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National Foundation on the Arts and Humanities: Reauthorization (1985): Report 16

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House NFAH Reauthorization Bill (H.R. 3248) As Passed by the House:
NEH Point-by-Point Comments

Sect. 101
(p. 1 of
House Report
99-274)

Effect: Changes the title of the law.

NEH Position: We do not understand the reason for this change.

Sect. 102
(p. 2)

Effect: Changes all references to "men" to references to "people" and inserts after Sect. 951(7) a new paragraph noting Congressional intent to encourage the teaching of art in the schools.

NEH Position: We do not think that the proposed changes to gender neutral terms throughout the bill are necessary. It is quite clear from context in the Act that references to "men" and "he" refer to all human beings, just as it is in almost all our laws, in common speech, and in the Constitution itself. Nevertheless, since there are some in this society who make such matters a point of unnecessary contention (just as there are others who object to the word "humanities"), we see little to be gained by belaboring the matter. We will not object to this change. (Note that in any case, the Congress may wish to add an "s" to "servant" in Sect. 951(3).)

The question of encouraging the teaching of art in the schools is an issue which NEA will address. We point out that Sect. 953(c) of the NFAH act prohibits federal supervision of curriculum and that therefore this issue might better be addressed in report language.

Sect. 102
(Gunderson
floor
amendment)

Effect: 1. Adds the words "and access to the arts and humanities" after "education" in paragraph (3), Sect. 2 of the Act; and adds "people of all backgrounds and wherever located" after "make," in the same paragraph. 2. Adds two sections on rural audiences dealing with NEA only.

NEH Position: No objection to part 1; defer to NEA on part 2.

Sect. 103
(p. 2)

(1)(A) Effect: Adds "and interpretation" after "study" in the definition of the humanities.

NEH Position: The addition of "and interpretation" is unnecessary since all of the humanities disciplines interpret their subject matter. However, we have no strong objection to the inclusion of these words other than to point out their superfluity.

(1)(B) Effect: Adds phrase at the end of the line focusing on "diverse heritage."

NEH Position: We oppose the addition of this phrase to the definition. First, the definition is awkward and unwieldy enough without adding more qualifiers to it. Second, most of what NEH does has nothing to do with "our" heritage, traditions and history. Finally, addition of this language is clearly intended to modify the legislative statement of purpose in order to justify inclusion of proposed language creating minority preferences (see below). As such, it would also, like that later language, support a basic change in the nature of the agency, from a supporter of the highest quality humanities products, as determined by peer review, towards a purveyor of narrowly defined special interest preference programs--from an agency devoted to the support of education and knowledge to a social action agency. NEH must oppose this language in this context and because of this use of it.

(2) Effect: Allows Challenge construction authority for NEH.

NEH Position: Sect. 5(1) and 7(h) are the NEA and NEH Challenge authorities. The amendment as written might require both Councils to approve every construction grant from either agency. The words "or the National Council on the Humanities" would eliminate this problem.

Sect. 104
(p. 2)

1. & 2. Effect: Corrects typo and wording no longer needed ("hereinafter established"), related to IMS.

NEH Position: No objection.

Sect. 105-
106
(pp. 2-4)

(Sect. 105-106 on NEA are parallel to, and have the identical intent of, Sect. 107-108 on NEH. Therefore the arguments below apply equally.)

Sect. 107
(p. 4)

1. Effect: Replaces "Chairman" with "Chairperson" for NEH.

NEH Position: This strikes us as needless tinkering. "Chairman" is hardly an inappropriate word. (It is, for example, the way most chairmen of congressional committees refer to themselves.) "Director," proposed in the original version of the bill, is a better substitute than such modern barbarisms as "chair" or "chairperson," but it is not as good as just leaving the legislation alone. On that basis we object.

Sect. 107
(p. 4)

(2)(B) Effect: Subsection (c) referred to [Sect. 7(c)] authorizes all NEH functions except State and Challenge. Therefore the proposed change would affect all of those functions. The proposed change would create a specific authority to "initiate and support" programs reflecting the diversity of American culture, "including the of, a minority, inner city, rural, or tribal community."

