Legislative History of the Reauthorization of the National Endowment for the Arts (NEA) (1990): Report 13

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CONGRESSIONAL RECORD — SENATE

NOT VOTING—1
Hatfield

So the bill (H.R. 5114), as amended, was passed.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

Mr. KASTEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I move that the Senate insist on its amendments, request a conference with the House, and the Chair be authorized to appoint committees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. Kerrey) appointed Mr. LEAHY, Mr. INOUYE, Mr. JOHNSTON, Mr. DECONCINI, Mr. LAUGHLIN, Mr. HARKIN, Mr. MIKULSKI, Mr. BYRD, Mr. KERREY, Mr. HATFIELD, Mr. D'AMATO, Mr. RYAN, Mr. SPEER, Mr. NICKLES, and Mr. STEVENS as conferees on the part of the Senate.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1991

The PRESIDING OFFICER. Under the previous order, the clerk will report the pending business, H.R. 5769, the Interior appropriations bill.

The legislative clerk read as follows:

A bill (H.R. 5769) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1991, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 3119 TO COMMITTEE AMENDMENT ON PAGE 101

The PRESIDING OFFICER. The pending question is amendment No. 3119 offered by the Senator from North Carolina to the committee amendment on page 101 of the bill.

TIME LIMITATION AGREEMENT

Mr. BYRD. Mr. President, I ask unanimous consent that the time for debate on this measure be limited to 1 hour, to be equally divided and divided between the distinguished Senator from Idaho (Mr. McCLURE) and this Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, for the information of Senators now, what we have here—I believe I state it correctly, or will state it correctly—we have a maximum of six amendments, that may be called up, and they all deal with NEA, the National Endowment for the Arts. There is a time limitation on those amendments, that is to say, that no amendment on which there are 2 hours, which means there are 7 hours of debate on six amendments, there is 1 hour of debate overall on the bill, now under the control of the two managers.

I think one might assume with some degree of certitude that there will be rolcall votes on those six amendments, and beginning at 2:30 p.m.—cira 2:30 p.m.—today we have 7 hours plus 1 hour on the Senate floor, which is half, making a total of 85/8 hours at best unless the time is yielded back or not used.

That would mean, then, at the earliest we can count on bringing to a conclusion this bill is by 11 o'clock tonight.

Mr. LEAHY. Mr. President, I move that the Senate stay in session until we complete this bill tonight.

The Senate took up this bill the day before yesterday. The Senate, on receiving it from the House last Tuesday, a week ago, reported it out of the subcommittee and the full committee a week ago. So the Senate has moved expeditiously. But we cannot wait another day. The bills to go to conference.

I would hope that we would have the cooperation of all Senators, and if some Senators can restrain their eagerness to hear their vocal chords and not use all of the time, it might help all of us to get home and get a little sleep which knits up the raveled sleeve of care.

Mr. President, let me just say a few words now and I will ask that I may use such time as I may consume to set the background of the stage for the NEA discussion.

Mr. McCLURE. Mr. President, before debate on this, will the Senator yield briefly?

Mr. BYRD. I yield.

Mr. McCLURE. I thank the Senator for yielding.

I join with him in the hope that we will not consume all of the time on each of these amendments and we may find a way as the afternoon goes on and the subject becomes more repetitious, although slightly varied by the subject matter of the amendments, we will all consume all of the time allotted to the amendments.

For the information of the Members and their scheduling of their time, this afternoon, the first amendment that will be considered will be the second one that will be considered has a 2-hour time limit, and the remainder have a 1-hour time limit.

Mr. BYRD. Mr. President, I ask unanimous consent that no other measure or matter may be taken up in the Senate this afternoon without the consent of the two managers of the bill. And we will be very liberal and fair in that if we are allowed to control the matter in that fashion.

THE PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, the recommendations of the Senate Appropriations Committee regarding the Appropriations Committee for the Arts reflect the concerns that have been voiced by many in this Chamber about the appropriate use of taxpayer dollars for so-called works of the NEA. I would note that the House-passed version of the Interior bill included a recommended increase in NEA's funding of $5 million, to a level of $180 million, for fiscal year 1991. The recommendation by the Senate Appropriations Committee will provide the Senate with a broader array of options when our conferees meet with those from the House to consider the appropriate funding level for NEA and the appropriate use of those funds.

Mr. President, this issue has consumed the Senate during the entire
course of the consideration of NEA funding this fiscal year. It is not an issue to be dealt with lightly. But given the press of business to be completed prior to sine die adjournment, I urge adoption of the committee recommendation—reasonable, temporary solution and as a means to expedite consideration of the Interior bill so that it may proceed to conference, where I can assure my colleagues that it will receive full attention.

This is not to say that the measure cannot be improved.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields the floor?

Mr. HELMS. Mr. President, I yield myself such time as I may require on the amendment.

Incidentally, I ask unanimous consent that the amendment be printed in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the amendment was ordered to be printed in the Record.

On page 101, line 23, strike "none" and all that follows through on page 102, line 7, and insert in lieu thereof the following: "none of the funds appropriated under this Act may be used by the National Endowment for the Arts to promote, distribute, disseminate, or produce materials that depict or describe, in a patently offensive way, sexual or excretory activities or organs."

Mr. HELMS. Mr. President, perhaps a review of the history of this issue for the last 15 months would be useful at this time.

Let me say to the distinguished Senator from West Virginia, my friend, Bob Byrd, that I have always had high respect for him. That respect was enhanced in July 1989, when I came to this floor and he was managing Department of the Interior Appropriations for fiscal year 1990. I showed him some of the so-called art that the taxpayers were subsidizing rewarding. Senator Byrd took one look at it and said, "Good gosh, I will take your amendment." And there it began.

After I offered my amendment to prohibit the funding of obscenity, I was greeted with hoots and jeers all across this country, and have been for the past 15 months. One Senator now boasts that he has raised $1 million for an exhibit in North Carolina from the artists who claim that they are entitled to have a pipeline to the pocketbooks of the American people to subsidize whatever they want to do in the so-called art field.

Sure, I voiced concern then, and I voice concern now about the assault on the Nation's basic values by some of these self-proclaimed artists who insist upon mocking the American people and shocking the sensibilities of the American people and who shield themselves behind the sponsorship of the National Endowment for the Arts, which is a loose cannon in terms of spending the taxpayers' money. To this day, these self-proclaimed artists declare that it is somehow censorship for Congress to even contemplate denying the taxpayers' money to finance and reward the kind of sleaze that has been produced by some of the people who have received Federal grants.

Now, that is the history of it.

Since I first brought up the subject last year, little has changed. If anything, it has become worse. All Senators, I am sure, have seen reports, entirely accurate, of the kind of filth that is going on, produced by people who have received funds from the National Endowment for the Arts in the past 15 months.

The same contrived pronouncements still pour forth from officials of the NEA, along with their allies in the arts community. There has been, in fact, a militant display of disdain for the moral and religious sensibility of the majority of the American people. I do not know how many tens of thousands of pieces of mail and telegrams I have received from people all across the country who do not want their money to be forced to subsidize these obscene materials. Other Senators tell me they also have been deluged with similar letters. The American people care about this thing. And with good reason. The provision included in the appropriations bill is not even a fig leaf. It will not have the slightest effect on the practices of the NEA.

