Legislative History of the Reauthorization of the National Endowment for the Arts (NEA) (1990): Report 14

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

(Continued)

AMENDMENT NO. 3130

(Purpose: To require that the National Endowment for the Arts establish review panel procedures and sanctions for persons who produce obscene projects or productions)

Mr. HATCH, Mr. President, on behalf of myself Senators KENNEDY, PELL, KASSEBAUM, METZENBAUM, DURENBURGER, SIMON, JEFFORDS, DODD, CHAFFETZ, SIMMONDS, ADAMS, MIKULSKI, BINGAMAN, MOYNIHAN, WIRTH, and LEAHY, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. Hatch), for himself, Mr. Kennedy, Mr. Pell, Mrs. Kassebaum, Mr. Metzenbaum, Mr. Durenberger, Mr. Simon, Mr. Jeffords, Mr. Dodd, Mr. Chaffetz, Mr. Simmons, Mr. Adams, Ms. Mikulski, Mr. Bingaman, Mr. Moynihan, Mr. Wirth, and Mr. Leahy, proposes an amendment numbered 3130.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 101, line 23 of the bill, strike all after the colon and all that follows through page 102, line 7 and insert the following:

"Provided further, That section 10 of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 959) is amended:

"(1) In subsection (a)(d), by striking `529' and inserting `3242';

"(2) by redesignating subsections (e) and (f);

"(3) by redesignating subsections (b), (c), and (d) as subsections (e), (f), and (g), respectively;

"(4) by designating the first through the fifth sentences of the existing subsection (a) as subsection (b);"

"(5) by designating the sixth through the eighth sentences of the existing subsection (a) as subsection (c);

"(6) by redesignating the ninth through the twelfth sentences of the existing subsection (a) as subsection (d);"

"(7) in subsection (c) as designated by paragraph (5), by striking `falsely' and inserting `false';

"(8) by redesignating the first through the second sentences of subsection (c) as redesignated in paragraph (5), and inserting subsection (e);

"(9) by designating the first through the sixth sentences of subsection (e) as redesignated in paragraph (5), and inserting subsection (f);

"(10) by redesignating the first through the second sentences of subsection (f) as redesignated in paragraph (5), and inserting subsection (g);

"(11) by adding at the end thereof the following new subsections:

"(b)(1) The Chairperson of the National Endowment for the Arts shall establish procedures that:

"(A) ensure that each panel of experts established pursuant to subsection (a)(4), has a wide geographic, aesthetic, ethnic, minority representation by;

"(B) create an agency-wide panelist bank, containing names of both qualified artists and individuals of knowledge, lay persons that have been approved by the Chairperson of the National Endowment for the Arts, or the designee of such Chairperson; and

"(C) require, where necessary and feasible, the increased use of site visitations to view an applicant and use a work of an applicant in order to establish the panel of experts in making recommendations;

"(D) require a written record summarizing all deliberations and recommendations of each panel of experts;

"(E) require that the membership of each panel of experts change substantially from year to year, with no appointment to a panel of experts to exceed 3 consecutive years;

"(F) require all meetings of the National Council on the Arts to be open to the public in accordance with the provisions of section 552b of title 5, United States Code.

"(2) In making appointments to panels established pursuant to subsection (a)(4), the Chairperson shall ensure that an individual who has a pending application for financial assistance under this Act, or who is an employee or agent of an organization with a pending application, does not serve as a member of any panel before which such application is pending. The prohibition described in the preceding sentence shall commence with respect to such individual beginning on the date such application is submitted and shall continue for so long as such application is pending.

"(3) The Inspector General of the National Endowment for the Arts shall conduct the appropriate reviews to ensure grantee compliance with all regulations that relate to the administration of all programs and operations of the National Endowment for the Arts. This review includes, but is not limited to, grantee compliance with all accounting and financial criteria.

"(4) The procedures described in paragraph (1) shall be developed not later than 90 days after the date of the enactment of this subsection.

"(c) The Chairperson of the National Endowment for the Arts shall establish sanctions for groups or individuals who receive funds pursuant to the provisions of sections 3(1), 5, and 13. Funds to create, produce, or support a project or production that is found to be obscene under State or Federal law shall be returned to the National Endowment for the Arts and the grantee shall not receive additional funds for such project or production."