NEH Position: NEH is strongly opposed to this provision. Our concern is less with the bill language itself, however unnecessary, than with how that language would be interpreted in the report (pp. 14-15). The bill language itself is general and addresses the diversity of American culture including minority, inner city, rural or tribal communities. There are no specific beneficiaries cited, and, consistent with existing specific authorities, there is no requirement to create new programs. However, the report language goes far beyond the words actually proposed for the statute, in fact taking language which appeared in early drafts of the bill (and which was rejected after broadly-based protests from NEH and outside groups) and reviving that language almost word-for-word in the report (pp. 14-15).

NEH strongly disputes the report's implication of large declines in and "underrepresentation" of gender and minority studies and scholars. See attachment A for a detailed, factual refutation of these implications.

Since there is no foundation to these charges, there is no need for the proposed new authority. NEH can and does already provide extensive funding and panelist opportunities for women and minority projects and scholars, under existing authorities, as demonstrated in the attached materials.

While the bill language creates a generalized solution to this non-existent "problem," the report language which interprets it adds great specificity to that solution. It names, for the first time in NEH history, a specific class of beneficiaries for NEH programs. All existing specific NEH authorities [see the list in 7(c)] indicate very general kinds of programs which NEH may support under the law, such as programs to "strengthen the research and teaching potential of the United States in the humanities," to "award fellowships" in the humanities, and to "foster the interchange of information in the humanities." None of these authorities speaks to privileged classes of citizens to whom preferences shall be given for funding. None are accompanied by report language making such requirements.

The proposed new subsection 7(c)(4), however, does come with such report language (p. 15). It names "organizations that offer outreach programs to local and regional communities" and "individuals whose work has a historical basis in, and is reflective of, the culture of minority, inner city, rural or tribal community, and multicultural, interdisciplinary organizations" as special classes of beneficiaries. Furthermore, while the bill language simply authorizes--i.e., it allows but does not require--particular programs, as do all the other specific authorities currently in the law, the report compels NEH for the first time to provide specific programs for benefit of special political constituencies. ("Programs and research for which financial assistance is provided under this section include those designed to (a) create,

produce and present work and scholarship reflective of the culture of a minority, inner city, rural or tribal community; and (b) provide persons who live in such a community with access to the humanities.")

In addition, the report language compels the Chairman to give "particular regard" to those "underrepresented" ("the Committee specifies that the Chairperson shall give particular regard to scholars and educational and cultural institutions, that have traditionally been underrepresented"). "Underrepresented" is defined on p. 14 of the report: "For the purposes of this Act underrepresented groups include women; minorities; the disabled; and members of inner city, rural and tribal communities." Thus, once again, the report goes far beyond the bill language in forcing favored treatment for particular groups of recipients.

Quotas and preferences are not and have not been appropriate overrulers of the peer review process. Women and minorities are currently eligible to compete equally with all others before their professional peers. To imply, as this does, that they cannot compete on an equal footing not only wrongs all others, it demeans those it presumes to help.

This combination of report and bill language would mark a major turning point for NEH: from a peer review agency aimed at supporting the best humanities efforts, to a social action agency, redistributing the nation's wealth to politically favored groups. For 20 years, Congress has resisted political expedience and has refused to use NEH to reward favored groups with traditional pork-barrel benefits. The proposed combination of report and bill language would end this tradition.

NEH hardly has a problem with emphasizing the importance of American culture. In fact, the agency has particularly done so in the past several years, with the report To Reclaim a Legacy, with the creation of the Office of the Bicentennial of the Constitution, with encouragement of proposals related to the Quincentenary of the arrival in the U.S. of Christopher Columbus, and, most recently,

with the new NEH-wide initiative, "Understanding America," for example. But this creation of special classes of beneficiaries is a step in the wrong direction, a step down a path with no end but utter fragmentation into interest-group set-asides and the dilution of quality standards established in the peer-review process.

