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

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October 24, 1990

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 conferees 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. LUTENBERG, Mr. HARKIN, Mr. MIKULSKI, Mr. BYRD, Mr. RUDMAN, Mr. RYAN, Mr. STEVENS, Mr. NICHOLS, 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 fiscal year 1991, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 3119 TO COMMITTEE AMENDMENT ON PAGE 101

Mr. BYRD. Mr. President, I ask unanimous consent that the debate on this measure be limited to 1 hour, to be equally divided among the distinguished Senators 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 of 1 hour on each, plus the time of one amendment on which there are 2 hours, which means there are 7 hours of debate on six amendments and 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 a half, making a total of 8½ 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. I am going to insist 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 bill has 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 use 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 doing that 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. It may be that some of the time allotted to the amendments.

For the information of the Members and their scheduling of their activities this afternoon, the first amendment will be considered 1 hour, 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 by the Senate Appropriations Committee regarding the funding for the National Endowment 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 art.

The committee recommendation continues language enacted in this last year with respect to obscenity and the use of NEA funds. The language has been continued in this bill because of the failure of the Congress to enact this language. The committee felt it was necessary to include language in the committee-reported bill which reflects a compromise that was developed after many, many hours of deliberation during conference on the interior bill last year. The committee recommendation which was included in the committee-reported bill reflects a compromise that was developed after many, many hours of deliberation during conference on the interior bill last year. It does not please everyone, but it is an attempt to provide guidance to the Chairman of NEA as grant decisions are made. Rather than attempt to craft new language which would limit the amount of floor time during debate on this bill, the managers recommended to the Appropriations Committee that the matter be brought to the floor and not be taken up in the committee and that last year's language be continued at that point.

Additionally, the committee has proposed striking the House version of the NEA reauthorization bill which was added in its entirety to the Interior appropriations bill which was the House version of the NEA reauthorization language last month. Floor action has yet to be taken on that legislation. The responsibility for moving that legislation to a conclusion does not rest with the managers of this Interior appropriations bill.

The committee bill also strikes the House provision which would have prohibited the NEA from using any appropriated funds for the preparation of an affidavit regarding the use of grant monies. By proposing to delete this language, the committee has agreed it has not required the preparation or signature of any such affidavit. The committee has placed the responsibility for this decision with the Chairman of the NEA, who ultimately bears the responsibility for the use of any grant funds awarded.

The committee recommendation also includes a proposed reduction funding of $5 million below the funding level included in the President's budget for 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. This reduction proposed by the committee will provide the Senate with a broader array of options when our conferees will have the choice to 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 as a 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 would be to say that the measure cannot be improved.

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

The PRESIDING OFFICER. Who yields time?

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 today.

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

There being no objection, the amendment was ordered to be printed in the Record as follows:

On page 101, line 23, strike “none” and all that follows through the period 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 past 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 taxpayer was subsidizing. 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 his re-election in West Virginia 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 should not be forced to subsidize these obscene materials. Other Senators tell me they also have been deluged with similar letters. The American people are darn well sick of this thing. And with 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 know very 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, that is the taxpayers, spends more than that amount in a few hours.

No, what is really at stake is whether America will allow the cultural high ground in this Nation to sink slowly into an abysmal hole that is controlled by people who clearly seek or who are willing to destroy the Judeo-Christian foundations of this Republic. That is what is involved. It is in that light that I am obliged to bring to the floor the subject of the National Endowments for the Arts again, and that is why my amendment is now pending.

Let us lay to rest the nonsense about censorship somehow being involved in the Federal Government refusing to automatically grant funds to self-proclaimed artists. There is a great deal of difference—all the difference in the world—between censorship and sponsorship. We are talking about sponsorship.

These artists who have their minds in the gutter are free to do whatever they want to do on their own time and with their own money. I have often said, Mr. President, that people who want to scrawl dirty words on the men’s room walls are free to do it, provided it is their own wall and their own crayons. But no, this crowd wants the Government—that is to say the American taxpayers—to pay for them for that sort of thing, and this Senator says no.