"(b) shall include-

"(A) repayment by the individual or organization that created or produced the project or production described in paragraph (a); and

"(B) ineligibility of the individual or organization that-"
"(4) funds received under section 5, to create or produce the project or production, to be obscene or violate child pornography laws pursuant to the provisions of paragraph (1); and

(5) require the Chairperson to develop regulations to implement the sanctions described in this subsection.

The PRESIDING OFFICER (Mr. DUCKWORTH). Mr. HATCH. May I reserve the remainder of the time that was yielded to him? I want to thank him for his kind remarks with regard to this amendment.

Mr. President, this amendment calls for the Arts shall develop procedures to ensure compliance with the provisions of paragraph (1) and (2) of subparagraph (A) or subparagraph (B) of paragraph (1) which fails to make such regulations with the provisions of this subsection, then such agency or group shall be liable to receive funds under this Act until such funds are repaid. The amendment also includes changes to the panel procedures and more access to procedures by the public.

The amendment calls for the National Endowment for the Arts to involve panels in the review process who come from a wide variety of backgrounds and specifically mentions geographic and aesthetic, ethnic and minority representation. Additionally, NEA shall develop procedures to ensure that the NEA does not fund obscene or violates child pornography laws pursuant to the provisions of paragraph (1) and (2) of subparagraph (A) or subparagraph (B) of paragraph (1) which fails to make such regulations with the provisions of this subsection, then such agency or group shall be liable to receive funds under this Act until such funds are repaid.

Mr. President, I am guided on this issue by two principles: First, that we have a responsibility to the taxpayers; and second, that Congress, and this is an important point, Congress cannot effectively micromanage matters that are inherently subjective. We just cannot. If we get into that, we shall have as many viewpoints and opinions as we have Members of Congress.

This amendment may not satisfy every single person's concerns on either side of this debate. It does, however, address the issue head on and provides a method of enforcement in what I consider to be a constitutional and fully consonant with our American values. The amendment calls for the Arts shall develop procedures to ensure compliance with the provisions of paragraph (1) and (2) of subparagraph (A) or subparagraph (B) of paragraph (1) which fails to make such regulations with the provisions of this subsection, then such agency or group shall be liable to receive funds under this Act until such funds are repaid.

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people throughout our country. These significant efforts and intense pressures have indeed strengthened our Nation and I think they have enriched our people.

In Utah, the National Endowment for the Arts in our State, a small mountain State in the Western part of our country, 1.7 million people, the Endowment has been very helpful with our Utah Symphony Orchestra which has consistently been rated in the top 25 orchestras in the country, many years in the top 10; Ballet West, one of the best ballet companies in the world; the Utah Opera Co.; the Shakespearean festival, world renowned for putting on Shakespearean plays in the summer. Arts festivals, and other approaches. Without just as well and have had the quality of arts appreciation or life that we have today. Today, Utah has become a colony of artists and all forms of art. It has uplifted all of us in that area.

In the past 25 years, the NEA has made over 85,000 grants that have enriched the lives of people all over our country in every State, not just the State of Utah. They have helped communities all over America to provide cultural services for their people. Twenty-five years ago, only five States had arts councils. Only five. Today, every State has its arts council. There are eight times as many professional dance companies today as there were back in 1965; Three times as many professional orchestras; nearly five times as many opera companies, and nearly eight times as many professional nonprofit theaters.

The expansion of cultural activities means that many more citizens have been able to attend performances and exhibits and benefit from the arts. I wish all agencies could do as good as the National Endowment for the Arts. Eighty-five thousand grants and we have 20 that have been criticized, and not all of those would be criticized by everyone.

Some of them deserve every ounce of criticism they have received, but that is a pretty sparkling record. It is the best of any agency in Government that I know of. It is something we owe to be proud of and not attack it.

As I say, my own State of Utah has benefited substantially from grants to opera, ballet companies, museums and other cultural activities. The people of my own State, particularly those in rural areas, have appreciated diversity of cultural offerings available to them at least partly because of the National Endowment for the Arts. I greatly appreciate the contribution of this legislation to making all of these things possible.