Last year, the arts lobby moved in after my amendment was adopted, and a watered-down, meaningless version was substituted in conference. I could not do anything about that because many Senators have connections to the arts community through their wives or others, and frankly they are afraid politically to do what the American people want them to do. Not all Senators, but some have admitted as much to me personally.

Mr. President, subsidize more than ever before that what is involved here is far more than a mere debate about the allocation of the $170 million in this bill for the NEA for the coming year. The NEA will receive that much or more for the next several years.

Well, that approaches $1 billion that can be wasted if the NEA wants to waste it. And they have demonstrated at the National Endowment for the Arts that they have little concern about how the taxpayer money is spent.

The funds involved may be regarded by some as trivial. I do not consider it that way. But I will acknowledge that the Federal Government in fact could legally ban the production, distribution, or exhibition of certain obscene materials, it is refusing to sponsor this sleaze.

The Government has no obligation whatsoever to require the taxpayers to subsidize projects that are so far beyond the applicability of constitutional protection that the Federal Government in fact could legally ban its dissemination. But the Government's refusal to pay does not prevent people from displaying or selling such materials at their own expense in the private sector.

The point is, if material is objectionable, do not try to dip into the public trough to pay for it.

Let me say again that I have respect for Senator Roger C. Byrd was enhanced by his reaction a year ago and his reaction now to this sort of thing. I say again that I have always had the highest respect for my friend from West Virginia, and I am very proud of him today.

The committee report notes that the funding for the NEA has been reduced as a result of the repeated fiascoes during the past year.

In closing, I want to emphasize that I am talking about things that have happened since the watered-down version of what pretended to be a restraint on this giveaway of the taxpayers' money. Under that version, passed last year, the situation has grown worse, not better, and we have the documents to prove it.

The Subcommittee also retained the language from last year's amendment.
and deleted the House's prohibition on NFA's requiring artists to sign a agreement with the NEA, as a condition of receiving the money, that they will abide by this congressional restriction.

So, I thank my friend from West Virginia. He sincerely abhors obscenity. I regret, however, that this disregard for so-called art, which most Americans regard as obscene, is not covered by the technical legal definition of obscenity in the committee amendment. As I said, the language that my friend from Virginia has included in the bill is identical to that contained in last year's conference report.

I say again, that is not even a figleaf. It does not prevent these sleazeballs from getting themselves naked on the stage, rubbing chocolate on themselves and saying: Look at me, I am an artist. It has not prevented it and it will not.

It fails to restrict the NEA in terms of supporting patently offensive works, and that is because the language in the bill allows the NEA to fund anything that the so-called experts at the National Endowment for the Arts consider to have some artistic merit. That is a loophole wide enough to drive six Mack trucks through abreast.

During the debate last year, Senator after Senator expressed disgust with the Mapplethorpe photographs, and declared that such art never should have been funded. But they did not vote that way because the pressure was put on. Yet the language included in last year's conference report creating the loophole that I just mentioned will, as a result of the Mapplethorpe obscenity trial in Cincinnati, allow the National Endowment for the Arts to continue to fund materials such as the distasteful portion of the Mapplethorpe works—again and again and again.

Last year, Congressman YATES, as well as sources from the NFA, and a prominent arts lawyer with a prestigious law firm, said that if each of their opinions, the language in last year's Interior appropriations conference report—which is identical to the language in this bill—would not, as a practical matter, provide any degree of control over what the National Endowment for the Arts decides to fund.

For instance, in an exchange with Congressman RHABACHER in the House, the lawyer said, "Funding of obscene art was not effectively prohibited by the conference report's compromise language." At least he was honest about it. I do not agree with Congressman Yates, but I do agree with the community standard, would find that the work, taken as a whole, appeals to prurient interest in sex, depicts or describes in a patently offensive way sexual conduct, and "—there you go—" when taken as a whole, lacks serious literary, artistic, political, or scientific value.

This means that even if a work appeals to prurient interest, even if a work depicts or describes sexual or ex-

There being no objection, the articles were ordered to be printed in the Register, for today.

(From the Paducah Sun, Aug. 30, 1990)

QUEST FOR MONEY, NOT ARTS FREEDOM

They call it a fight for rights, for constitutional principles, for artistic freedom. They say they are striking a blow against censorship and the half of elevating the national cultural level.

What malarky. Why can’t they just be honest. As they say, the same thing they want is to get their hands on more federal tax dollars?

They are the so-called artists who are cataractauling about being cut out of their once generous, unquestioning Uncle Sam.

Four of the artists, outraged that their National Endowment for the Arts funding for this year had been vetoed, are contemplating lawsuits. Their weeping supporters gathered last week to castigate NEA Chairman John Carter, made the senator from North Carolina, and Sen. Jesse Helms, who has become the arts elite’s symbol for the Philistines who would trample creative liberty to death.

It’s popular. It’s supportable. The senator from North Carolina is qualified to be curator of the Louvre.

The funding being taken from the federal tax dollar so traumatic were caught in new law that denies grants for work deemed to be obscene or sacrilegious. And that goes back to the uproar over the infamous Mapplethorpe and Serrano exhibits, which initiated the national debate on the entire NEA program.

That debate can be followed by one of two tracks—whether there should be any restriction on government-sponsored art according to content, or whether there should be federal tax support for the arts at all.

A sizable number of observers, this newspaper among them, believe the federal art subsidies ought to be bailed entirely as a matter of spending priority. That also would put a stop to all that nonsense from the arts people about censorship and end the haggling over what is obscene and what is not.

On the surface, critics of the NEA program may seem concerned about waste of taxpayers’ money. But dug down by the obscenity-sacrilege issue that goes the controversy its emotional edge.

What bothers a lot of ordinary people is that, by implication, the Robert Mapplethorpe and Annie Sprinkles, their government seems to turn hostile to the values held by them and society in general.

There is a disturbing perversion when the state sees evil and calls it virtue, sees ugliness and calls it beautiful, sees silliness and calls it profound. If this is cultural warfare, as some believe, government not only is taking sides, it’s taking the wrong side.

It’s not enough for the NEA to say that out of all the applications only few are offensive. Why should any be?

How would the Urban League respond if told that of 1,000 restaurants in a city, only a couple of them served non-junk food? To hear some tell, suspension of federal patronage by the NEA, who believe federal patronage by the NEA, would be the cultural equivalent of the IRS shutting down the church of their choosing. This Is: Should the public pay for it? That question is sidestepped by all the cries about the sky falling on the arts in America. Just listen to these cries of alarm:

"This is no longer a fight about obscenity. This is about the very principles of democracy and the fundamental rights of this country."—Mary Schmidt Campbell, New York City’s commissioner of cultural affairs. Her way with hyperbole only confirms what a lot of people think about the state of culture in New York City.

A very small minority who oppose federal support of the arts are on a war footing, and they are vigilant in disciplining the arts endowment."—Rep. Pat Williams, Montana Democrat.

And so hysterically on, all because a lot of people’s respectability is offended by a contemporary photograph, or a crucifix in urine, or a waste of good chocolate: No Sale. Yes, there are those who believe the shock value of such artifacts to warn that Western civilization is in danger (it probably, always has been). But NEA isn’t censoring, it’s simply trying to finance some of it any more. It shouldn’t have to, any more than a patron of a cafeteria in a city doesn’t like or that might offend Aunt Matilda if she spotted it hanging in the room.

Just because it’s the government that’s shouting out “No Sale” doesn’t mean it can’t.

