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Claiborne Pell

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TALKING POINTS ON THE AMENDMENT TO IMPOSE
"CONTENT RESTRICTIONS/PROHIBITIONS" ON NEA FUNDING

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- o It is impossible to apply a content or subject matter restriction at the time of an NEA grant award because, in most cases, the project, production, or program is not yet underway. Future activity, for the most part, is supported by NEA grants, whether it be development of a new play, opera, design project or a dance touring program, assembly of a museum exhibit, performance of orchestra concerts, production of a video work, or renovation of an historic theater. The "content" the amendment seeks to prohibit or control often does not exist at the time a grant is awarded.
- o For this reason, current law provides the most appropriate and enforceable accountability for Federal funds. Under the Endowment's reauthorization legislation, a completed project is subject to review by a court of law if obscenity is charged and a clear mechanism for the Endowment's recovery of the Federal grant funds is authorized.
- o Content restrictions or prohibitions were considered and rejected during the protracted debate on the NEA reauthorization legislation in 1990. Congress determined to reaffirm the role of the courts in determining obscenity and to authorize recovery of Federal funds in those cases. The courts are the proper judges of what is protected under the First Amendment.
- o Current statutory language is stronger than content-restriction amendments as it clearly defines obscenity. The courts and Congress have wrestled with the definition of obscenity for years. The Supreme Court's definition of obscenity in Miller v. California, 413 U.S. 15 (1973), is the operative definition and it was adopted as part of the NEA reauthorization statute.
- o In addition, current statutory language provides that "In establishing . . . regulations and procedures, the Chairperson shall ensure that -- (1) 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."
- o Previous floor debate in support of content restrictions in both the House and Senate clearly suggests that its proponents are seeking to restrict support for projects which involve certain subjects and issues, approaches to topics, points of view, and groups of individuals. A reminder of what occurs when a government undertakes this policy was embodied in last year's exhibit at the Smithsonian Institution's Ripley Center entitled "'Degenerate Art': The Fate of the Avant-Garde in Nazi Germany."

- o The procedural changes implemented by the Arts Endowment in 1990 represent an important "opening up" of the Arts Endowment. The NEA made the following major changes in its advisory panel procedures:
 - The Arts Endowment now requires that membership of each panel change substantially from year to year and that each individual is ineligible to serve on a panel for more than 3 consecutive years. The average turnover ratio of panelists Endowment-wide is currently 77 percent. The minimum turnover ratio for panels in an individual program is 33 percent. One-fourth of the total number of panels at the Endowment turn over 100 percent every year.
 - Review panels are now more diverse, including qualified individuals from all parts of the country, all cultural and ethnic groups, and with diverse beliefs and aesthetic viewpoints. The Endowment has solicited names of potential panelists from a broad range of private sector groups, organizations, and state and regional arts agencies, has invited Members of Congress to submit names for consideration, and published an announcement in the Federal Register on March 20, 1991.
 - Each panel now also includes a lay person, a person not making his or her livelihood from the arts, but knowledgeable about the arts and their role in our society.