliefs and values of the American public." The controversial issue of obscenity was passed to the courts.

Throughout the summer, the Senate Labor and Human Resources Committee had worked on an NEA reauthorization (S 2724) compromise that broached the topic of letting the courts rule on obscenity. The compromise, offered by Orrin G. Hatch, R-Utah, was part of the least intrusive methods for awarding arts grants — while still addressing obscenity and pornography — that had been proposed in Congress so far.

Meanwhile, Pat Williams, D-Mont., who chaired the House Education and Labor Subcommittee on Postsecondary Education, worked on an agreement with E. Thomas Coleman, Mo., the subcommittee's ranking Republican, to reauthorize the NEA and leave the obscenity issue to the courts.

The Williams-Coleman compromise (HR 4825) became the chief vehicle that first passed the House on Oct. 11 as a straight reauthorization for the endowment. When the Senate failed to act quickly on a reauthorization, NEA supporters in the House turned their attention instead to the NEA's spending bill.

The fiscal 1991 Interior appropriations bill (HR 5769 — PL 101-512) was amended to include a three-year reauthorization of the NEA with no restrictions on the kind of art it might fund. Congress required grant recipients to return money used to produce any work of art that the courts declared obscene. Artists could be barred from receiving additional grants for three years unless they paid the money back.

In a House-Senate conference, the Senate agreed to drop an amendment by Jesse Helms, R-N.C., that would have eliminated the NEA altogether. The Senate then accepted the House language, which instructed the NEA, in judging applications, to take into account "general standards of decency and respect for the diverse beliefs and values of the American public."

arts and humanities, Congress in 1965 established the National Foundation on the Arts and Humanities. The foundation consisted of two autonomous subdivisions, the National Endowment for the Arts and the National Endowment for the Humanities.

Each endowment was authorized to make grants, most of them matched, for a wide range of activities. The operations of the National Foundation were coordinated with other federal activities.


BACKGROUND

After several years of growing congressional and private support for the study, development and presentation of the commissioning of parks, buildings and monuments and support of the Library of Congress, the Smithsonian Institution and the National Gallery of Art. (1985 Almanac, p. 621)

Since its inception, the endowment had served as a catalyst to encourage record levels of new private and public support for artists and arts organizations. Historically, each federal dollar awarded had attracted more than $8 in matching funds.

Recent Controversies

NEA funding for exhibitions of works that members of Congress found pornographic or sacrilegious had boiled into a major controversy on Capitol Hill in 1989. Triggering the outcry were two artists: Andres Serrano, creator of "Piss Christ," a photograph of a crucifix in a jar of urine; and the late Robert Mapplethorpe, known for his homoerotic photographs.

NEA advocates in Congress faced the uphill task of pushing two sets of legislation — the reauthorization and the appropriation — through a barrage of restrictive amendments.

Corralling the move to squelch NEA funding of the controversial works was the outspoken Republican from North Carolina. Helms had warned his colleagues that he would resurrect the NEA brouhaha each year until strict guidelines on federal arts funding were imposed. He told them: "Old Helms has been beat before. But old Helms does not quit."

The endowment’s watchdog in the House was Dana
Rohrabacher, R-Calif. Neither Rohrabacher nor Helms were members of panels with jurisdiction over the agency.

As the public got increasingly involved in the controversy, representatives of the evangelist right — Rep. Donald E. Wildmon, a former Republican presidential contender Pat Robertson — cranked up letter-writing campaigns to members calling for the abolition of the agency.

Over 85,000 NEA grants had been awarded by 1990 and supporters argued that detractors were using a handful of controversial projects to destroy a quarter-century of work.

Helms offered an amendment in 1989 that would have prohibited federal funding for materials that were "obscene" or depicted various activities or human organs. Although he gained some support, his colleagues in the Senate eventually rejected that proposal 82-35.

Helms revised his instructions and asked for a ban on federal funds for artworks that could be determined obscenity, and several lawsuits challenged the constitutionality of the certification requirement.

Under the new law, the NEA required grant recipients to sign a pledge of compliance with the new set of restrictions. Some of the arts groups protested by rejecting the NEA money; several lawsuits challenged the constitutionality of the certification requirement.

True to his word, Helms' campaign for another Senate term in North Carolina used the NEA as a platform centerpiece. Although he won the 1990 election, Helms again lost the NEA battle.

**COMMITTEE ACTION**

As the arts community grappled with the new ban on funding artworks that might be considered obscene, House and Senate committee members in mid-1990 faced a new round of NEA authorization and appropriation bills. The immediate challenge was to craft language that could address the obscenity issue without sparking the ire of either detractors or supporters of the endowment.