Thomas Jefferson argued for the separation of church and state because, among other reasons, he was compelled to support the propagation of a doctrine he doesn’t share. The mixing of art and state properties the same as putting a New York City police officer among the public. But because a civilized society has an obligation isn’t as possible or desirable. So this democratic society has compromised by funding Public Art and leaving the choice of performance to the private sector. It isn’t very neat and it won’t satisfy everybody, but it’s democracy in America.

Public Art is the aesthetic equivalent of civil religion: limited, decorative, unifying, a little dull, maybe-but a legitimate expenditure of public funds. Outraging the public with its own money isn’t. That’s an establishment of art; its a way of compelling support from people who would never give it voluntarily. Rest assured, as long as it is supported at all, it will be as boring, especially if it is intended to shock. Flicking through the channels on cable TV has much the same effect. Years ago, I read a letter to the editor with a phrase that still sticks in my mind: “It gets boring not having peace of mind all the time.”

Those who want to work in the public arts as if it were the private kind are kidding themselves as well as the rest of us if they believe they can go on indefinitely assaulting the sensibilities of their peers. The U.S. government will have its attention caught after a while. And that’s just what has happened. The application of various 2-by-4s finally woke up even the most zealous customers have decided to walk out that would seem their inalienable right.

(From the SBC Bulletin)

REPORT OF COMMITTEE ON RESOLUTIONS

RESOLUTION NO. 4—ON GOVERNMENT SUPPORT OF OBSCENE AND OFFENSIVE "ART"

Whereas, God has ordained government to do good works; and

Whereas, Southern Baptists have historically supported the constitutional rights of free speech and have opposed censorship; and

Whereas, the Supreme Court has held that First Amendment rights of speech and expression do not extend to the possession, production, distribution, or sale of child pornography (New York v. Ferber, 1982; Osborne v. Ohio, 1976; and Bowers v. Hardwick, 1986); and

Whereas, regulations of pornographic material which is deemed to be harmful to minors has been upheld by the Supreme Court (Ginsberg v. New York, 1968); and

Whereas, restrictions on government funding of art which either denigrates or promotes a certain religious belief are constitutionally permissible; and
Whereas, opposing government funding of art is not censorship of art; and

Whereas, taxpayers should not be forced to pay for art that they do not wish to g""enereated consciences as Thomas Jefferson said in 1785, to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical...; and

Whereas, it has been revealed that the National Endowment for the Arts has funded, in recent years, an increasing pattern of support for obscene, highly offensive, morally repugnant, and sacrilegious "Art;" and

Whereas, Congress is considering various proposals to abate or reasonably restrict the content of what the National Endowment for the Arts may fund; and

Whereas, the President of the United States and some in Congress are opposing legislation which would either abolish National Endowment for the Arts or government funding for the arts; and

Therefore, be it resolved, That we the messengers of the Southern Baptist Convention and the Louisiana Baptist Convention meet on June 14-16, 1990, call on Congress and the President to set standards which prevent funding of highly offensive, morally repugnant, and sacrilegious "Art" for if such is not done, cease funding the National Endowment for the Arts.

[From the NOVA Law Review, Spring 1990]

ART, THE FIRST AMENDMENT, AND THE NEA CONTROVERSY
(BY JESSE HELMS)

TAX-PAID OBSCENITY

"America" has been caught up in a struggle between those who support values rooted in Judeo-Christian morality and those who would discard those values in favor of a radical moral "relativism." As Congressman Henry Hyde has said, "the relativism in question is as absolute and as condescending self-righteous as any 16th century (Spanish) inquisitor.

For me, I have focused on the federal government's role in supporting the moral relativists to the detriment of the religious community. I confess that I was shocked and saddened last year when I learned that the federal government had funded an "artist" who had put a crucifix in a bottle of his urine and gave it the mocking title, "Piss Christ." Obviously, he went out of his way to insult the Christian community, which was compounded by the fact that Christian taxpayers had been forced to pay for it.

As one distinguished federal judge wrote in a personal letter to me, when a federally-funded artist creates an anti-Christian piece of so-called art, it is a violation of an important part of the First Amendment which guarantees the right of all religious faiths to be free from government-endorsed or mandated activities. When the National Endowment for the Arts contributes money to an artist for him to use to dip a crucifix in his own urine for public display, it is no different (in terms of church and state entanglement) from a municipality's spending taxpayers' money for putting a crucifix on the top of city hall.

October 24, 1990

CONGRESSIONAL RECORD — SENATE
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The controversy over Andres Serrano's so-called "art" had hardly begun when it was disclosed that the National Endowment for the Arts and Pennsylvania gallery to assemble an exhibition of Robert Mapplethorpe photographs which included photos of men engaged in sexual or excretory acts with nude children. A concerned Borough President in New York City send me a copy of an NEA-supported publication, "New Yorkika," which featured photos of nude children in various poses with nude adults, men with young girls and young boys with adult women. All of those "works of art" were offensive to the majority of Americans who are decent, moral people. Moreover, as any student of history knows, such gratuitous insults to the religious and moral sensibilities of fellow citizens lead to an erosion of civil comity and democratic tolerance within a society. Therefore, funding such insults with tax dollars surely is anathema to any pluralistic society.

This was the basis of my offering an amendment to the Interior Appropriations bill to prohibit the National Endowment for the Arts (NEA) from using tax dollars to fund, promote, or reward obscene or blasphemous art. Congress unwisely enacted only a severely weakened version of the amendment that does not even prohibit funding for the NEA-supported publication, "New Yorkika," or the exhibition of Robert Mapplethorpe photographs. Even so, this weakened amendment is the target of unfound and often absurd criticism.

Opponents of the legislation often make the following unfounded and misleading allegations:

1. Restrictions on federal funding for the arts constitutes direct censorship.

This is a deliberate attempt to confuse censorship with sponsorship. Such deliberate misrepresentations are intellectually dishonest.

The Constitution gives Congress the responsibility and duty to oversee the expenditure of all federal funds—including funding for the arts. The amendment originally proposed, as well as the one passed, was intended to forbid the federal government from using tax dollars to fund, promote, or reward obscene or blasphemous art. The amendment clearly states that it is an issue that it is the role of the government to use tax funds in the role of a patron (sponsor) for such "art." The legislation in no way "censors" art; it does not force anyone to create, creating, or displaying blasphemous or obscene "art" at their own expense in the private sector.

Therefore, sanctions comparisons between the amendment and communist dictatorships in Eastern Europe fall on their face. In communist countries everything is paid for by government; therefore, if not approved by the government, it is not produced. Western democracies, on the other hand, rely on the private sector where ideas are left free to compete with minimal or no governmental participation.

Thus, it should be obvious to all that, despite the fact that some who choose to shock and offend the public can still do so—but at their own expense, not the taxpayers'. Censorship is not involved in this debate. It is merely a question of whether the government should use tax dollars to fund the NEA, a federal art foundation.

2. Subsidizing some art forms but not others (obscene art) constitutes indirect censorship.

If this is true—and it isn't—the NEA has been in the censorship business for 25 years, when it went out of its way to insult the Christian community while not funding others. So, those who are crying "censorship" in this regard are ignoring the defect of their logic (or lack thereof). Do they not see that, following their logic, every applicant denied federal funding can protest that he has been "censored" by the subjective value judgments of the NEA's artistic panels?