Censorship is when the Government bans the production, distribution, or display of materials in both the private and the public sector. That is censorship. What we are talking about is merely a question of sponsorship. It does not have anything to do with banning anything. It has only to do with the Federal Government financing it at the taxpayers’ expense.

So when the Government refuses to pay for the production and distribution of a billion 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 legally objectionable, do not try to dip into the public trough to pay for it.

Let me say again that my respect for Senator Robert 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 even prouder 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. So I think it is of emphasis, 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 committee also retained the language from last year’s amendment.
and deleted the House's prohibition on NEA's requiring artists to sign an 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 respect him, 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 West Virginia has included in this bill is identical to that contained in last year's conference report.

I say again, that is not even a fig leaf. It does not prevent these sleazeballs from getting themselves nacked 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 say is considered 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 photos, as if that sort of 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 disgusting portion of the Mapplethorpe works—again and again and again.

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

For instance, in an exchange with Congressman Rohrabacher in the House, the NEA's chief counsel 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 not deny that truth about this.

Then the Los Angeles Times quoted James Fitzpatrick, a prominent arts lawyer, as concluding that the conference report fails completely to achieve the legislature's public interest control. The Los Angeles paper even quoted unidentified sources within the NEA itself as saying, "The wording appears to be so vague that virtually any artistic subject matter would be funded."

Mr. President, who are we trying to kid? This Senate will do one of two things. It will do something to stop this revolting practice by the National Endowment for the Arts by adopting an amendment. I am going to give them a chance to vote on it. I rather imagine that millions of Americans will be looking at this vote. I hope so.

Last year's conference report language, which is identical to the pending committee amendment which I seek to amend, has this to say:

None of the funds authorized to be appropriated for the National Endowment for the Arts or the National Endowment for the Humanities may be used to promote, disseminate or produce materials which, in the judgment of—

Get this—

which is in the judgment of the National Endowment for the Arts or the National Endowment for the Humanities may be considered obscene, including but not limited to depictions of sadism, the sexual exploitation of children or individuals engaged in sex acts and—

Get this—

and which, when taken as a whole, do not have serious literary, artistic, political or scientific value.

See? There is that loophole with those six Mack trucks racing down upon you. The taxpayers better get out of the way because the NEA is going to stick it to them again if this committee amendment, to which I am offering an amendment—if this amendment stands as is. If that happens, the taxpayers are going to have it stuck to them again.

The conference report adopted this language last year because the art community insisted that we must use the Supreme Court standard from the Miller case to restrict federal funding for obscenity. But what no one bothers to mention, when they talk about the arts, is that there is a standard that the Government has to meet before it may refuse to pay for patently offensive material. In the Miller case, Mr. President, the Supreme Court held that materials cannot be banned—bear in mind that word "banned." I am not talking about banning anything. I am talking about subsidizing it or rewarding it with their money.

I ask unanimous consent that the following articles—none of which have been subsidized by the NEA—be printed in the Record:

An editorial from the Paducah Sun on August 30, 1990; an article by Paul Greenburg that was in today's Washington Times; a resolution passed by the Southern Baptist Convention at its national convention in New Orleans this past summer; an article I submitted for the NOVA Law Review last spring; and an article by André Rysen that appeared in the Heritage Foundation's Review.

Mr. President, I reserve the remainder of my time, and I yield the floor.
CONGRESSIONAL RECORD—SENATE
October 24, 1990

There being no objection, the articles were ordered to be printed in the Record for October 19.

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, and say the same thing is the only thing they really want is to get their hands on more federal tax dollars? They are the so-called artists who are caterwauling about before cut out 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 challenging lawsuits. Their weeping supporters gathered last week to castigate NEA Chairman John Frohnmayer, who made the decision, 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 to support artists, and that is what the senator from North Carolina is qualified to be curator of the Louvre.

The four artists feel they have been cut 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.

Thaie case contains 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 deserves what.

On the surface, critics of the NEA program may seem concerned about waste of taxpayer money, while the obscure or sacrilegious issue that gives the controversy its emotional edge.

What bothers a lot of ordinary people is that by smearing Art, 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 the $378 million it doles out, only a 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 serve Chinese food? That is not enough?