I fully respect the position of the distinguished chairman of the Appropriations Committee and could not agree with him more that obscurity has no place in the work of the National Endowment for the Arts. Moreover, I believe we are in complete agreement that very specific steps must be taken by the Congress to ensure the accountability of taxpayers' dollars that are spent by the Endowment in the future. We differ only on the best way to achieve this.

As chairman of the subcommittee that authorizes the National Endowment, I am particularly disappointed that the Appropriations Committee did not see fit to continue to support the National Endowment in its original form. I feel that the Congress must continue to thrive in the spirit of bi-

The Committee on Labor and Human Resources has carefully reviewed the testimony and began a long and fair and responsible debate that explored the arts in this country, but I believe we can do this without compromising the balance of good taste. I hope you will see that this amendment is a step in the right direction.

I call upon all my colleagues to support it. I surely hope we will. I think it is worthy of their support. I hope, when we vote on it, we can vote overwhelmingly in favor of this amendment. I hope this amendment will help to resolve some of the conflicts that have been evident in the arts.

Mr. FELL. Mr. President, it is a pleasure to rise as a co-sponsor of the amendment put forward by my colleague from Utah that would strike a section of the administrative provisions under the heading of the National Foundation on the Arts and Humanities that relates to language so overwhelmingly approved by this subcommittee and the ranking members of the Subcommittee on Education, Arts and Humanities are joining us in this effort.

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partisanship and mutual cooperation that has been the hallmark of its existence.

To my great regret, our reauthorization proposal is not likely to be considered by the Senate during this session. This is especially disappointing because we believe we had reached a solution that would have garnered support in the full Senate. The House was able to move ahead, however, and pass a bill last week that contains many provisions present in our own bill. I am eager to point out that the House addressed the issue of obscenity in the same manner as the Senate Labor Committee.

The amendment we are now considering takes the very core of our larger reauthorization proposal—the provisions dealing with NEA accountability and obscenity—and substitutes these points for the obscenity language in the bill. By presenting this amendment, we offer Members of the Senate the opportunity to respond to the work of the Labor Committee that was developed over a period of time and in a bipartisan spirit over the last 6 months.

This amendment addresses obscenity directly but we are mindful to avoid the constitutional pitfalls that would arise with the imposition of guidelines that would establish prior restraint on NEA grant awards. Instead of requiring the Endowment itself to set standards on what may or may not be obscene, this amendment places that role in the courts where such a decision truly belongs. This avoids the potentially serious constitutional problems which could arise if an administrative agency like the NEA were to make determinations of obscenity. It acknowledges that obscenity and child pornography are not forms of protected speech under the first amendment. Objection and child pornography are illegal and this amendment requires strict sanctions against any NEA grantee who is convicted of violating such laws.

If a grantee is convicted by a court of guilt for obscenity or child pornography laws, the amendment requires this individual, or organization to repay all Federal grant funds and be ineligible for any Endowment grants for a period of 3 years.

The amendment echoes the findings of the Independent Commission which was established a year ago in this same Interior appropriations bill. The Commission, which made its report to the Congress in September, found that "the National Endowment for the Arts is an inappropriate tribunal for the legal determination of obscenity, for the purposes of either civil or criminal liability." It went on to tell us, and I quote here directly from the Commission report:

"The nature and structure of the Endowment are not such that it can make the necessary due process findings of fact and conclusions in these determinations. The Endowment must, of course, make grants that comply with federal and state law but the appropriate forum for the formal determination of obscenity is the courts."

I ask the Senate to give its support to this amendment which reflects the almost unanimous recommendation of the Labor and Human Resources Committee, as well as the final position of the House of Representatives and the findings of the Independent Commission that was established in the Interior appropriations bill. Taken together, this is a strong endorsement of the amendment before us, and I urge my colleagues to support it.

Mr. HATCH. Mr. President, I yield 5 minutes to the distinguished Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise in strong support of the amendment offered by my colleague from Utah. I want to take this time to commend the work that he and Senators Pell, Kennedy, and Kassebaum have devoted to this extremely difficult and sensitive issue. They have worked out what I think is a very excellent reconciliation of the difficulties we have.