3. Is there such a thing as obscene art?

The vast majority of taxpayers would first ask themselves whether something is obscene—and if it is, then it's not art. However, the NEA—are just the opposite. Anything they regard as "art" cannot be obscene no matter how revolting, decadent, or repulsive. As NEA Chairman John Frohnmayer told a California newspaper, "If an (NEA art) panel finds there is serious artistic intent and quality in a particular piece of work, then by definition that is not going to be obscene."

4. Federal funding restrictions must use the obscenity definition outlined by the Supreme Court in Miller v. California?

It is important to remember that the Supreme Court has never established an obscenity definition for the purposes of restricting government funding. But Chair- man Frohnmayer and the "art community" erroneously assert that the Constitution requires that the definition in Miller v. California be used in both restricting federal funding and censorship. However, refusing to subsidize something does not "ban" it. In order to BAN obscenity, Miller would require the government to prove that materials: (1) appeal to a prurient interest; (2) depict in a patently offensive manner sexual or excretory activities or objects,; (3) lack serious artistic or scientific value.

Numerous cases show that the Court does not apply the same standards to government's refusal to fund Amendment activities as it does to the government's effort to ban such activities.

For example, in Miller v. California, the Court stated: "We are not concerned here with whether one has a Constitutional right to engage in an activity, he or she does not have a Constitutional right to Federal funding of that activity. As long ago as 1942, in Wickard v. Filburn, the Court stated that, "It is hardly lack of due process for the Government to regulate that which the Constitution does not forbid." And recently in Rangel v. Taxation With Representation, a unanimous Court reiterated a litany of cases holding that restriction on the use of tax dollars to fund such "art" is not a violation of the First Amendment and no need not meet the same strict standards of scrutiny.

Thus, it is unlikely that the Supreme Court would require Congress to use Miller test in its entirety in order to prohibit the NEA from funding obscenity. In fact, I believe...
The Court would uphold a Congressional prohibition on funding for any patently offensive depictions or descriptions of sexual or excretory activities or organs regarding the presence of absence of artistic merit. It would be interesting if Congress should decide to see a display of the Miller test at the National Endowment for the Arts' National Endowment for the Arts panels solely to determine if something is or is not obscene. The 1983 amendment approved by Congress on the other hand, effectively grants the NEA and its elitiast art panels sole authority to decide what is or is not obscene for purposes of government funding.

Thus, the legal effect of the current amendment is to prohibit nothing. The NEA can cloak even the most patently offensive depictions of sexual or excretory conduct with "artistic merit" simply by deciding to fund the work, thereby making legally non-obscene. This was precisely what the current amendment's drafters intended since they wanted to deceive the public into assuming that federal funding for obscenity had been prohibited—when, as a legal matter, it has not. Since last year, to date, the NEA has funded 19 controversial works out of 42,000 grants over the last 25 years. (This figure is, after all, statistical manipulation, but that's an argument for another day.)

The point is this: The "arts community" is fond of asserting that prohibiting NEA funding of obscene art will either "destroy art in America" or, at best, "lead to art which is bland." On the other hand, the Post Office, which has indeed funded a number of offensive works, has funded only about 20 controversial works out of 85,000 grants over the last 25 years. (This figure is, after all, statistical manipulation, but that's an argument for another day.)

5. The original Helms amendment is not enforceable.

This is nonsense, and those who say that know it's nonsense. There was nothing vague about the Federal Communications Commission is having no problem making the determination that various broadcasts are indecent and/or obscene. The Postal Service is able to decide whether or not something concerning obscene or indecent mail. The Justice Department's National Obscenity Task Force has been able to determine what is obscene under the federal criminal statutes.

If the FCC, the Postal Service, and the National Obsolete Task Force can handle their responsibilities in this regard, why cannot the National Endowment for the Arts do likewise?

6. The amendment chills artistic expression.

The "arts community" cannot have it both ways. Either the NEA is funding so many controversial works that eliminating such funding will devastate the arts community—or the NEA has funded so few (20 in 25 years) that an obscenity restriction could have no more than a negligible impact.

My response to the first argument is that if art in America is so dependent on obscenity in order to be creative and different, then Congress has a duty to the taxpayers to shut the NEA down completely, thereby allowing America's slide into the sewer. My answer to the second argument is that if so few offensive works have indeed been subsidized by the NEA, why all the fuss from the "arts community"?

In summary, the National Endowment for the Arts has always had the responsibility and the right to decide which works are suitable for federal funding of the arts—and that has been precisely the problem. The NEA has defaulted upon that responsibility. It has been insinuated for 25 years, by the NEA, why all the fuss from the "arts community"?

Imagine a government so confident of its discernment, and so obvious of this capacity in its citizens, as to declare each year which automobile it considered the most desirable, or, for that matter, which General Motors for its Cutlass Supreme Sedan, or to Ford for its Taurus wagon. It is likely that the same news media groups both the auto industry, and serves by the public at large, would be scandalized. In a market economy we expect government to play the role of umpire or even referee in competition prevail, but not otherwise meddling in matters of private choice. This role is clearly perverted by the government's cheering for one automobile veteran over another and giving it a seal of approval plus cash rewards. The monach们 of Britain once did so, but republican values in America forbid such royal favoritism of principle.

Yet in a realm far less open to laboratory testing than the automobile industry, far more liable to error in the long lens of time, where personal taste reigns with magisterial indifference to modes of scientific verification—the arts—we find our government selecting among artists who are worthy to receive public funds and which are not. That the system has provoked a scandal that has reverberated through the halls of Congress is not especially remarkable. What is remarkable is that it took this long to occur.

AESTHETICS OR SCANDAL

The National Endowment for the Arts (NEA) managed to survive outside the light of public scrutiny quarter century, quietly giving grants to artists of "approved" tendencies. The public was indifferent to art that was subsidized but out of sight. In recent years, however, with the rise of photography and "performance art" to places of prominence, the awards the NEA has made in these more accessible art forms have captured media and public attention as never before. With public scrutiny, cries of indignation were not long in coming, while the NEA was not many works supported by the NEA, works of varying technical accomplishment but certain to offend taste, morals, and aesthetic sensibilities of ordinary Americans.

The downward spiral of taste that the art world has suffered in recent decades follows, in large part, from a mistake about the nature of art that arose from an accident of history. In the 19th century, middle-class mores became wedded to officious norms of academic art, and the NEA was asked to fund the day, without trying to shock anyone and merely by creating original works, appeared as revolutionary iconoclasts who threatened the establishment, their work was placed in perspective, and by distilling visual essentials in a painting, "producing pictures that are a lesson." Both in creating art and collecting it is not radicalism, but taste: "Taste is the best judge. It is rare. The artist addresses himself only to an exceedingly restricted number of individuals. Consider critics prominent in this group of the elect, though they have since come to dominate the discussion of what constitutes art. "Discussions about art are almost useless," remarked Cézanne. "The labor that achieves progress in one's own craft is sufficient compensation for not being understood by imbeciles."

Impressionist painting's "shock value"—a novel factor in art history—was clearly incidental to the aesthetics of works. None of the world's great art until then, through some 5,000 years of labor, had ever been certified as superior by indignant public outcry again since the fuss that greeted Impressionism, public scandal has become a convenient "proof" of aesthetic authenticity. By dint of some very sloppy reasoning, became confused with the essential—at least for certain cultural elites—and a series of simplistic tenets took root: To express the self is to shock. Art is expression. Therefore art must be shocking.