**Senate Action**

After a summer of closed-door talks among its leaders, the Senate Labor and Human Resources Committee on Sept. 12 approved an NEA reauthorization (S 2724) by 15-1. The bill included a compromise that would pass to the courts the controversial issue of obscenity.

The compromise offered by Hatch would not forbid the NEA from funding any art on obscene, homoerotic, satirical, or other grounds. But artists or arts organizations would be required to return any federal dollars if a court found that works they created were obscene or violated child pornography laws. In addition, they would be ineligible for NEA grants for at least three years from the date of conviction.

If an artist could not repay the grant money, the endowment could require that the state or local arts agency that passed the money along to the artist make the repayment.

"I think they have put together a pretty good blueprint for the resolution of this," said Anne G. Murphy, executive director of the American Arts Alliance, a consortium of performing and exhibiting arts groups. And Marsha Adler, deputy director of public policy for People for the American Way, called it an "artful compromise."

But in Tupelo, Miss., Wildmon was unimpressed. As director of the American Family Association, he and his members lobbied heavily against the endowment. "What Sen. Hatch has done is give the NEA the best green light they can get," Wildmon said. "His proposal would not prohibit 'Piss Christ.' His proposal would not prohibit Mapplethorpe. His proposal would prohibit absolutely nothing."

Hatch, however, said the solution was a constitutional method for sanctions against obscenity. "I completely agree that we cannot tolerate spending hard-earned tax dollars on art that is obscene or involves child pornography. Taxpayers should certainly not be expected to subsidize such filth under the principle of free expression."

Daniel R. Coats, R-Ind., opposed the measure. He complained that the compromise would do nothing to prevent obscene works from getting federal dollars. "If we don't address it here, we're going to hear about it on the floor. If we don't address it on the floor, we're going to hear about it from the American people, and I think the future of the National Endowment for the Arts will be in jeopardy."

Coats offered an amendment that would bar grants for obscene projects, for the sexual exploitation of minors and for attacking historically religious tenets, traditions, symbols or figures.

Hatch dismissed Coats' proposal as unconstitutional and a prior restraint of freedom of expression. The amendment was defeated, 2-14, with only Strom Thurmond, R-S.C., supporting Coats.

With the bipartisan committee backing, the NEA reauthorization was considered in a good position to fend off expected attacks from Helms.

Arts advocates were optimistic that the combination of the Hatch plan and an independent commission's report Sept. 11 opposing legislative restrictions on the content of NEA-funded art would protect the endowment from efforts on the House floor to tighten restrictions.

In addition to letting the courts decide whether a project was obscene or violated child pornography laws, the Senate legislation would eliminate the controversial requirement that artists sign a pledge not to create obscene works. Instead, grant recipients would be requested "to note" the sanctions that would be incurred if they created an obscene work.

To make the agency more responsive to the public, the bill called for:

- Increased geographic, aesthetic, ethnic and minority representation on the panels selecting grant recipients.
- Standardized panel procedures.
- Increased visits to see applicants' works.
- Access to all deliberations and recommendations of each panel.
- Open meetings of the National Council on the Arts.

The legislation would authorize $195 million in fiscal 1991 and such sums as may be necessary through 1995 for the NEA.

**House Action**

As the debate unfolded in the House, Sidney R. Yates, D-Ill., squelched a proposal July 24 by House Appropriations Committee Chairman Jamie L. Whitten, D-Miss., to ban funding of "obscenity."

Whitten had inserted language in a report on the continuing resolution (H J Res 655) that would bar federal
funds from being used to support or finance "any indecent, antireligious or obscene picture, play or writing." The report would have required that anyone violating the guidelines return the money.

Whitten visited the Interior Appropriations Subcommittee, which Yates chaired, and requested a ban on funding "filthy pictures." The subcommittee, however, decided to hold off and debate the issue in full committee.

At the appropriations hearing Sept. 24, Yates complained that Whitten's resolution was only for 20 days. And he noted that the law allowed the federal government to recapture NEA funds used to create obscene works.

Siding with Yates, Silvio O. Conte, R-Mass., said Whitten's language was vague and most likely unconstitutional. And he said Whitten did not consult other members on the amendment, which Conte said represented the views of "only one person, one man, sort of a poliburo of sorts."

Yates' motion to delete the language was approved by voice vote.

**Williams-Coleman Compromise**

On Oct. 4, Williams and Coleman of the Education and Labor Subcommittee on Postsecondary Education, unveiled a compromise version of an NEA reauthorization bill (HR 4825). The compromise stated that the NEA could not fund obscene art but would leave it to the courts to judge whether a project had crossed that line.

After a hearing, the NEA could order grant recipients to return the federal money if they were found guilty of violating obscenity standards. In addition, offending artists would be barred from receiving grants for three years.