To hear some tell it, suspension of federal patronage of the arts and artists would make of the nation a cultural wasteland. But the question is: Is the public supported by the Robert Mapplethorpe and Annie Sprinkles? Does anyone recall American life in pre-1965 being bereft of art, music, literature and other cultural fare? The NEA and its beneficiaries had a good thing going until they aroused the American public with their excesses. Now that the government is being challenged, the arts groups condescendingly put down their critics as unenlightened persons who have no appreciation for the work of others. The idea is that the endowment and its friends are a clubby little clique of elitists.

Creating something wonderful. It ought to be given as much freedom as possibly—and that includes freedom from government sponsorship.

(From the Washington Times, Oct. 19, 1990)

ARTSMANSHIP: TIME IS MONEY (By Paul Greenberg)

In a study of American society that has never been bettered, "Democracy in America," Alexis de Toqueville pointed out that every generation in man in a society sooner or later becomes a legal one. Now, more than a century later, Americans have progressed to the point where every pet question apparently must go to court, too. No matter what Congress does this week, appropriations for the arts will wind up in a court. You can bet your favorite painting on it.

Item: Four artists plan to sue the National Endowment for the Arts because their applications to support art that was turned down by the NEA's governing body. It's not easy to tell how many other grants have benefited these artists—Karen Finley, Holly Hughes, Amy Spinkles and Flen. The associate managing editor of Chronicles magazine, Katherine Dalton, counts "four or five" grants for Mr. Miller over eight years, and "something like nine" for Miss Finley; the other two got grants just last year. Are they suing for the right of untrammelled artistic expression or to retain a permanent place on the federal dole? That's something for the courts to decide.

You may remember Miss Finley as the chocolate lady; she has achieved a measure of fame or notoriety by smearing herself with the confection. The critics may be divided over whether this art is but some of us think chocolate lovers are moved to tears by the waste. (Chocolate, as a great philosopher once pointed out, is the definitive refutation of the doctrine of free will.)

The deciding voice in this Hullabaloo, though it may be lost in all the grand pronouncements and moving manifestoes, is: Is this art? Surely even critics of the arts are willing to admit that the NEA has to entrust that timeless question—What Is Art?—to the assorted competencies of American congressmen, bureaucrats and judges.

The question 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 values of this country."—Mary Schmidt Campbell, New York City's commissioner of cultural affairs. Her way with hyperbole only makes you wonder what is going on.

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

And so hysterically on, all because a lot of paintings with chocolate lady; she has achieved a measure of fame or notoriety by smearing herself with the confection. The critics may be divided over whether this art is but some of us think chocolate lovers are moved to tears by the waste. (Chocolate, as a great philosopher once pointed out, is the definitive refutation of the doctrine of free will.)

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October 24, 1990

Whereas, opposing government funding of art is not censorship of art; and

Whereas, taxpayers should not be forced to pay for publicly displayed art that they are aghast at; and

Whereas, the government should not be forced to fund art that is abrasive to the taxpayers; and

Whereas, the National Endowment for the Arts has, in recent years, been increasingly used to fund obscene, highly offensive, morally repugnant, and sacrilegious "art;" and

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

Whereas, the President of the United States and state and Congress are opposing legislation which would either abolish National Endowment for the Arts or government funding of art; or would impose restrictions on types of art it would fund; and

Whereas, the United States Constitution in no way requires the federal government to fund the arts.

Therefore, be it resolved, That we the members of the Southern Baptist Convention and the Christian Savings Association of Louisiana, which are opposed to the funding of obscenity, hereby request the President of the United States and the Congress to prevent the funding of obscene art.

[From the Nova Law Review, Spring 1990]

ART, THE FIRST AMENDMENT, AND THE NEA CONTROVERSY

(By Jesse Helms)

TAX-PAD 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 absolutist and as condescending as it is often absurd.

For many, 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 amazed when last year it was revealed 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 religions to be free from governmentally-sanctioned criticism. 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 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.