The shallowness of this syllogism is rarely plumbed by the gallery directors, museum curators, art criticism heads who embrace and propagate it, among other reasons, because it makes connoisseurship an instantly acquired skill. For while judging the intrinsic merit of a new work of art is extremely difficult, virtually anyone can identify which play or painting is likely to be the most shocking to the average citizen. To find in this imbecilic enough for gallery managers and theater directors restless in search of clients. It is wholly unacceptable as the national arts policy of a government of, for, and by the people.

MORTAL CONNOISSEURS

The case for making the NEA more discerning with the people's money has been argued by some capable politicians, including Congressman Henry Hyde (in National Review), and by thoughtful art critics such as Samuel Lipman (in Commentary). Unfortunately, they err by recommending better judgment at the NEA to clean up the prevailing mess, instead of seeing that the very enterprise of selecting certain artists to receive public subsidy is in itself an appropriate function for a democratic government.

The scandal has resurrected the old question, "What is art?" It has also added a new one to the agenda, "Why have an NEA?"

People outside a given field tend to trust its practitioners with more expertise than they actually possess. Disappointment follows from discovering that doctors do not have all the right answers and occasionally treat the wrong condition. People do not always know the law, and that professors can be narrow-minded and ignorant. The recent scandal at the NEA should add to our wonderment that so many state-appointed connoisseurs and critics, selecting works of art judged so superior to the...
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norm—a man squashing beetles on his chest, a woman defecating on stage, a pork queen inserting a speculum in her vagina to offer the audience a look at her cervix as he is inflicted wounds on themselves to prove they were a "sick society," a crucifix photographed In a jar of urine, a young girl photographed to reveal the vagina of the artist who stuck his hands in her rectum—that these achievements deserve the gift of taxpayers money plus the imputrator "funded by the NEA.

The whole misadventure ought to instruct the public that artists and art connoisseurs are no less sensitive, human, and no more to be trusted to steer the ship of art than generals are to be trusted to choose our wars.

The break at the NEA owes, in the very outlandishness of the works regarded, that even in the most trustworthy and mature hands, certaining the value of contemporary art is undeniably difficult. A great hoax is played on the public when the belief is sponsored that objective criteria exist to discern superior art from the ordinary. Critics are certainly, to pass immediate judgment so that we may besmirr our selves to see and hear what In time may prove embarrassing. In the case of the two centuries of experience, which teach us that there is no sure compass, certainly, no unbiased trial works. The passage of time, the qualifications of the judges, are odd with the past the two centuries of experience, which teach us that there is no sure compass, certainly, no unbiased trial works. The passage of time, the qualifications of the judges, are odd with the past the two centuries of experience, which teach us that there is no sure compass, certainly, no unbiased trial works. No art example of our past times to endear us to art is the artist's responsibility. But a whole art movement must pass before any sort of meaningful judgment can be made about the lasting value of a newly minted sculpture, painting, or drama. Critics are needed, certainly, to pass immediate judgment so that we may besmirr our selves to see and hear what In time may prove embarrassing.

When Cezanne was shown some paintings by Van Gogh and asked what he thought of them, he commented that they were simply the works of a madman.

We expect some professional jealousy in any field, whether among lawyers, doctors, or auto mechanics. But what makes the arts different is that technical skills that are central to other professions are not central to the value of a work of art. Cezanne got lower grades for drawing at the lycee than did his companion Zola. But Cezanne became a great artist despite his awkward draftsmanship because of the quality and power of his vision. Art, as Proust underlined, is above all not a matter of technique, but of vision. And to cultivate a unique and personal voice will well insulate the artist from the virtues of competing visions. In consequence, the presence of artists on government panels distributing grants to other artists is against a proper judgment, not to mention cabis, cronyism, networks of convenience, political log-rolling along with ideological self-advancement. All of these processes have been made against those involved in grant-giving at the NEA.

How Government Can Help

But are we not obligated, as a society, to "do something" for the arts? Is it not one of the highest pursuits of the human spirit, the embodiment of ideals all too unattainable in politics or commerce? Yes. And that is precisely why the funding of the arts in a tax-funded 112nd century is particularly loaded with choices in the people in their natural diversity, whether as individuals or corporate entities, for the foundations. It is not the role of government to "assist" the process either by joining in the swings of art fashion that anoints one coterie cod or another, by trying to check or balance them by throwing state influence and power behind some others.

As a point of departure, the laissez-faire capitalist to the entire question would be that art is a commodity like any other, and that those who want the product should pay for it. If, as the owners of John Brown's paintings, they desire to sell unsold. Certainly government should have no role in paying for products that no individual will buy.

As a point of departure, the laissez-faire or market argument is unassailable. Society as a whole should not pay for what no individual is willing to pay for. In one of the cases, it is argued, the market is a fool. This is, of course, a debate in the second century makes the point. A young painter

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The recent scandal of government funding may prove a blessing if the policy implications behind the events are plumbed to their root. The enterprise of identifying undue government interference in art has no agreed-upon criteria, for its standards are hotly debated by critics, curators, and the artists themselves. Government, least of all, is suited to select the worthy amid the crowd. Government has no special authority or expertise whatever in the arts, and it should be one of a strictly neutral agent so far as regards the success or failure of this artist or that, this school or schoolhouse.

We should recall that Shakespeare, Rembrandt, Shelley, Keats, and countless other great artists did not depend on government grants to create their works. Their support came from private patrons, fellow artists, and the general public. The Church was a great institutional patron, whose place today has been largely taken by corporations and private foundations.

The Helms amendment attempts to address offensive depictions of sexual activities. The term "patently offensive" is derived, as we know, from the Miller decision which established a three-prong test for obscenity. The Helms amendment does not leave the decision about what is obscene to the courts, but leaves it to the Senate. It would exercise prior restraint on matters that may be perceived in the future as offensive.

As we know, prior restraint has been ruled as unconstitutional. The Miller standard uses the judgment that the word "project" would be patently offensive according to community standards. There is no accommodation of the community standards. Obviously, community standards in Los Angeles would differ a little bit from that in my home town of Newport, RI. Standards differ all around. As the saying goes: "beauty is in the eye of the beholder" and I believe it is correct to say that "obscenity is also in the eye of the beholder."

In general, there are some broader implications that we will get to when this amendment is being decided upon, one way or the other, and we will make the arguments in full for even moving further away from the direction Senator Helms would like us to move.

In that regard, too, I believe that any agency that has produced about 85,000 grants with only 20 being lemons is a pretty good record in the Federal Government. I only wish I could say the same for many other Government programs. I appreciate the eloquence of Mr. Byrd, but I will go on to a vote shortly. I yield such time as he desires to the Senator from Utah.

Mr. HELMS. Mr. President, may I inquire about the time situation?

Mr. HATCH. Mr. President, I also address the remarks of the distinguished Senator from North Carolina. He has been, I think, one of the vociferous voices against some of the improprieties that many have criticized regard to a few grants that the National Endowment for the Arts has made. At least in the end result, helped to fund.
I think that he has raised this issue, it has been a very heated issue from the beginning. But I think now that the controversy is beginning to subside. I think that it is time to take a step back and really look at this issue objectively, to try to understand what is really going on here. What I think is important is that we take a closer look at the issue of obscenity and pornography. I think that we need to be careful not to overreact to this issue. It is important that we be fair and balanced in our approach to this issue.

