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Reauthorization: S. 2724 (1990): Memorandum 02

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~~PRIORITAC~~

*Very interesting -
We may well have
to move to hold
options 1 (as
amended) and 2!*

M E M O R A N D U M

TO: Senator ✓
FROM: ADC
RE: Update on NEA Reauthorization

May 14, 1990

As you have read, the crisis facing the NEA has gone from bad to worse. The situation is unraveling daily. It now appears that some kind of fundamental change in the Arts Endowment is inevitable. This is highly regrettable because each move is now dictated by a dangerous combination of unfair attacks by the right wing and a largely ignorant and politically-obsessed Congress. This grim situation is exacerbated by a lack of leadership in the White House and Endowment and a major rift in the arts community over the proposal to give the bulk of the money to the states. This proposal (championed by House Republicans) to block grant 60% of all NEA appropriations to the states comes at the worst possible time - splitting the community and diluting their efforts against Helms. The National Assembly of State Arts Councils will endorse it formally on Friday. But rifts are occurring there as well with some state arts councils adamantly opposed to it. As I mentioned, this proposal does NOT appear to be gaining support on the Senate side. Our members are looking for cover but without going to such extremes to find it.

At the risk of appearing too rational, I have circulated the attached sheets to our committee staff in the hopes of working out a bi-partisan approach to the problems that are facing the NEA. So far we have had a much calmer approach to the crisis than that in the House where, in addition to this state arts reallocation, there are active proposals to eliminate the Endowment altogether. Our main problem in the Senate continues to be Helms and his desire to add content restriction to the legislation. No one on our side has yet called for the termination of the agency - but anything can still happen.

The attached sheet labeled PHASE #1 is a series of procedural measures that would go into the statute to ensure greater accountability, openness and fairness in the grant procedures. I have shared this with staff on both sides and will know later this week what parts of this proposal appeal to our committee members and who needs what when. My guess is that we will take some steps in committee and save something for the floor.

PHASE #2 is language that could be used on the floor to counteract a Helms effort to add his content restrictions. This language would put the obscenity decision into the courts (where

it belongs) and permit the NEA Chairman to take punitive action against the offending grantee. I am working with Kathleen Sullivan, the Harvard Law professor who testified at our hearing. Further fine tuning of the language will occur.

Some of our Democrats will find these PHASES too strong and some Republicans are likely to say they are not enough - but I am trying to forge a consensus this week and by Friday I will have a sense of where we are. For you to go beyond these measures would be a mistake as many in the arts community (including those who are giving you money) will strongly oppose much of this. The American Arts Alliance (Anne Murphy), for example, opposes any changes in peer panel review. These steps should give you any cover you need in RI. While this is not likely, Chafee and perhaps Schneider could embarrass you by saying you are going too far. Chafee has been outspokenly supportive of the NEA - as it is currently set up.

In regard to the POST story today about the One year extension..... Pat Williams is distressed at the direction things are going but he is not ready to propose a one-year bill. The paper overstated this point. I am in touch with his staff throughout each day and if we believe a meeting between the two of you should be set up, we will recommend it. For today we are continuing to get a sense of where our colleagues are. There is a slight chance that NASAA will pull back on the state block grant proposal by Friday and if this happens it may kill the House initiative. So we should sit tight for a few days on the one-year idea.

Phase 1

In addition, the National Endowment for the Arts is directed to promulgate regulations within 90 days which:

(A) Ensure that all peer review panels have wide geographic, ethnic, minority representation by

(i) creating an agency-wide panelist bank, containing names of both qualified artists and knowledgeable, educated lay persons of which have been approved by the Chairperson of the National Endowment for the Arts, or a designee, and

(ii) ensuring that panels, where feasible, have knowledgeable educated lay persons serving at all times; and

(iii) where feasible, standardizing panel procedures;

(B) Require applicants, where appropriate, to submit a written statement of what is intended to be created with Federal financial assistance with the grant application; and

(C) Require that recipients, on a case by case basis, where necessary, submit reports explaining what will be created, performed, presented, or supported with Federal financial assistance, prior to release of any funds; and

(D) Require all appropriate aspects of meetings of the National Council on the Arts be open to the public;

~~(E) Provide for sanctions, in addition to those listed in subsection 10 (1)(3)(A) - (C), should a recipient substantially fail to satisfy the purposes for which such financial assistance is provided and the criteria specified in the last sentence of subsection (a), as determined by the Chairman of the National Endowment for the Arts.~~

phase 2

Add the following language to the Endowment's enabling legislation immediately following section 954 (h):

954 (i) If a court renders a final decision, after appeals, that a work funded by the National Endowment for the Arts is obscene, the Chairperson of the Endowment may, after reasonable notice and opportunity for hearing and upon a determination that the grant recipient knowingly disseminated or produced obscene materials that were funded by the proceeds of an Arts Endowment grant, declare that no further grants shall be made to such recipient until the recipient repays or arranges the repayment, within one year of final appeal, all or a portion of the Federal funds that were so used."