Senator Helms represents North Carolina in the United States Senate. He is the Minority Leader of the Senate. He is a member of the Senate Committee on Agriculture, Nutrition and Forestry and a member of the Select Committee on Ethics and the Commissio

The controversy over Andres Serrano's so-called "art" had hardly begun when it was disclosed that the National Endowment for the Arts (NEA) paid 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 New York City send me a copy of an NEA-supported publication, "New York," which featured photos of nude children in various poses with nude adults, men with young girls and young boys with adult men.

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 degradation 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 subsidize, either absolutely or by implication, sacrilegious art. Congress, however, enacted only a weakened version of the amendment that does not even prohibit funding for the Mapplethorpe-Serrano works which created the controversy.

So, I weakened amendment that was the target of unfounded 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 deliberations are representations that are intellectually dishonest.

The Constitution gives Congress the responsibility and duty to oversee the expenditure of all funds—including funding for the arts. The amendment originally proposed as the one passed, was intended to forbid the federal government from funding obscene or blasphemous art. The amendment clearly does not prevent artists from producing, depicting or blasphemous art. The amendment does not prevent artists from producing, depicting or blasphemous art. Therefore, funding obscene or blasphemous art is not a violation of the First Amendment.

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, whereas the NEA has been in the censorship business for 25 years. But it is not the task of government to make art, not the task of government to make art. If it is, then the NEA is the only organization that should pass judgment on what is obscene.

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 isn't art. However, when the Supreme Court in Miller v. California defined what is obscene, it defined it in terms of what a reasonable community would find obscene.

For example, in Miller v. California, the Supreme Court held that "Art," the First Amendment, and the NEA Controversy. Juli

The enormous response I have received from throughout the country indicates that the vast majority of Americans support my amendment because they have learned that their tax money has been used to reward artists who have elected to depict sadomasochism, perverted homoerotic sex, and the violation of children.

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But by its very nature, the NEA has the duty to make art for the art sake, not as a way to get the government out of the censorship business. It is not the role of government to make art, not to determine what is art, not to determine what is 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 Chairman Frohnmayer and the NEA have refused to fund art which it considers obscene. Frohnmayer told a California newspaper, "If an [NEA art] panel finds there is serious artistic intent and originality in a particular piece of work, then by definition that is not going to be obscene."
lieve the Court would uphold a Congressional prohibition on funding for any patently offensive depictions or descriptions of sexual or excretory activities or organs regardless of the presence of absence of artistic merit.

It would be interesting if Congress should decide to adopt the ‘‘moral turpitude’’ standard because Miller allowed a jury to ordinary citizens to decide if something is or is not obscene. The 1969 amendment approved by Congress on the other hand, effectively grants the NEA and its elitist arts panels sole authority to decide what is or is not obscene for purposes of government funding.

Thus, the end of the current amendment is to prohibit nothing. The NEA can cloak even the most patently offensive depictions of sexual 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, Attorney General William French Smith has asserted that he would and could fund the Mapplethorpe exhibit under the language passed by Congress.

5. The original Holmes 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’s enforcement of the amendment. It was plain that making the determination that various broadcasts are obscene and/or obscene. The Postal Service is able to determine what thing 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 Obscenity 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’’ 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 NEA has funded about 20 controversial works out of 85,000 grants over the last 25 years. (This latter day, is statistical manipulation, but that’s an argument for another day.) The point is this: 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 ability to eliminate works that are not suitable for federal funding of the arts—and that has been precisely the problem. The NEA has default upon that responsibility. It has been inflicting American values so long that it has become captive to a morally decadent majority which delights in ridiculing the values and beliefs of decent, moral taxpayers.

It should therefore be evident that as long as the NEA is given the sole authority to decide what is ‘‘art’’—even when the taxpayers disagree. Congress should either authorize the entire Miller test by allowing a panel of lay citizens—and not the self-appointed elitists at the NEA—to decide whether patently offensive works merit taxpayer funding.

Or Congress could just adopt my original amendment, and let the ‘‘art community’’ continue to howl.