(2)(B) Effect: Creates a new specific authority for NEH under Sect. 7(c) to "foster international programs and exchanges."

NEH Position: We must oppose this change. The House report implies that the Endowment is not doing enough in the area of international studies. We dispute this contention.

Two programs in our Division of Research Programs are devoted exclusively to projects concerned with the study of foreign cultures: Intercultural Research, which makes grants to scholarly societies to support basic research in the humanities in Eastern Europe, the Soviet Union, and the People's Republic of China; and the Translations Program, which supports translations of important humanities texts from other cultures. In addition, our Division of Education Programs funds a number of projects in schools and higher education institutions to upgrade foreign language programs. Finally, NEH has recently created an Endowment-wide initiative, "Understanding Other Nations," paralleling the new "Understanding America" initiative and aimed at encouraging proposals directed to increasing quality foreign language instruction at all levels.

In FY 1984 alone, NEH grants for projects about foreign cultures totaled over \$34.7 million. NEH support of international studies is and will continue to be extensive.

Thus, to add a new specific authority in sect. 7(c) is unnecessary and would tend to skew programs in this direction artificially, an area already covered on a very large scale by the United States Information Agency. Should Congress want to

commend and encourage our efforts in this area, conference report language to that effect would be sufficient and appropriate.

(2)(E) Effect: Technical change ("workshops" for "workships").

NEH Position: No objection. We point out, however, that the law as currently written (amended through May 31, 1984) shows "workshops," not "workships." Please see the attached copy of the legislation compiled by our General Counsel.

(2)(E) Effect: Creates a new sentence at the end of Sect. 7(c) which would compel the chairman, in selecting grant recipients, to give "particular regard to scholars, and educational and cultural institutions, that have traditionally been underrepresented." ("Underrepresented" is defined on p. 14 of the report, as noted above.)

NEH Position: While the proposed new subsection 7(c)(4) noted above would compel the creation of special programs designed for a particular set of special interest groups, this provision would require that the same interest groups get "particular regard" when being considered for grants under any of NEH's regular programs currently authorized under 7(c)--i.e., virtually all of NEH's programs. We strongly oppose this provision for the reasons stated above in the discussion of the proposed new subsection 7(c)(4).

Sect. 107
(p. 4)

(3)(A) Effect: Sect. 7(f) establishes State Programs. The change (to "the Arts, Humanities and Museums Amendments of 1985") determines the groups which could become state agencies.

The proposed change also calls for a report on progress towards the goals of the State plan."

NEH Position: No objection to the report on "the State plan." The technical change, however, precludes the possibility of groups formed after 1985 from ever becoming State agencies. Therefore NEH recommends that "humanities council in

existence on the date of the enactment of the Arts and Humanities Act of 1980" be replaced by "the existing humanities Council."

Sect. 107
(p. 4)

(3)(A)(cont.) Effect (new subsection vii). Calls for public hearings for groups interested in the State plan, with summary of the response of "the State agency."

NEH Position: We must oppose this language. State programs should (and do) make clear their plans and guidelines and solicit advice from both the scholarly community and the citizenry at large. However, the methods used to publicize and gather advice must vary depending upon the size and demographic conditions within the state. Some states hold formal meetings once a year for this purpose. These are generally the states of small geographic size, states in which the costs of such a meeting are moderate (for example, Rhode Island). To require formal meetings of every state would place a financial burden on the geographically large states, without evidence that it would produce any better results than the variety of methods currently in place.

Among the less expensive, though effective forms of advice gathering and citizen education currently used by the state humanities councils are:

- 1) Biennial reports to the people and governor.
- 2) Evaluations of projects by audiences and scholars.
- 3) Regional and/or institutional meetings of scholars with council members or staff.
- 4) Newsletters to all cultural institutions, previous project directors, humanities scholars, ethnic organizations, and any other interested citizens within the state. Mailing lists range from 2,000 to 15,000-25,000.
- 5) Guidelines circulated by all state councils. (The availability of these is widely announced.)