The amendment before us addresses language in the appropriations bill which places content restrictions on funds expended by the National Endowment of the Arts (NEA). The restrictive language forbids funding of works that may be considered obscene "which, when taken as a whole, do not have serious literary, artistic, political, or scientific value." That standard certainly is not one with which we can disagree.

The Hatch amendment, which I cosponsored, modifies that language with regard to who makes the determination. The compromise language was patterned after the Labor Committee on Labor and Human Resources. That compromise language addresses the question of Federal funding of obscenity and pornography by deeming anyone convicted by a court of creating or producing such work from NEA funding for at least 3 years. Federal funds used in such work.

Both this amendment and the language in the appropriations bill restrict the promotion of obscenity in the arts. Let us all be perfectly clear: This is not a debate on obscenity. I think I can speak for every Member in this body when I say that no one questions the offensive nature of obscenity work and no one questions that there is no room for Federal funding of obscenity.

The debate is not whether Federal money should fund obscene work. The debate is the question of who decides what is offensive and obscene. The Hatch amendment on the other hand, places that function upon the courts. Let me explain why this is such a fundamental distinction.

By placing responsibility on the courts to determine what is obscene, he or she is placed in an extremely difficult position to decide an issue that he or she is not qualified to decide. Although legislative and congressional action has focused on "obscenity," the term is ambiguous. In a narrow, legalistic sense, obscenity involves the exact standards of proof prescribed most recently by the U.S. Supreme Court in Miller versus California. It is certainly appropriate for the courts to decide.

The other meaning of the term, in common parlance, involves grossly offensive matter—with the term grossly offensive having a different definition depending on the situation.

Therefore, by requiring that the Chairman of the NEA be responsible for determining such an inexplicit term, Congress is placing a tremendous burden upon the Chair.

As the bipartisan independent commission, named by President Bush and supported by the Democratic and Republican leaders of Congress, concluded "• • • the NEA is an inappropriate tribunal for the legal determination of obscenity. The Commission believes it inappropriate for the Endowment to attempt to make determinations of what constitutes legal obscenity. The nature and structure of the Endowment are not such that this body established in the appropriations bill last week that contains many provisions present in our own bill. I am eager to point out that the House addressed the issue of obscenity in the same manner as the Senate Labor Committee.

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Government or public reprisal for work that is supported by the endowments.

I have argued for this provision on the merits of placing a decision of determination obscurity in the courts and further argued that such a system would afford first amendment rights. I have not even touched upon the secondary issue of what I believe to be a frustrating and needless debate.

I say that not because I wish to overlook the issue that has been raised with regard to obscenity. Obscenity itself is no small matter.

However, when you put it in the context of the number of grants and awards and all the wonderful things that the NEA does, it becomes one on which we should not focus all of our attention. The Senator from Utah explored the virtues of the many programs that go on in his State. The same is true in mine, as you see the artists in residence and the wonderful opportunities that young people have to discover the work, which many argue is the thrill of being involved in the arts.

Between 1965 and 1988, the NEA reviewed approximately 302,000 grant applications and funded approximately 85,000 grants. Last year alone, more than 17,000 grant applications were considered, resulting in 4,600 grants to artists and 886 to literature. The national attention focused on the NEA involved two particular artists. Together these grants account for less than 1/4% of 1 percent of the total 1938 Arts Endowment budget. That is a small concern.

However, if we are to address this issue it is imperative that we do so in a manner which does not threaten or stifle the free expression of artistic work, which many argue is the signature of our culture.

To me it is a question of risk in our society. Is it not worth the risk of 1/4% of 1 percent to ensure that we do not stifle the possibilities of a future artist? The Hatch amendment achieves the fine balance of restricting Federal funding of obscene art without unduly crippling artistic expression.

I urge my colleagues to support the Hatch amendment.

Mr. HATCH. I yield 5 minutes to the distinguished Senator from Connecticut.

Mr. DODD. I thank my colleague from Utah, Mr. President.

Let me, first of all, commend him for his leadership on this issue and for his eloquent delivery this afternoon in support of his amendment.

Mr. President, I would like to pick up on a point the Senator from Utah made when he cited the fact that the NEA operates, and strongly, but I think it needs to be emphasized in this debate.

It almost borders on the ludicrous, Mr. President, that we are here debating this. I would have thought that maybe an amendment was going to be offered that might have been a resolution commending the National Endowment for the Arts.