(From the Policy Review, Fall 1990)

ABOLISH THE NEA—GOVERNMENT IS INCAPABLE OF DETECTING ARTISTIC GENIUS

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, which General Motors for its Cutlass Supreme Sedan, or Ford for its Taurus wagon. It is likely that in the new ‘‘antiapparatchik’’ auto industry, and joined by the public at large, would be scandalized. In a market economy we expect government to play the role of umpire in competition prevail, but not otherwise meddling in matters of private choice. This role is clearly perverted by the government’s cheering for one competitor over another and giving it a seal of approval plus cash rewards. The monarchs of Britain once did so, but republican values in America forbade such royal favors of principle.

Yet in a realm far less open to laboratory testing than the automobile industry, far more liable to error in the long lots of time, where personal taste reigns with magisterial indifference to modes of scientific verification—the arts—we find our government selecting among artists which 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 until the early 1970s. Then cultural 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 represent the ‘‘artistic tenets’’ takes 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, and art critics 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 fall into this hasty judgment is enough for gallery managers and theater directors restlessly 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 represent the “artistic tenets” takes root. To express the self is to shock. Art is expression. Therefore art must be shocking.

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 tried 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 they are wrong. Politicians do not always know the law, and that professors can be narrow-minded and ignorant. The recent scandals at the NEA should add to our worry that this relationship involves state-appointed connoisseurs selecting works of art judged so superior to the
October 24, 1990

CONGRESSIONAL RECORD — SENATE

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October 25, 1990

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grow or to pursue a neglected talent. Time will be seen as the ultimate luxury, and while some will waste it, humorously, as a leisure that has permitted many of the finest works of art and philosophy to arise. And, yes, it will be seen as the ultimate luxury, for improving the people."

The list of philosophers who were amateur essayists, as were Stendhal. This applies to a great many other people of western civilization would be a sorry thing without its ledger of unpaid work and the heroism of its visionary amateurs.

Individuals as professionals, as amateurs, and as artists develop a healthy pluralism of competing goals behind the events are plumbed to the public do we improve our chances that arts. The government has no business doing so at the lowest level of sensationalist creates, limited only by the pocket and teaching English to working class or another. under the control of Mr. PELL.

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, even when governments played a role, it was mainly for the purchase of art in public places—usually with the government’s support from private patrons. This is widely noted decline in independent taste. An elitist herd mentality has begun to steer the art support process, with timid corpora- tions and funds seeking to the NEA for leadership, and the NEA narrowly in thrall meanwhile to the “cutting edge” discerned in provocative “performance art” and what we enjoy, the pushing of religion in New York fashion.

Thus, I am a great supporter of the arts. The distribution of grant money to a chosen few assumes a wisdom that government does not possess, and affords it powers it does not deserve. A free society naturally develops a healthy pluralism of competing tastes and preferences, whether in cheeses, wines, books, or art. The ethos of a free society aims at decentralizing opportunities and power. We want public funding for the arts to save us from privatization of the arts of public life, its standards are hotly debated by critics, curators, and the artists themselves. Government, least of all, is suited to select the best. 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 what art is 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 that area, 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 movement.

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I think because he has raised this issue, he has been vastly criticized by some. I think one of the criticisms is that it has been very unjust. He has gone through a lot of pain, but he is very sincere and he has raised some very important issues here.

I think in some of us in this body, does not want to see patently offensive art in any form, whether it depicts patently sexual activity or excretory activities or organized. I think most people probably would agree with that. But when you start defining what that means, that is where you get into difficulties.

Any time you put a content restriction into the field of art, you are saying you may have difficulties with art that is even good, with art that is excellent, art that in certain ages and in certain times and certain places is offensive to the people there, but becomes majorly accepted by the world a century or two later.

So content restriction, it seems to me, is the real issue. I have to say, along with the distinguished Senator from Rhode Island, that when an agency of the Federal Government is coming up, that is the major plus acts and it is criticized maybe 20 times, that is a super extraordinarily successful agency of Government. Not all 20 are going to be found offensive by everyone. I think there are more. Maybe there are 100, if you really go through all the 85,000-plush grants, that some people will find offensive. In fact, I think some people will find anything that the National Endowment for the Arts funds offensive, but I am talking about the general public at large.