Any time you put a content restriction into the field of art, you are saying that you may have difficulties with art that is even good, with art that is excellent, art that in certain ages and in certain places is offensive to the people there, but becomes acceptable by the world a century or two later. If you start defining what that means, that is where you get into difficulties.

There are at least some guidelines in the Miller case, but they still leave it up to the local community. The Supreme Court has spent decades trying to define what obscenity and pornography really are, and they still have not quite defined them. In fact, I think they are as far away today, from a definition, as they were 50 years ago. There are different groups of people in our society as to what is or is not patently offensive.

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Mr. President, I do not intend to prolong this. I know what the distinguished Senator from North Carolina said in his remarks. The court really does not define any of those terms themselves. So that is the problem with having content restriction. I think there are the protections provided to recipients of NEA funds.

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Mr. President, I appreciate what the distinguished Senator is trying to do, and I have to say that I appreciate him personally. I think he has created an unhealthy debate for the country. It has not been an unhealthy debate for the country, but now is an opportunity for all of us to put this debate to rest. I think the way to do that is the amendment that we will file immediately after the disposition of this amendment, whatever its disposition may be.

With that, I yield the floor.
ence between what is criminal and what is supportable, and that is the very center of this debate.

The Senator from North Carolina, however, in his opening statement, indicated broad opposition of the National Endowment. I do not have the broad opposition. Neither do I believe that it is impossible for the National Endowment to do a much better job than they have done up until this time.

I have no trouble at all making the National Endowment responsible for their activities. The taxpayers of this country are entitled to some words because I do not want to do some of the stuff that has been supported. The National Endowment has that responsibility.

I thank the Senator for yielding this time.

Mr. PELL. Mr. President, under this amendment, if it is passed, we would find that Rodin's "The Kiss," Monet's "Reclining Lady," and Michelangelo's "David," could, in some communities, be ruled illegal or unfinanceable.

I am prepared to yield back the remainder of my time if nobody on this side has anything more to say. I hope it might be the same on the proponents'side as well.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair. I wish I could accommodate—no, I do not wish I could accommodate the Senator from Rhode Island. I do not feel I am addressing the Senator, although he is my friend. We serve together on a major committee in this Senate.

Mr. President, first on this figure of $85,000 grants. We have asked the NEA to validate that figure and if they can't. It is banded around as if it is fact. It has taken on a life of its own.

We are not talking about $85,000 symphony orchestras or choral groups, or authors. We are talking about sleaze in the arts world.

Now, I do not know of anybody who can find any redeeming features in some of the stuff that has been supported. Let me give you a few examples. I do not want to leave out some words because I do not want to use them on the Senate floor.

For example, the Kitchen Theater in New York City; let us discuss that for a moment. Does anybody remember Ariel Sprinkle? Let me tell you about this act that was indirectly funded by the National Endowment for the Arts. I suppose there may be somebody in this broad land who thinks it has a redeeming feature. But Miss Sprinkle's performance at the Kitchen included what I would consider disgusting live sex acts. She uninitiated on stage and invited the audience to play gynecologist on her with a flashlight. She brazenly declared, "Usually I get paid a lot of money for this, but tonight its' Government funded."

The NEA also helped Illinois State University Gallery in Normal, IL, put on an exhibit entitled "David Wolanowicz: Tongues of flame." Unbelievably, this man submitted some pictures which were subsidized by the taxpayers. They were more repulsive, more than either of Robert Mapplethorpe's. I have attempted to have some copies of them sent over here for Senators to look at them, if they doubt my word about it. But I will warn you that these pictures display homosexual acts actually engaged in ultimate sexual and excretory acts with one another.

The taxpayers money went to fund these. That is the reason I am on the floor.

Yet another offensive project the taxpayers have recently paid for through the NEA is the San Francisco International Gay and Lesbian Film Festival. The NEA gave this 10-day festival—that is what they called it—$9,000 for "administrative costs." More than 100 films were shown with titles which I cannot use on the Senate floor.

But let me read a review of it. "Scenes from some of the films include masturbation, and oral sex between men and men, and women and women," according to a newspaper story.

Karen Finley's little show was entitled "We Keep Our Victims Ready," and this was another one of those Kitchen Theater performances that the NEA decided the taxpayers should support.

Let me say to my friend from Idaho that not once have I advocated the dissolution of the National Endowment for the Arts. I think it is very good to teach kids how to play in the symphony and write or to participate in drama. That is fine as far as I am concerned, even though in this time of budget crises we might think twice about it.

The NEA recently denied funds to a woman named Mrs. Hughes to perform in one of these obscene plays as a result of intense public scrutiny. But the NEA still gave her $15,500 playwriting fellowship based on the script she wrote for the obscene play. Do you see the pattern?

Now do not talk to me about $85,000 nice grants and 20 obscene ones. In the first place, who knows what has gone on before last year that was not detected? Where do we get the figure of $85,000 for all of the grants? They cannot tell you. They pull this figure of $85,000 out, and they throw it out, and it takes a life of its own. And the American people have it stuck to them again.

Senators can vote as they dab. I blame you may wish. But I am saying to you, Mr. President, that if they vote against this amendment, they are voting in favor of funding for the most vile, most crude, most rotten, kind of material imaginable.

I yield such time as the Senator from New Hampshire may wish.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

The HELMS. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes 26 seconds.

Mr. HELMS. I thank the Chair. Mr. HUMPHREY. Mr. President, I thank the Senator from North Carolina for yielding.

More than that, I want to thank him for his courageous fight against the abuses of the NEA. It takes some courage to do that, Mr. President. The arts community and entertainment community are very powerful politically. The Senator has described the retribution he has suffered at the hands of that community for his temerity in standing up against this waste of tax-payers' funds.

So my hat is off, as it so often is, to the Senator from North Carolina for being right on the issue, and having the courage to stand up and to make his case so powerfully.

I hope Senators support him. I would go farther, frankly, than the Senator from North Carolina. Just the other day, I remind my colleagues, we passed a measure in this body against the vote of this Senator to increase the gasoline tax 9 cents per gallon. That is on top of a 35-cent or 40-cent per gallon increase over the last few months because of the Persian Gulf crisis.

We passed that tax and so many others on the excuse that there was no more place where we could cut nothing more that we could cut in the budget. What absolute rubbish. Here is a perfect example of the waste and abuse of taxpayer funds that exists in this budget. The budget is larded with this kind of stuff. It is a favor for a community with a lot of political clout. They raise 1 million bucks to defeat Senator Helms or attempt to defeat Senator Helms, and they get in return a $185 million reward on their appropriations bill for this year alone. The kind of favor that comes from pandering to the arts community. It is an outrage.

We ought to terminate the National Endowment for the Arts because there will be no end to this argument and controversy over what is art and what is not. The Government should not to be subsidizing this endeavor. If people want to paint anything they want, anything imaginable, fine. They are protected by the first amendment. But there is nothing in the Constitution, Mr. President, as the Senator has...
pointed out, that obliges the taxpayers to subsidize the exercise of that right. So I would go much farther. I think the Senator is being too moderate. I would get rid of it. I say get rid of it. I say let us get serious. This is a time of crisis. We are not asking for the taxpayers' money on such frivolity and decadence. It is outrageous.

The Senator's proposal is much too mild in my opinion but I applaud him for the courage of offering it. I will certainly support him with my vote and I have in the past.

Mr. President, I reserve the remainder of the time for Senator HELMS.