6) Staff travel within the state to meet with scholars and the public to solicit suggestions and evaluations of projects.

7) Regional representatives paid by the councils to aid prospective grantees and solicit advice about programming. (This is a common method used by geographically large states.)

8) Citizen questionnaires - distributed through resource centers or by the council itself.

Council-created citizen/scholar committees on identified issues, for example, the Wyoming Association for the Advancement of Humanities and the Advancement of Humanities and the Utah Group on Humanities Education.

In addition, NEH is not aware of any complaints about the workings of the current system. The wording of this language, particularly the reference to "the State agency," would apply to the NEA system, where the State Arts Council are, in fact, State agencies. (As the Committee knows, the State Humanities Councils are not State agencies, and thus the reference to State agencies does not have meaning.)

Sect. 107

(3)(A)(cont.) Effect (new subsection viii): Mandates a report on level of participation by scholars, availability of humanities to "all people" in the State, and plans to "secure wider participation" and "address availability" in the above two items.

NEH Position: Oppose this language. The proposed language implies a clear encouragement to fund lesser projects which allow "coverage". To solicit good projects in all corners of the State is one thing, and something NEH encourages. It is quite another to require the goal of "equality" of geographic and ethnic coverage. Once again, this language implies that NEH and its State Councils should ignore merit in the review system in order to meet artificial quotas and deliver funds to politically favored groups.

Sect. 107
(p. 5)

(3)(B) Effect (new subsections I and J): I is identical to new subsection vii above; J is identical to new subsection viii above.

NEH Position: Oppose, for the reasons noted above in the discussion of new subsections vii and viii above.

Sect. 107
(p. 5)

Effect: Subsection (g) of Sect. 7 sets the minimum wage provisions via the Secretary of Labor. The proposed change would require rather than allow the Secretary of Labor to produce regulations on this issue.

NEH Position: We have been and are ready to abide by the regulations of the Secretary of Labor in this matter. We neither favor nor object to the proposal.

Sect. 107
(p. 5)

(6) Effect [new subsection (j)]: Extends Davis-Bacon to all NEH construction projects.

NEH Position: NEH opposes this provision as unnecessary and potentially requiring our grantees to incur greater costs for paperwork and for the same construction work.

Sect. 107
(pp. 5-6)

(6) Effect [new subsection (k)]: Calls for a "state of the humanities" report.

NEH Position: NEH does not object generally to preparing such a report. We do object to the wording "The state of the humanities report shall include a description of the availability of the Endowment's programs to emerging and culturally diverse scholars, cultural and educational organizations, and communities and of the participation of such scholars, organizations, and communities in such programs." Given the bill's proposed new language for 7(c)(4), which creates a specific authority for "minority, inner city, rural, or tribal community" projects, and the related language compelling the chairman to "give particular regard" to specific "underrepresented" groups defined in the report when making grants, this language, in the context, is not an innocuous

request for information but rather an implied requirement to "show results" in this area. As we have noted above, NEH has no problem with, and an excellent record of, soliciting a wide range of applications reflecting the diversity of this country. We think that this wording is inappropriate for the reasons noted above in objection to the proposed new subsection 7(c)(4).

Sect. 107
(p. 6)

(6) Effect [new subsection 1]: Compels NEH to submit all EEOC-required plans and reports within 30 days.

NEH Position: This issue has been the subject of two hearings before the House Government Operations Committee and House Education and Labor Committee. As the report from the first hearing makes clear, this is still an issue very much in dispute. The key question is whether or not the EEOC has exceeded its authority and Congressional intent in requiring "goals and timetables," which imply quotas. NEH takes the view of the Justice Department that such goals and timetables exceed the law and the Congressional intent of the law. (See the testimony of John Agresto and the attached letter from William Bennett on this issue.) Compelling NEH to take the other side of this question does not resolve the issue. It also ignores the still unresolved question of whether such directives are binding on any agency, a question which the Congress must resolve directly before it is appropriate to bind NEH in this way.