The question is, do we want to continue with the national endowment, do we want our artists to have freedom of expression that might lead to the new Michelangelo? I know people today who would be offended by some of Michelangelo's works. The very fact he would have the ambition and temerity to depict, say, a sexual activity, would offend some people. Because he did, we have been inspired for years in the Sistine Chapel and elsewhere.

I know art that would be criticized by some people no matter what it is. I also know that there are certain people who would like to do away with the National Endowment for the Arts and use this particular issue, 20 criticized works of art or approaches to art, some might criticize, as a means to do away with an agency that has done good all over America.

Mr. President, the problem with content restriction is that it is very difficult to define what it means and what a recent amendment adopted by the Senate, which I applaud, tried to do, is that it does not want to limit creativity, and it seems to me, that works have to be judged in totality and in content. What may be offensive to the distinguished Senator from North Carolina, and me, may not be offensive to a large group of people out there, who are better purveyors of art than we are. In his amendment, it is not clear who makes this decision about what materials "depict or described in a patently sexual or excretory activities or organs."

This is no way to reparameter the funds in this amendment. If there was a way of defining exactly what is pornographic, there would be no way to reparameter the funds that will be spent in violation of his amendment, because the only way you can find it in violation is after the fact. Frankly, there is no definition of what pornography is and I contend that there will be as many definitions as there are different groups of people in our society as to what is or is not patently offensive.

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 twenty years before the court. They have outlined some definitions. There are at least some guidelines in the Miller case, but they still leave it up to the local community.

The Miller case says that the average person applying contemporary community standards, if that average person applying community standards, would find that the work, when taken as a whole, appeals to the prurient interest in sex; if the work depicts or describes, in a patently offensive way, sexual conduct; and if the work, when taken as a whole, lacks serious literary, artistic, political or scientific value, then a jury can find that work to be obscene or pornographic.

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.

Mr. President, I do not intend to prolong this. I know what the distinguished Senator from North Carolina has written, I know if I choose to do it for it, I just happen to disagree with the approach.

What I would like to do, Mr. President, is call attention to the amendment that we will file immediately after this one, whether it is adopted or not, because in that amendment we think we provide for sanctions that will work, that will be acceptable to the community, of those who will hold up for the art. I do not think we will participate in the arts, sanctions and procedural protections, that we think will lead to excluding even more than the 85,000-plus grants of the NEA have done so far, works that the community as a whole, the country as a whole, the people as a whole, would find patently offensive.

But we leave it up to the people who are skilled in the arts to do it. We continue with the National Endowment for the Arts, we will file an amendment that we will file after wards, that will accomplish everything the distinguished Senator from North Carolina would like to accomplish, without the content restrictions, and without trying to bind the artistic freedom in any form, whether it depicts sexual activity or excretory activities or organs.
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, especially in my locality, do not and therefore while I do not agree with all the statements made by my friend from North Carolina about the National Endowment, I am not in opposition to this amendment. I find nothing wrong with saying to the National Endowment, you must do certain things. It seems to me, on the face of the amendment, it is not hard to find out who has the responsibility under it and therefore 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 accommodated, 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, or to report that figure. 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 art 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. Just 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 just a moment. Does anybody remember Annie 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 urinated 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 Wojnarowicz: Tongues of flame." Unbelievably, this man submitted some pictures which were subsidized by the taxpayers. They were more repulsive, I think, than 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 them that these pictures display homosexuals 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. It is called or to sing or to participate in drama. That is fine as far as I am concerned, even though in this time of budget crises we could not afford to support it.

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, to 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 M. 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 dabble, and they 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 36 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 the 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 taxpayer's 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.

If the Senators support him, I would go farther, frankly, than the Senator from North Carolina. Just the other day, I reminded 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, and 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 fund for the kind of crap 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 is 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 must not accept the wasting of 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 into law 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 ugly little creatures who are half human often engaged in utterly depraved acts painted on canvas or panel, activities that included those that were sexual, or scatological in nature. I have no doubt at the time there were people who found those works extremely alarming, even repulsive. But today, we view his work not only as art, but we view his message and the message about the state of human society as one that is subject to eternal truths. That is what we are saying when we say he is a genius and he is a great artist.