Mr. HEINZ addressed the Chair.

Mr. PELL. Mr. President, I yield 2 minutes.

Mr. HEINZ. Mr. President, what we are fundamentally talking about here is whether or not we are going to try to write a certain type of content restriction that goes beyond any definition of obscenity or pornography which, as we know, is not protected speech. And to those who say that the Government should not be in the business of using the taxpayers' money to support obscenity, or pornography, I say they are absolutely right. But that is not the issue that we are discussing.

I would like to illustrate it by drawing upon two works of art that probably many of us have seen either in books or we studied them in school. One is the work of Hieronymus Bosch the 16th century northern European painter who depicted the worst personality traits of people in the form of human often engaged in utterly deplorable acts painted on canvas or panel, activities that included those that were sexual, or scatological in nature. I have no doubt at the time because I saw them that the audience understood what the artist was trying to depict.

I ask unanimous consent that it be in order that I ask for the yeas and nays.

The PRESIDING OFFICER. Is there objection? Without objection, Mr. HEINZ, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PELL. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator controls 5 minutes and 30 seconds.

Mr. PELL. I yield to the Senator from Colorado for a minute, and I would like to retain the remainder of my time.

Mr. WIRTH. I thank the Senator. I will be brief. I had not intended to speak on this amendment until I heard the Senator from New Hampshire announce the investment of $1 million and getting back $145 million in pandering.

That kind of a discussion and kind of analysis is simply inappropriate on the floor of the U.S. Senate. Mr. President, it is certainly not the level of the discussion that we ought to have on what is a fundamentally very important issue related to freedom of expression and freedom of speech in the greatest democracy that the world has known.

Mr. President, for more than a year the public, and consequently the Congress, has vigorously debated the National Endowment for the Arts (NEA) and how it does its job. Its job is to fund thousands of programs and productions across the United States, to encourage and sustain a climate where artistic efforts can flourish, and to bring this art to the view of the public.

Last year, in reaction to the support of the work of Andres Serrano and Robert of Dapplethorpe, the Congress cut the appropriation for the NEA by $45,000—the total amount for these two grants. Congress also restricted the content of projects receiving grants, leaving it up to the officials of the NEA to determine what is appropriate and what is not. Declaring that these content restrictions would be only temporary, Congress created an independent commission, composed of members appointed by Congress and the administration, to examine the grantmaking process of the endowment and make recommendations for a more permanent solution. This solution was to be considered during the NEA reauthorization—clearly a more appropriate vehicle than an appropriations bill.

Well, Mr. President, we find ourselves in the waning days of the 101st Congress without the promised reauthorization for the National Endowment for the Arts. Rather, what we find in the Interior appropriations bill is a simple extension of the misguided policy from last year. I opposed these subjective content restrictions then, and I oppose them today—as does 80 percent of the membership of the NEA, which I have received from my fellow Coloradans.

Mr. President, the Senate does not have to accept this continuation of business as usual. The Independent Commission has finished its work and made its recommendations. The authorizing committees in the House and the Senate have reported legislation—in large part reflecting these recommendations—and the House has even found the time to approve its version. If the Senate chooses, it can act in a similarly responsible fashion.

Today, Senators HATCH, PELL, KENNEDY, and KASSEBAUM are offering an amendment to replace the obsolete language currently contained in the bill we are considering. This proposal reflects elements contained within the Senate reauthorization legislation currently pending on the calendar, as well as certain concepts found in the House legislation.

The amendment would permit a court of law to determine if the nature of the work is obscene. In the event that a court so rules, the artist or group would be required to repay the taxpayer's money. This is a loss of eligibility for any future NEA funding.

Mr. President, this amendment will assure us that if an artist creates or produces an obscene work, he or she would be liable for that error. But it would remove the decisionmaking process from politically influenced bureaucrats and it would be made with sufficient due process.
I oppose legislating a moral code on the works of particular works of art. But this amendment we are now considering is a reasonable compromise, one that can work and should be adopted.

Mr. President, the formulation of policy from heated reaction to public controversy is a sure-fire way to make bad decisions. The continuation of such a policy is worse. I urge my colleagues to adopt the Hatch-Pell approach.

Thank you Mr. President, and I yield the floor.

Mr. PELL. Mr. President, I yield 1 minute to Senator Adams, who is a co-sponsor of the amendment.

Mr. ADAMS. I thank the Senator from Rhode Island very much. I rise in opposition to the amendment of Senator Helms and in support of the amendment of Senator Hatch, which is an excellent amendment.

Mr. President, I am alarmed that this bill once again contains restrictions on what is art. How can we, as responsible policymakers, vote for a bill that includes language that essentially forbids Federal funding for an art that "may be considered obscene?" Almost anything "may" be considered obscene by some. As a young district attorney, I once was asked by enforcers to prosecute a man singing the words of Mr. N. Frye, or "you go and fry," for sending a horse dropping placed in a milk carton through the mail to a Federal district judge, alleging it was sending obscenity through the mail. How can we support a bill that in reality censors artists by defining what may be considered obscene so broadly? That, I submit, is not our job.

Members of Congress are in no position to sit as censors over the works of our Nation's artists. I am sure that each of our colleagues has a different eye for what is pornography.

Several weeks ago during a Labor and Human Resources Committee markup I voted for a bipartisan compromise to reauthorize the Endowment. I voted for this bill with a heavy heart. But the compromise was necessary in order to prevent further damage to the integrity of the National Endowment of the Arts. I did not speak on that compromise, but today we must prevent, if we can, the language contained in this bill.

I ask my colleagues to oppose the language contained in this appropriations bill and to support the amendment offered by Senator Hatch.

The amendment before you is similar to the compromise adopted by the Labor and Human Resources Committee. The amendment is language that I recommended by the independent commission that Congress created last year to review the Endowment controversy.

The amendment before the Senate may leave the decision regarding obscenity to the courts. That is how it should be. The amendment provides that if the court determines a project is obscene, the person or group held to be in violation of the law will face a 3-year penalty. There would be prohibited from receiving a grant for up to 3 years and would have to repay the grant funds to the Government.

After all is said and done, I still have a hard time seeing why we want to punish the NEA. What is this controversy about? It's about a handful of artistic works. Only 25 out of a grand total of 85,000 grants ever awarded by the NEA. I challenge my colleagues to find another federally funded program that enjoys the kind of support and record of achievement as does the NEA.

The last 11 Pulitzer Prize winning plays were developed at NEA funded nonprofit theaters.

Since 1965, 100 local arts agencies have grown into over 2,000 local arts agencies across our country.

As I stated earlier, 85,000 grants have been awarded by the NEA's 25 years of existence, and only a handful have created this controversy.

The NEA's record of achievement speaks for itself. We must not turn our backs on the NEA. I urge my colleagues to support the pending amendment by Senator Hatch.

Mr. BRADLEY. Mr. President, I am saddened that this debate about restrictions of expression has derived us from the task of reauthorizing a program that, at a very small cost, has opened the imagination of America. The National Endowments for the Arts and Humanities have touched the lives of nearly every American, bringing paintings, sculpture, symphonies, theater, stories and dreams into schools, community centers and town halls across our land.