Sect. 108
(p. 6)

(1) Effect: Exchanges "chairperson" for "chairman" as the head of the Council. It also modifies the Council member selection language to include "individuals who (1) are from among citizens of the United States who are recognized for their broad knowledge of, expertise in, or commitment to the humanities, and (2) have established records of." In addition, it requires the President to give "due regard to equitable representation of women, minorities, and persons with disabilities who are involved in the humanities."

NEH Position: Our objection to the use of "chairperson" throughout the bill is noted above. We have no objection to the proposed (1)(B) language beginning with "individuals." In the language on Presidential selection, we would object to the word "equitable" if that were to be interpreted as a call for some form of proportional representation on racial or sexual or disability grounds, as seems the intent from the proposed new subsection 7(c)(4) and other features of the bill noted above. The quality of the appointee, not his or her race or sex or disability, should remain the key criterion of judgment.

Sect. 108
(p. 6)

(2)(3)(4) Effect. Changes "he"'s and "his"'s."

NEH Position: As above.

Sect. 109
(pp. 6-7)

(1)(2) Effect: Changes "he"'s," "his"'s and "chairman"'s; drops members of the Federal Council, as requested in the Administration bill.

NEH Position: As above; and agree with dropping members, as noted in the Administration bill.

Sect. 109
(p. 7)

3. Effect: Drops requirements for completed studies, as requested in the Administration bill.

NEH Position: Support.

Sect. 109
(p. 7)

(3)(D) Effect (Report on museums): Calls for study of federal support for museums, including overlaps, impact of IMS, and conservation.

NEH Position: Oppose. NEH agrees with NEA on this matter. Since federal support rightly provides only a small percentage of total museum support, a study in this area should cover the private sector, not be confined to federal activity. NEH, NEA and IMS are currently working on how a review of museum activities can best be done. Report language could encourage this effort.

Sect. 109
(p. 7)

(3)(E) Effect (Policy statement on acquisition of art for Federal buildings). Such statement will provide for local participation, call for planning for Federal commissions for new buildings, make judgments of appropriateness for locale, and avoid official style.

NEH Position: Principally NEA responsibility.

Sect. 110
(p. 7)

(1) Effect: Changes "he"'s and "his"'s; exchanges "Chairperson" for "Chairman."

NEH Position: As above.

Sect. 110
(pp. 7-8)

(1) Effect (Panelist criteria and length of service): Requires NEH/NEA heads to "appoint persons who have exhibited expertise and leadership in the field under review, who broadly represent diverse characteristics in terms of aesthetic perspective, and geographical factors, and who broadly represent cultural diversity." Calls for panel rotation with no more than 20 percent of "annual appointments" for more than 3 years on a "subpanel," with consideration of experience. Requires that panels not fund proposals which "lack serious literary or artistic merit."

NEH Position: Current law requires that "any advisory panel appointed to review or make recommendations with respect to the approval of applications or projects for funding shall have broad geographic and culturally diverse representation" [Section 10(a)(4)]. We do not see the need to replace the existing language, which has served both Endowments well, with the proposed language.

However, if the new language were adopted, there are two problems which would need to be addressed. The phrase "and leadership" in the phrase "exhibited expertise and leadership in the field" might better be deleted, since the word "expertise" covers the intent of the word and since the requirement of "leadership," which implies an established reputation, might preclude the use of younger but fully skilled scholars. Secondly,

since it would be inappropriate to require NEH panelists to be chosen for panels on the basis of "aesthetic perspective," the phrase would need to read "in terms of aesthetic or humanistic perspective," etc. (Proposed change underlined.) We reiterate, however, that the present language in the law is superior to the proposed change.