Francisco Goya we accept today as one of the great painters the world has ever known. Nevertheless, he had a gift for caricature. One of his targets was the Spaniard in the Spanish court. He depicted corrupt priests actually in the act of thievery or in the act of rape. To the establishment of his day, that was considered blasphemous. And in Spain, in that day and age, that was a very dangerous thing to do. He was denounced and worse.

Yet, the content of his art, however, shocking it may have been to them, today we accept and even praise as an acute and utterly justified form of social criticism.

So Mr. President, in sum, we legislate content at our peril, and I hope we will just trust President Bush's appointee and the National Endowment which has made very few mistakes out of some 80,000-plus decisions.

Mr. HELMS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from North Carolina controls 24 minutes.

Mr. HELMS. I ask unanimous consent for 1 more minute in addition to that.

Mr. President, I am tempted to ask the Senator from Pennsylvania if the artist whom he identified got a Federal grant from the National Endowment for the Arts. I have no argument with what he said. I am not talking about banning. I am talking about subsidizing.

If the Senator will forgive me, I do not follow his line of reasoning. Let me use the remainder of my time to read the text of the amendment on which Senators Vestal, Helms, and I have worked. 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 the President finds to be patently offensive. porkway, sexual or excretory activities or organs.

That is all. It does not say ban them. It simply prohibits use of the taxpayers' money. I think that is a fair proposition.

Mr. President, have the yeas and nays been ordered on the amendment? The PRESIDING OFFICER. They have not.

Mr. HELMS. 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. HELMS, 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 speak on the Administration of $1 million and getting back $45 million in pander.

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 debate 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 support for the work of Andres Serrano and Robert Mapplethorpe, the Congress cut the appropriation for the NEA by $65,000—the total amount for these two grants. Congress also restricted the content of projects receiving grants, leaving it to the official of the project 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 people who 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 is to do its job, it must finally pass an amendment that is in a reasonably similar 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 version.

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 public funds. An artist or group that is found in maximum of $15,000 in 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 vast or particular works of art. But this amending support 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 funding for an object 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 selling his name as N. Frye, or "you go and fry," by 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. I urge this body to support this language twice. Once during the consideration of the NEA reauthorization, and again during consideration of the Interior appropriations bill. Moreover, the amendment is strongly endorsed 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 criminal sanctions. They 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 saying 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 given by the NEA's 25 years of existence, and only a handful have created this controversy.

The NEA's record of achievement speaks well for itself. We must not now forsake history 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, its real purpose is to help the mayors, who may be expert on design, gain the knowledge to help shape the aesthetic development, open their imaginations about the design of the communities we share. As Mayor Vincent Schoemehl, Jr., of St. Louis put it, the institute "helped me to understand—and to persuad other people that makes a city successful is the quality of the environment it offers."

Besides Trenton, the Mayors Institute has brought to the University of Virginia the mayors 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 funds it has, but because I believe it exemplifies the reasons we have an NEA in the first place. The communities we live in are going to look like something. They can be unplanned, rural, or suburban, and modern. The community should be built by humanity, and some art may help. 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, and more. Young people with whom I have been in touch at this New School for the Arts in 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 pride. 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 Endowment for the Arts and the Humanities, and authorize their contributions to our society for years to come.

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 the 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 outrageous.

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. The artists who are intent on such depictions need not apply for Federal funding.

Mr. President, the real focus of this amendment is to restrict 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 it 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 encourage appreciation 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 unconstitutionally vague standard. Later during this debate I believe that the Government should not fund art which has been determined to be obscene, but because I

Mr. PELL. Mr. President, I believe all time has been used 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.

Mr. SIMPSON. I announce that the Senator from Oregon (Mr. HATFIELD), is necessarily absent.

The result was announced—yeas 29, nays 70, as follows:

[Rollcall Vote No. 307 Leg.]

YEAS—29

NAYS—70

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

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

The PRESIDING OFFICER. That amendment (No. 3119) was rejected.

Mr. JOHNSON. Mr. President, I mean to reconsider the vote by which the amendment was rejected and I now move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSON. 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 understood that the distinguished Senator from Louisiana was going to bring up another matter.

Mr. JOHNSON. 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 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. JOHNSON. 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.