Reauthorization: S. 2724 (1990): Report 01

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Arts Education Initiative
Summary

NATIONAL ARTS EDUCATION BOARD

A National Arts Education board is established within the National Endowment for the Arts. It will consist of fifteen members appointed by the Chairperson of the Endowment who are broadly representative of the arts education community at all levels. The Chairperson shall consider the geographic, ethnic, and gender diversity of the Board when recommending members, as well as participation by individuals with physical disabilities.

The term of service on the Board will be five years, three seats turning over each year. Length of terms for members of the first Board shall range from one to five years, with three members appointed for each term length, producing the staggered Board appointments. Any member serving for seven consecutive years shall be ineligible for reappointment for three years after his or her term. Any member being succeeded by a new appointee shall retain his or her seat until the appointee takes office.

A Chairperson of the Board shall be appointed by the Chairperson of the Endowment from among the appointed Board members. Except where noted, a quorum shall consist of eight members.

The Board shall meet at the call of the Chairperson. It shall, however, not meet less than four times a year. It will also be convened should one-third of its members request in writing that it meet, in which event seven members shall constitute a quorum.

Compensation for Board members not in regular full-time service of the United States shall be fixed by the President, but will not exceed the rate specified for grade GS-18 set forth in section 5332 of title 5. Travel expenses may be allotted as well as per diem in lieu of subsistence.

The Board, in cooperation with the Chairperson of the Endowment, shall work to coordinate and encourage efforts to improve arts education at all levels of formal education systems and in programs of nonformal education for all age groups. It will also work to develop and stimulate research on improved teaching methods in arts education. Finally, it will encourage and facilitate the work of other federal and state agencies in the area of arts education.
GRANTS TO INCREASE AND IMPROVE ARTS EDUCATION

The Chairperson of the Endowment is authorized to make grants to schools, groups, or individuals of exceptional talent engaged in or concerned with arts education. Grants will be made for projects which foster the development of improved arts instruction through (a) an improved teacher pool with access to quality curriculum materials and career development resources, (b) joint programs between federal, state, and local education agencies and arts agencies, (c) partnership programs between education agencies, businesses, colleges, and universities, (d) artist-in-residence programs at all education levels, (e) the implementation of technology and improved facilities in arts education, (f) improved evaluation and assessment of arts education and instruction, (g) research, surveys, planning, and publications relevant to arts education, and (h) enhancing public understanding of the arts through informal education activities using a variety of media.

Grants shall not exceed 50% of the total cost of the project.

AUTHORIZATION OF APPROPRIATIONS

$10,000,000 is authorized for this arts education program of the Endowment. Any appropriations for this section must be in excess of $175,000,000 for the already authorized purposes of the NEA.

Any new dollars allocated for arts education shall be equally divided between this title and other arts education programs within existing NEA programs.
SUMMARY OF HATCH AMENDMENT


The amendment addresses the question of federal funding of obscenity or child pornography by debarring from NEA funding for at least 3 years anyone convicted of creating or producing such work and by recouping all federal funds used to support such work.

Specifically:

1. A determination of whether or not an art work is obscene or is child pornography would be made by the courts.

2. After a final court ruling that a federally funded work is obscene or is child pornography, the person or group convicted for violation of obscenity or child pornography laws will be debarred for not less than 3 years or until the grant money is repaid—whichever is longer.

3. The person or group which received or used NEA funds for the work must repay the grant funds to the government. If for any reason they do not repay, any group which gave NEA funds to them would have to repay. Any person or group which is liable for repayment of the NEA funds and fails to do so will be ineligible for any NEA funding in the future.

Procedural Changes

The amendment includes a series of changes in NEA procedures in the basic NEA statute. These changes are:

1. Creation of a panelist bank of qualified arts professionals and knowledgeable lay persons and the appointment of knowledgeable lay people to the review panels.

2. Standardization of panel procedures.

3. Requirement for site visits (where necessary and feasible) to view works, followed by a written report to panelists.

4. Requirement for a written record of all panel deliberations and recommendations.

5. Requirement for rotating panel membership.

6. Opening to the public of all National Council on the Arts meetings.

7. Prohibition against service on a review panel by any individual with a pending application for NEA assistance or by any employee of an organization with a pending application.
Description of sanctions in Hatch, Kennedy, Pell, Kassebaum substitute amendment to S.2724.

1. **When are sanctions applied?**

Sanctions shall be applied when NEA funds are used to create, produce or support a project or production which is found to be obscene or to violate child pornography laws in a criminal trial (and all appeals of the conviction are exhausted) in a state in which the project was produced or which was described in the grant application as a site for the project.

2. **What are the sanctions?**

Sanctions include repayment of the NEA funds which supported the work found to violate obscenity or child pornography laws. In addition, the defendant or defendants in the trial will be debarred from the NEA funding for at least 3 years or until the funds are repaid—whichever is longer. Failure to repay the amount due will result in permanent debarment.

