

University of Rhode Island

DigitalCommons@URI

Reauthorization: S. 2724 (1990)

Education: National Endowment for the Arts
and Humanities, Subject Files I (1973-1996)

7-12-1990

Reauthorization: S. 2724 (1990): Memorandum 01

Alexander D. Crary

Follow this and additional works at: https://digitalcommons.uri.edu/pell_neh_I_77

Recommended Citation

Crary, Alexander D., "Reauthorization: S. 2724 (1990): Memorandum 01" (1990). *Reauthorization: S. 2724 (1990)*. Paper 7.

https://digitalcommons.uri.edu/pell_neh_I_77/7https://digitalcommons.uri.edu/pell_neh_I_77/7

This Memorandum is brought to you for free and open access by the Education: National Endowment for the Arts and Humanities, Subject Files I (1973-1996) at DigitalCommons@URI. It has been accepted for inclusion in Reauthorization: S. 2724 (1990) by an authorized administrator of DigitalCommons@URI. For more information, please contact digitalcommons@etal.uri.edu.

M E M O R A N D U M

TO: Senator July 12, 1990
FROM: ADC
RE: NEA Agreement and Strategy

As of this afternoon, we have an agreement. Hatch and Kassebaum have signed off on what we have worked out and I think we can all be satisfied with the results. I will summarize our anti-obscenity proposal below.

We are at a crucial point as far as strategy goes and your participation is needed. There is a full committee mark-up set for next Wednesday, July 18. We can be ready with our amendments by that time but our colleagues do not want to go to mark-up UNLESS we can get some assurance from Senator Mitchell that we can proceed to the floor within the next week. Kassebaum and Hatch do not want to have our agreement acted on in Committee and then have it sit out there until September as a target for the right wing.

I have been talking to Mitchell's staff and they are aware of our agreement. They suggest that you now discuss the timing problem with Mitchell himself. If we go to Committee on the 18th, we would like to be on the floor June 24-26 - ideally. Apparently the Farm Bill will be the pending business then. If that week looks bad for the floor then we should delay the mark-up. Nick Littlefield will help us schedule a mark-up for whenever we need it. Mitchell's staff also suggested that the four of you who are part of this agreement (Pell, Kennedy, Kassebaum, and Hatch) sign a letter to Mitchell (and perhaps another to Dole) detailing the agreement and stating your joint commitment to it. This will also help keep Hatch and Kassebaum in line later on when the heat on them will intensify.

It would also be a good idea for you to speak to Kassebaum after you check with Mitchell - to say how pleased you are at the progress and that you hope she can push things along on her side by talking to Dole and the White House. If the White House will endorse our agreement, it should help bring Dole on board. I will be informing Frohnmayer of our situation just before the mark-up and ask for his help with the White House.

As of now this agreement is known only to the four participants in the negotiations. We will try to keep it secret until the mark-up. A summary of our anti-obscenity amendment is on the next page.

ANTI-OBSCENITY AMENDMENT

The amendment would address the question of federal funding of obscene art by debarring for at least 3 years anyone responsible for creating an obscene 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 would be made by the courts - with the possibility of appeals as high as the Supreme Court.

2. After a court has ruled that a federally-funded work or project is obscene, the person or group directly responsible for the work will be debarred (black-listed) for not less than 3 years or until the grant money is repaid -- whichever is longer.

3. The person or group directly responsible 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.

EXAMPLES

The New York State Council on the Arts receives money from the NEA as part of their state block grant. The Council then gives \$50,000 to The Kitchen (an alternative arts space) for a series of performances. Among the performances is one by Annie Sprinkle for which she receives \$10,000 from The Kitchen.

A criminal charge is filed against Annie Sprinkle and a court determines that her act is obscene. At that point, she is debarred from federal funding for a minimum of 3 years., and she must repay the \$10,000. If she does not repay, she will be permanently debarred and The Kitchen is responsible for repaying. If The Kitchen refuses to repay, it too is debarred and the New York State Council on the Arts is responsible for repaying the \$10,000.

Alternatively, assume that a criminal charge was brought against The Kitchen for presenting Annie Sprinkle and that it was impossible to determine how much of the \$50,000 for the performance series supported her show because the grant was for "general operating support." If The Kitchen lost the case, they

would - under this amendment - be required to return the entire \$50,000.

RATIONALE

These are the reasons for taking this approach:

1. It is confined to obscenity, which is already illegal and where clear legal standards exist (under the Miller vs. California Supreme Court case of 1973). Such clear standards do not exist for other types of "offensive" work - such as blasphemous, sado-masochistic or homo-erotic art works. It would be extremely difficult - if not impossible - to define standards in these areas.

2. It leaves the determination of whether or not an art work is obscene to the courts where such decisions are routinely made - and away from the NEA where the decision now lies. Since obscenity is determined on the basis of community standards, there is no national definition of obscenity. This is one reason why the current restrictions - which leave the decision up to the NEA Chair - have been so widely condemned.

3. It assures that the individual or group responsible for the work is punished through debarment and assures that the government gets its money back.