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STATEMENT OF SENATOR CLAIBORNE PELL

Mr. President, I think it important to this discussion to set forth the dilemma faced by Ms. Alexander and the National Endowment for the Arts in the case of some of those few grants that have become controversial. In a number of these grants, the artist applicants are rated highest by the citizens and arts professionals who make up the Endowment's review panels. These panels are chosen from diverse communities from around the nation with an eclectic mix of aesthetic standpoints. If the Endowment rejects these highest-rated applicants on the basis that their past work indicates that they may produce controversial art in the future, the artists can, and have, successfully brought suit against the agency on constitutional grounds.

The case of the Ms. Holly Hughes illustrates this point. Ms. Hughes is an artist and the winner of two "Obie" awards. Ms. Hughes' application was ranked first among the over one hundred applications received by the review panel. The National Council on the Arts, nearly all of whom were appointed by the previous Administration, voted 14 to 0 in favor of her application.

Mr. President, this amendment would make the responsibilities we have placed upon the Endowment impossible to fulfill. Because arts grants are by nature prospective, the Endowment would have first to decide whether a particular applicant might in the future fall afoul of this amendment and then decide whether the amendment would be unconstitutional as applied. In other words, this amendment would make the Endowment into a federal court. It would result in more lawsuits and more polarizing controversy over whether particular art was offensive. We cannot tell if this amendment would prohibit federal funding for a

production of John Steinbeck's "Grapes of Wrath," Shakespeare's "Othello" or Rembrandt's "Adam and Eve.'

The Supreme Court has set forth the principles governing the judgment of what works may be considered obscene. Outside of those parameters, the agency risks acting unconstitutionally if it attempts to conduct itself in accordance with amendments such as this. I believe that a continued focus on artistic merit, along with Ms. Alexander's new ideas for procedural reforms of the agency, remain the best solution to these occasional controversies.