3. **Who is responsible for repayment and how much must be repaid?**

The initial obligation to repay funds is with the individual or organization which actually created or produced the project found to be obscene. The amount to be repaid is that portion of the total NEA funds received by the individual or organization which were used to create or produce the project found to be obscene, provided that it is identifiable. If it is not possible to separate out the portion of the funds used for the work, the entire NEA grant must be repaid.

If the Chairperson of the NEA determines that the individual or organization which created or produced the project found to be obscene is unable to or has not made repayment, and if such individual or organization did not receive its funds directly from the NEA, but was a subgrantee of an agency or arts group or other entity which received funds directly from the NEA and passed funds on to such individual or organization, then such agency or arts group is responsible for repaying the funds.

Repayment of funds by the individual or organization which created or produced the project found to be obscene must be made within 90 days of the exhaustion of final appeal of the conviction, unless such period is extended by the Chairperson of the NEA for up to two years. If an agency or arts group which subgranted funds to such individual or organization is required to repay funds, it must do so within 30 days of the original 90-day period.
4. **Who is debarred from receiving further funds from NEA, and for how long?**

Any individual or organization which received funds from the NEA, used them to create or produce the project found to be obscene, and was convicted in the criminal obscenity or child pornography trial, will be debarred for a period of not less than three years. If such individual organization is required to repay funds as described above, then he, she, or it is debarred until it repays such funds. If an agency or arts group is required to repay funds, as described above, and does not make such repayment, it is debarred from receiving further funds until such funds are repaid.

5. **Summary**

The overall scheme of repayment and debarment is designed to assure that the person or entity which received NEA funds and used them in creating or producing the work found to be obscene or to violate child pornography laws must repay the funds used to create such work. If such person or entity does not make timely repayment of such funds, it is debarred from receiving further NEA funds until it does so. If the individual or organization actually making the obscene art does not repay the money, then an agency or arts group who received the funds from the NEA and passed them on to such individual or organization must repay the money. If it does not do so, it is debarred.

Any individual, organization, arts group or agency which used NEA funds to create a project or production which is found to be obscene or to violate child pornography laws, and is a defendant convicted at such obscenity trial, is debarred for three years.

The Chairperson of the NEA is charged with promulgating procedures to ensure compliance with these sanctions.

6. **Illustration**

A State Arts Board receives money from the NEA as part of the state block grant. The Board then gives $100,000 of the NEA funds to a theater group for a performing arts series. Among the performances in the series is one in which an individual performer receives $10,000 from the theater group. A criminal action is brought against the performer, and a court convicts the performer of violating obscenity laws.

**Sanctions**—

The performer must repay the $10,000 and would be debarred from federal funding for a minimum of 3 years. If the performer does not repay the full amount, he or she would be permanently debarred and the theater group would be responsible for repaying. If the theater group fails to repay, it—too—is debarred and the State Arts Board would be responsible for repaying the $10,000. If the State Arts Board does not repay, it would be debarred until it makes full repayment.
RELIGIOUS RESTRICTIONS ON NEA FUNDING ARE UNCONSTITUTIONAL

Restrictions on NEA funding that specifically target art that "denigrates the objects or beliefs of the adherents of a particular religion" are blatantly unconstitutional. They violate the First Amendment right to freedom of speech and expression; they abrogate the right to freedom of religion, which protects free exercise of religion and requires the separation of Church and State; and they are unconstitutionally vague and overbroad.

First, the Supreme Court has long recognized that the First Amendment prohibits restrictions of religious speech or religious art. "[T]he state has no legitimate interest in protecting any or all religions from views distasteful to them... It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine." Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 505 (1952). Since Burstyn, the Court has consistently ruled that the expression of an idea may not be restricted on the ground that the idea is offensive or disagreeable. Texas v. Johnson, 109 S. Ct. 2533, 2544 (1989); Ward v. Rock Against Racism, 109 S. Ct. 2746, 2754 (1989). Just last June, in United States v. Eichman, 58 L.W. 4744 (June 11, 1990), the Court reemphasized that "virulent ethnic and religious epithets" are within the protection of the First Amendment." Id. at 4746.

Content restrictions on "blasphemy" also violate the First Amendment guarantee that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The First Amendment prohibits the Government from either favoring any religion or discriminating against any religious practice. As the Court held in Burstyn, freedom of religion is threatened under both these clauses whenever religious expression is singled out for censure -- including by an attempt to regulate the religious content of art. 343 U.S. at 504-05.

Finally, restrictions on "blasphemous" art are unconstitutionally vague. Id. at 531, 533 (Frankfurter, J., concurring). Vague restrictions on "denigration" of religion has a chilling effect on art: "To allow such vague, undefinable powers of censorship is bound to have stultifying consequences on the creative process of literature and art... The effect of such demands upon art and upon those whose function is to enhance the culture of a society need not be labored." Id. at 531-32.