We have no objection to substantial panelist rotation and regard for the need for experienced panelists; this reflects current practice at NEH. The proposed rule of 20 percent and 3 years would apply only to NEA's standing panel system, so we have no comment here. The proposed requirement that panelists reject proposals lacking "serious literary or artistic merit" reflects current NEA practice. We would point out, however, that this proposed change appears in Section 10, the section addressing administrative provisions for both NEH and NEA, and as part of a proposed new subsection which repeatedly mentions "each Chairperson," referring to both agencies. We also understand that it is the intention of the author of this language that it should apply only to NEA, as the wording "lack of serious literary or artistic merit," which would apply to NEA but not to NEH projects, clearly implies. We would ask, then, that if this language is retained, the wording would be modified to read as follows: "Panels of experts appointed by the National Endowment for the Arts to review or make recommendations," etc. (Proposed change underlined.)

Sect. 110
(Arney floor
amendment)

(3) Effect [new subsection (d)(1)]. Assures post-award evaluation; strikes old section (d)(1), relating to a completed study.

NEH Position: No objection to those provisions dealing with NEH; defer to NEA on those dealing with NEA.

Section 110
(p. 8)

(3) Effect [new subsection (d)(2)]. Creates particular post-award evaluation requirements for NEA.

NEH Position: Defer to NEA judgment here.

Sect. 110
(p. 8)

(3) Effect [new subsection (e)] . Mandates a study and a report on arts and humanities education in the schools, including policy statements on teacher availability, the proper role of the arts and humanities in the schools, recommendations for NEA/NEH participation in such education, and an evaluation of NEA/NEH policies which might interfere with an expand role in such education.

NEH Position: We have no objection to doing such a study. We note that NEH has already set education in the schools as a special interest, with changes several years ago in the Division of Education Programs and the creation of a new program of highly successful Summer Seminars for Secondary School Teachers.

Sect. 110
(p. 8)

Effect [new subsection (f)]. Requires a report from each Endowment on procedures for choosing panelists and for conducting panels, including procedures to avoid conflicts of interest.

NEH Position: No objection.

Sect. 111
(DeLay/Arme
y floor
amendment)

(a) Effect: Freezes the NEH FY 86 authorization of definite funds at the current appropriations level for FY 85 (\$95.207 million) and calls for a 4% increase for FY 87. Sets a two year reauthorization (FY 86-87).

NEH Position: Oppose. The dollar amount for FY 85 exceeds what we need. We also oppose a two year reauthorization, which contradicts the Administration bill, the Senate bill, and the testimony of virtually all public witness. All of the above support a five year reauthorization.

Sect. 111
(DeLay/Arme
y floor
amendment)

(b) Effect: Freezes NEH Treasury Funds for FY 86 at the appropriations level for FY 85 (\$10.78 million) and calls for a 4% increase for FY 87. Freezes Challenge funds at \$19.66 million and calls for a 4% increase for FY 87. Qualifies subgrantees for matching.

NEH Position: Oppose dollar amounts. The dollar amount for FY 86 for Treasury funds is less than our request at \$126.33 million. This cap will injure our efforts to provide adequate matching funds for all of our Divisions, including State programs. Conversely, the Challenge dollar amount exceeds what we need. Please see the attached "capability statement" sent to Senator McClure for appropriate Treasury, Challenge, and program levels at \$139.478 million (attachment B). We support the qualification of subgrantees, which has the same effect for NEH as the Administration bill.

Sect. 111
(p. 9)

(c) Effect: Authorizes \$14.291 million in NEH administrative funds for FY 86 and a 4% increase for FY 87.

NEH Position: If the Congress and President decide to provide overall funding for NEH at \$139.478 million, as proposed in H.R. 3248, the \$14.291 million would be acceptable for administrative funds. It does not, however, reach the level of \$14.540 million which NEH estimated it would need at this overall level in its letter to Senator McClure providing a "capability statement" at that level. We note again that this overall funding level would exceed what we need. We oppose the "chairperson"/"chairman" change, as noted above.