Three weeks ago, Congress displayed a remarkable prescience about America's purpose in a changing world. In establishing the National Endowment for the Arts and its companion the National Endowment for the Humanities, we affirmed that our Nation's leadership "cannot rest solely upon superior power, wealth, and technology, but must be solidly founded upon worldwide respect and admiration for its institutions, foundations, or qualities...as a leader in the realm of ideas and of the spirit." As the Soviet threat diminishes, America's purpose in the 1990's will stem not so much from our military strength as from the power of our ideas. The NEA is an example of a nation that nurtures the talents of all its citizens and opens the doors to a full, rich public life.

Now that the insight of 1965 that inspired the founding of the NEA has been validated by the events that led to the end of the cold war, it comes as quite a surprise to me and to many of my constituents that this agency should be the object of controversy and suddenly become subject to reauthorization legislation. The NEA was founded on a set of principles derived from the principle of democratic pluralism that inspired the Bill of Rights. To refer again to the words of Mr. President, the formulation of policy from heated reaction to public controversy is a sure-fire way to make bad decisions. The continuation of such a policy is worse. I urge my colleagues to adopt the Hatch-Pell approach.

The value of an open creative process to an entire society cannot be judged solely by one or two examples of its outcomes, just as the value of first amendment cannot be judged solely by a few notorious things that people say. But those seek to constrain and undermine the very purpose of the NEA do just that—take one or two pieces of art and call them typical of the entire institution.

Mr. President, allow me to describe for my colleagues briefly a program funded by the NEA that truly typifies the Endowment's work. The Mayors Institute on City Design began in 1988, when the mayors of seven American cities, including Trenton, NJ, came together at the University of Virginia for 3 days of intensive conversations among themselves and with urban designers about how to construct humane, livable cities. With the addition of 2 yearly regional institutes in the Midwest and the South, the mayors of 77 cities, representing nearly 34 million people, have now participated in the Mayors Institute for City Design, funded by the Design Arts Program of the National Endowment for the Arts.

Each mayor comes to the institute alone, without staff or files. Each major brings a design problem from his or her city, which might range from the redevelopment of a waterfront to the design of a sidewalk or a housing project. While the Institute ideally helps each city find a solution to each problem, is real purpose is to help the mayors, who may be expert designers, find a way to help them, or to help others that makes a city successful is the quality of the environment it offers.

Besides Trenton, the Mayors Institute has brought the University of Virginia the mayor of Newark, NJ; Sharpe James, and the mayor of Princeton, the late Barbara Boggs Sigmund. The program helped each of these mayors find a clear direction for
the physical layout of their communities. I describe the Mayors Institute at some length. Mr. President, not only because of the NEA and the real issues, but because I believe it exemplifies the reasons we have an NEA and the purpose it serves. The communities we live in are going to look like something. They can be unplanned, sterile, havens for crime and cruelty. Or they can be humane and warm, good spaces to work, raise children, or visit a museum on a Sunday afternoon. Only by devoting attention and resources to this project, and by opening our imaginations without restrictions, can we make that happen.

The NEA helps us shape a rich and humane cultural life for our entire nation. In New Jersey, it has helped millions of families enjoy the Hoboken Chamber Orchestra, the McCarter Theater Company, the Composers Guild of New Jersey, the Willowbrook Jazz Festival, Montclair, the Center for Innovative Printmaking at Rutgers, the Newark Community School for the Arts, and other institutions that rely on the NEA to fund their educational programs.

The rich cultural pluralism made possible by the NEA has renewed America's role as the leader of the world. Our artistic successes are a source of national pride for all of us, and they are made possible only by an open process of creativity and dedication to excellence with no other restrictions. At a time when the nations of the world look to the United States as a model of democratic pluralism and cultural diversity, we must continue to nurture our culture in the spirit of democracy and national purpose. Mr. President, if we are blocked from reauthorizing this important program this year, I hope that very early in the next Congress we will consider the National Endowments for the Arts and the Humanities. I believe they should be supported in whatever way they can be humane and good spaces to work, raise children, or visit a museum on a Sunday afternoon. Only by devoting attention and resources to this project, and by opening our imaginations without restrictions, can we make that happen.

Mr. GRASSLEY. Mr. President, I will not take very long on this matter. There are just a couple of points I would like to make in support of this amendment offered by my friend from North Carolina. I have received thousands of letters, cards, and phone calls from Iowans expressing their concerns about Federal funding for the Arts Endowment. By an overwhelming margin of 8 to 1, they want Congress to adopt legislation to prevent the flow of Federal funds to offensive and pornographic work. Clearly, taxpayers are outraged by claims that they must be forced to pay for such offensive exhibits. To do this in the name of free speech is even more offensive.

Mr. President, Senator HELM's amendment, which simply seeks assurance that taxpayers' money will not be misused, hardly infringes upon an artist's freedom of speech or expression. Artists who are intense on such depictions need not apply for Federal funding.

Mr. President, the real focus of this amendment is restricting tax dollars, not restricting art. Artists can do with private funding whatever they like. There is nothing in the Constitution which guarantees any artist a dime. It is pure arrogance to suggest anything to the contrary.

I recognize that the National Endowment for the Arts has made possible many quality programs throughout the country. I hope that it will continue to do so. But taxpayers should not be forced to pay for a photograph of subjects far too obscene for any gentleman to describe.

The reason Congress established the NEA was to promote the arts and to enrich the life of the arts throughout the country. This function of the NEA does not require funding projects which stretch the boundaries of public tolerance.

Again, Mr. President, I support the arts and I support the NEA. I also support standards, such as those proposed by the Senator from North Carolina. Only then can we be assured the goals of the National Endowment for the Arts will not be distorted and that, instead, Federal sponsorship of quality art programs will be maintained.

Mr. LEVIN. Mr. President, I do not believe that the Government should fund art which has been determined to be obscene by a court that is applying standards required by the Constitution. But, the Helms amendment applies an unconstitutional and standard. Later during this debate I will explain which will deny NEA funding for art and apply a constitutional standard.

Mr. PELL. Mr. President, I believe all time has been up by my adversary, and I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina retains 22 seconds.

Mr. HELMS. Mr. President, I yield the remainder of my time.

The PRESIDING OFFICER. The time having been yielded back, the yeas and nays have been ordered.

The clerk will call the roll.

The PRESIDING OFFICER. The amendment was rejected and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, the conference report on the___

Mr. BYRD. Mr. President, there has been an order entered that no matter or measure may be taken up during the consideration of this bill without the consent of the two managers.

The PRESIDING OFFICER. The Senator is correct. Under the previous order, the Senator from Utah, Mr. HATCH, is to be recognized to offer an amendment.

Mr. BYRD. That is correct. But I understand that the distinguished Senator from Louisiana was going to bring up another matter.

Mr. JOHNSTON. Mr. President, I was going to see, with the concurrence of the managers and with a short time limit, whether we might bring up the conference report which has some time sensitivity because it needs to go into reconciliation. We are trying to get a time agreement, and, as I understand it, the two Alaskan Senators are willing to give that time agreement.

The PRESIDING OFFICER. That would require unanimous consent, because there is a previous order providing for the Senator from Utah, Mr. HATCH, to offer an amendment.

Mr. BYRD. Mr. President, I will be very happy and try to work out something to accommodate the Senator from Louisiana and the Senators from Alaska, but I do not believe they are ready to proceed right at this moment.

Mr. JOHNSTON. Very well. I thought they were here and ready.

Mr. BYRD. I certainly want to try to accommodate the Senator.

In the meantime, I wonder if we could proceed to the Hatch amendment.

The PRESIDING OFFICER. The Senator will suspend.