"The heart of the issue here is whether members of the House of Representatives were going to hold ourselves up as determiners of art in America," Williams said. "With this, we say 'no.'"

Other Republicans who backed the compromise were Steve Gunderson, Wis., and Paul B. Henry, Mich.

Coleman and Gunderson had initially wanted to require the NEA chairman to determine whether an artist had created an obscene work, and if so, to stop the grant and recoup the money. The artist could have appealed the decision in U.S. District Court. Critics said the plan would have turned due process on its head.

Coleman and Gunderson also proposed increasing the distribution of all NEA funds to state arts agencies from 20 percent to 60 percent.

Henry had proposed language that would have directed the NEA to avoid funding projects that "deliberately denigrate" the cultural heritage of the United States, its religious traditions, or racial or ethnic groups. He would also have barred funding any project that was obscene according to Supreme Court standards or indecent under the Federal Communications Commission's definition.

In a nod to Henry, the compromise would instruct the NEA chairman to ensure that "artistic excellence and artistic merit" were the criteria used to judge applications, while taking into account "general standards of decency and respect for the diverse beliefs and values of the American public."

Provisions in the compromise would have also tightened the application process, making the chairman more accountable for the art the NEA funded.

When no consensus emerged on the obscenity issue during a markup on the legislation reauthorizing the agency for three years, HR 4825 was sent to the floor without it.

There were 26 amendments pending, including one to abolish the agency.

**FLOOR ACTION**

Endowment supporters in the House guided the compromise reauthorization bill toward successful passage, easily defeating Rohrabacher's attempts to add restrictions.

Bogged down by other legislation, the Senate did not move as quickly. No supporter appeared willing to introduce S 2724 and face another floor fight with Helms.

With the reauthorization stalled, congressional attention shifted to appropriations. The House passed a funding bill (HR 5769) on Oct. 15 and attached the entire three-year reauthorization, again throwing the ball to the Senate.

**Senate Action**

The NEA reauthorization bid was adopted as an amendment to the Interior appropriations spending bill (HR 5769) on Oct. 24. The Senate voted 73-24 on the amendment, offered by Hatch, that reflected a compromise hammered out earlier in the Labor and Human Resources Committee. (Vote 308, p. 60-S)

The Hatch amendment supplanted language in the Appropriations Committee version of the bill that would have continued to ban funding of projects that "may be considered obscene, including but not limited to, depictions of sadomasochism, homoeroticism, the sexual exploitation of children, or individuals engaged in sex acts and which, when taken as a whole, do not have serious literary, artistic, political or scientific value."

But in the excitement of winning that fight and beating back even stiffer obscenity restrictions offered by Helms, arts supporters left the floor before work on the bill had been completed.

That allowed Helms to win a voice vote approval in a nearly empty chamber of an amendment to bar funding of works that denigrate religion. Helms complained that the funding ban in existing law left "a loophole wide enough to drive six Mack trucks abreast through."

He said the language "doesn't prevent these sleazeballs from getting themselves naked on a stage, rubbing themselves with chocolate and saying, 'Look at me, I'm an artist.'"

Hatch, however, framed the debate this way: "Do we want to do away with the endowment, or do we want artists to have freedom of expression?"

Helms' first amendment, which would have forbidden NEA funding for projects that "depict or describe, in a patently offensive way, sexual or excretory activities or organs," was defeated, 29-70. (Vote 307, p. 60-S)

The Senate then adopted the Hatch plan to require artists to pay back the government if they were convicted of violating obscenity or child pornography laws and to ban artists from receiving federal grants for three years after a conviction.

The huge margins in both votes convinced members the debate was essentially over. Claiborne Pell, D-R.I., who had worked with Hatch on the compromise, issued a news release proclaiming victory for restriction-free legislation.

But Helms was not through. First he offered an amendment to prevent grants from being awarded to people whose family income was 1,500 percent of the poverty line. It was rejected by voice vote.

Then he offered his religion amendment. Hatch, however, had left the floor. Only Pell and Robert C. Byrd,
D-W.Va., remained. Byrd, who said he would accept the amendment for discussion in conference, had voted with Helms on the two prior roll call votes. Pell, who could have asked for a roll call vote, simply said “no.”

Hatch said it would be up to the House to take the language out of the bill. Even with a roll call vote in the Senate, he said, “I’m not sure it could have been stopped anyway.”

Williams, the chief sponsor of restriction-free legislation in the House, called the Helms amendment “a wart on an unblemished face.”

The ban on funding sacrilegious art inserted by Helms dealt a wild card to conferees ironing out the differences between the two chambers’ Interior appropriations bills. Most members expected conferees to drop the language before returning the Interior bill to both chambers for final approval.