When you have a Federal agency after 25 years that extends 85,000-plus grants and at the end of a quarter of a century we are able to look over the landscape and find 20 grants that offended some people, I would suggest that maybe half of those would not even be in controversy today, since some of them were in controversy 10 or 5 years ago, and here we are trying to restrict the ability of an agency to do its job with the kind of record the NEA has.

So I am disappointed in many ways that we are even engaging in debate, which would restrict the ability of this agency, which has achieved the incredible performance level it has. I find it somewhat remarkable that we are involved in this process at all, where we are defining or restricting the ability of this agency.

But I commend my colleagues from Utah, as well as others who are responsible for drafting this compromise proposal. In many ways, Mr. President, I regret that they have had to do this because, frankly, as I said moment ago, I think the agency is performing remarkably well. But the fact is the political realities are such that we need to have some language that is going to satisfy some people, and that the agency is going to do its job.

I just want to be on record, Mr. President, that I think it is doing its job. I think the taxpayers in this country can be deeply proud of an agency of the Federal Government, that after 25 years, a quarter of a century, 85,000 grants, has 20 cases they can point to that were challenging. In 19 cases the cases were not even made to artists. They were made to museums, who in turn, made the grants or other organizations. So the Hatch amendment is even a sponsor in a couple of these cases. Here we are spending good time this afternoon, quibbling over the fact there was some controversy over grants extended out of an agency that has performed that well.

I wish to make just a couple of points about the agency, Mr. President, because, unfortunately, I think people assume that these artists are only supported by the National Endowment for the Arts. It has been pointed out by the Chairman of NEA that the $119 million we provide to the NEA actually generates something in the neighborhood of $1.8 billion in private contributions to support artistic productions across this country.

That is a remarkable incentive for generating this nation’s private capital to support art in this Nation. In the absence of that kind of seed money, if you will, I suspect he does, that number would be infinitely less.

The Senator from Utah pointed out 25 years ago, only a handful of States had arts councils. As a result of the work of the NEA, we now find that all 50 States are engaged, or have arts councils. And the states provide all sorts of artistic productions, from youth programs to the actual productions of the visual arts, performing arts, which has generated a tremendous amendment of interest across the country.

I would like to make an additional point. On all of this. The NEA’s job ought to be, in a sense, to promote not the accomplished artist, not the one who has arrived, not the one who has achieved commercial acclaim or success.

The idea behind this, at least a good part of it, is to say those who have not yet achieved that kind of status, that we believe enough in you, we believe in what you are trying to do, that we would like you to continue what you are doing.

So the essence of the program, in a sense, is to reach those artists who have not yet achieved that kind of success, and to say, stick with it, keep trying, we think you are on the right track, we would like to see you do more.

So, by the very nature of the program, we end up dealing, from time to time, with those who are on sort of the cutting edge.

So when we hear of artists who are performing things or performing productions of art that is not yet commercially acceptable, that is exactly the kind of work that the NEA ought to be involved in, promoting that sort of activity.

Last, I hope that we in this Chamber today, would recognize that, in many ways, it often appears that though the politicians get quickly forgotten, the artists of the day are remembered. That is not always true, but it is from time to time throughout world history. So the signature, the identifying characteristics of a generation, in many ways, are left by the artists which the generation produces, not by the speeches given by Senators, Congressmen, not by Presidents or heads of state necessarily, but by what the artists say and perform, do, at any given time.

In a sense this great country of ours has always taken pride that we have produced great artists throughout our history, and today we ought to be encouraging even more.

So I hope the Hatch amendment is adopted. I hope it would have been that we would have gone back to what had been done earlier. But if this is the way we are going to achieve the kind of openness in this process that I think is possible, then I am going to strongly support this amendment, because I believe that has not ended up, with an NEA that would perform as well as it has in years past.

Connecticut, like Utah, like Vermont, of course with our Goodspeed...
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Opera House, the O'Neill Theater, Hartford Stage, countless other organizations in our State, have benefited as well in this program.

So I urge the adoption of the Hatch amendment, and hope we can finally put this issue behind us, and recognize the significant contribution of this remarkable agency that is celebrating its 25th anniversary.