**House Action**

After a debate punctuated with strident warnings about obscenity and pornography, the House on Oct. 11 rejected attempts to restrict and kill the NEA and voted overwhelmingly to reauthorize the agency. The 349-76 vote on HR 4825 followed months of stalemate between arts advocates who wanted to preserve the endowment as it was, moderate Republicans who wanted to include language opposing obscenity, and conservatives who wanted to abolish the agency altogether. *(Vote 449, p. 144-H)*

The compromise crafted by Williams and Coleman finally paved the way for passage. The compromise stated that the NEA should not fund obscene projects, but it left the-determination of what was obscene to the courts.

Rohrabacher framed the debate by telling his colleagues that they could either vote to provide guidelines for the NEA or they could “gut the standards” by voting for the Williams-Coleman substitute.

The House first rejected, 64-361, an amendment by Philip M. Crane, R-III., that would have abolished the NEA. *(Vote 446, p. 144-H)*

Rohrabacher then offered his amendment, which would have restricted the endowment from funding projects that were obscene; that depicted human sexual or excretory activities or organs; that denigrated the beliefs, tenets or objects of a particular religion; or that denigrated a person or group on the basis of race, sex, handicap or national origin.

Defending his language, Rohrabacher asked, “Is it censorship not to fund projects indistinguishable from hardcore pornography?”

He complained about an NEA grant to the San Francisco Lesbian and Gay Film Festival, which had used the money to show films with pornographic titles.

But Amo Houghton, R-N.Y., objected strongly, saying “The pornography issue is a ruse,” designed to gut federal arts spending.

The amendment was defeated 175-249. *(Vote 447, p. 144-H)*

Lawmakers approved the Williams-Coleman substitute with little dissent, 382-42. *(Vote 448, p. 144-H)*

An amendment by Fred Grandy, R-Iowa, softened one provision in the compromise, which would have barred artists from receiving grants for three years after being found guilty of violating obscenity standards.

Grandy’s amendment, approved by voice vote, would allow artists to receive grants once they repaid their original grant.

Rather than revise the controversy when the reauthorization bill floundered in the Senate, the House passed HR 5769 on Oct. 15 and attached the entire reauthorization measure — complete with the three-year extension of the endowment, the obscenity penalty provisions and the shift in funding to the states.

The Senate insisted on amendments to HR 5769 on Oct. 24; the House disagreed with the new provisions and asked for a conference on Oct. 25.

**FINAL ACTION**

Both the House and Senate agreed to a conference after each chamber passed HR 5769, the Interior appropriations bill, with conflicting amendments on reauthorizing the NEA.

Avoiding another series of heated arguments, the Senate conferees accepted the House version, including the Williams-Coleman compromise, without much discussion.

The conference report filed in the House on Oct. 27 (H Rept 101-971) appropriated $147 million for the endowment. The House agreed to the Interior conference report Oct. 27 by a vote of 298-43. The Senate cleared the bill by voice vote Oct. 27 and President Bush signed the measure Nov. 5. *(Vote 532, p. 168-H)*

As expected, the conferees deleted the Helms provision that would have banned funding works that denigrated religion. Slightly more controversial was the complete deletion of the Hatch amendment.

Rep. Conte of Massachusetts spoke in support of Sen. Hatch’s reform provision, calling it a “a workable mechanism for excluding art not worthy of federal funding.”

By contrast, he pointed out that the Williams-Coleman provision would require the NEA chairman to ensure that grants were made on “general standards of decency and respect for the diverse beliefs and values of the American public.”

“Now that sounds like apple pie and motherhood, but in reality the NEA will have a difficult, if not impossible, time implementing this provision in a constitutional manner,” Conte said.

**Critics Promise More Pressure**

Critics of the NEA vowed to maintain the pressure despite their final setback. “I say to the arts community and all homosexuals upset about this amendment: What is past is prologue,” Helms said. “You ain’t seen nothing yet.”

Even Hatch, who helped broker the conference agreement, warned that the endowment could face trouble in the future. “If there are any of these [offensive projects] funded in the future, they’re going to be in trouble, and I’m going to be upset, too,” he said.

For its part, the NEA was torn as to how to proceed. The National Council on the Arts, which advised the NEA chairman, voted on Dec. 14 not to impose standards of decency on panelists who recommended arts grants. Instead, the council instructed panel members that “by virtue of your backgrounds and diversity you represent general standards of decency — you bring that with you.”

In January 1991, U.S. District Court Judge John Davies in Los Angeles ruled that the antiobscenity pledge that grant recipients had been required to sign under the fiscal 1990 provision was unconstitutional.

On Feb. 20, the endowment announced that it was dropping the requirement to settle a similar suit brought by the New School of Social Research in New York.

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