Mr. President, I yield the floor.

Mr. HATCH. Mr. President, I feel very deeply about the arts. I think that is apparent. I am concerned about it. I do not think it is a liberal-conservative issue. I think it is an issue of human understanding.

Shortly after my birth, my folks lost their home in the Depression. My dad built us a home with $50 worth of old lumber that he bought from an old burnt-out shell of a building. We did not have indoor facilities for a number of years in that home. We were very poor.

My father was a building tradesman. In fact, he taught me his trade. I worked at it 10 years myself, and became a full-fledged member of the AFL-CIO as a Journeyman. I am proud of it to this day.

I loved athletics. I would rather have done athletics than anything else. But my mother and my rough old father, who worked with his hands, started me playing the piano when I was 6 years old. I practiced piano for 6 months. I always have remembered what I learned, and I can still flutter around on the piano a little bit. Somehow my folks got their hands on a beautiful violin. Then my mom and dad sacrificed everything they had so that I could have violin lessons.

As an athlete, I have to admit, I did not like carrying that violin to school at first. I got into all kinds of fights over it. But it got me standing up for the violin. My folks encouraged my interest in music and taught me all about the arts,浏办 all the way over to Oakland, sat in Peanut Heaven in the Syrinx Mosque, and listened to the great Pittsburgh Symphony Orchestra.

I saw all the great artists: Roberta Peters, Fritz Kreisler, Rubenstein, Horowitz, you name it. My folks made sure I had the opportunity to appreciate the arts. I could talk about their sacrifices and their encouragement of my interest in the arts for quite awhile.

I will not bore the Senate tonight, nor do I want to take a lot of time. I am to this day, in such debt to that caring mother and devoted father for the sacrifices they made so I might have the privilege of helping me to play the violin, the viola, the string base, the organ, and the piano. I am not very good at any of those now, but I was at the time. I have not played the violin since I left high school. However, I was the concert master in our high school orchestra. I was in "Who's Who in America High Schools" for music.

I liked playing basketball even more. But all the basketball playing in the world did not do as much for me as playing that violin and defending my right to play it with my friends in the schoolyard.

Mr. President, the distinguished Senator from Connecticut hit the nail right on the head when he said that for this little bit of seed money that we get, the NEA helps for the Arts we get billions of dollars of product. Money spent on the arts benefits kids—like that poor kid from Pittsburgh named Orrin Hatch.

I do not mean to make it so personal. There are millions of kids just like I was who play the arts, but personal instrument, see a symphony orchestra, ballet, opera, hear the reading of poetry, or other great works of fiction, in fine art museums, see a jazz festival, visit art museums, or in museums, depends upon seed money from the NEA. The few dollars of seed money given to NEA amounts to billions of dollars of private contributions and increase cultural offerings all over this country.

I feel the same way the distinguished Senator from North Carolina makes about pornography, obscenity, filth and, criticism of our fellow religions. However I do not believe that content restrictions will help further in the arts. I think such restrictions will hurt the arts. Some will say that my amendment does not do enough. Others will say it does go too far.

I think it is a reasonable balance to get us where I think the distinguished Senator from North Carolina would like to see us. I know he is a broad-minded person, and he sees the value of the arts.

I hope that this amendment will be agreed to, because the NEA helps people all over the country experience the arts and I want to see them continue as a viable agency. This is an important decision; this is not some insignificant debate in the U.S. Senate. Our votes today, will make a difference as to whether or not the NEA continues to do the excellent job it has done throughout these years.

Mr. President, I feel very deeply about the arts. I am sorry to have unburdened my soul to the degree of telling personal experiences shape our lives. To my dying day, I will be grateful to that loving mother who only went to the 8th grade, but spent the rest of her life studying literature, poetry, and music, even though she never played an instrument. Her kids benefited from her love of those things.

I have to say, to my dying day, I will be grateful to her, and for what she taught me. NEA exponentially has done a similar thing for the people of Utah, many of whom would never experience the symphony, the ballet, and the opera, if it was not for the help of this agency.

I reserve the remainder of my time.

Mr. HELMS. Mr. President, I wonder if the Senator will yield 5, 6 minutes to me. I have been good to me—I have never heard it.

First of all, let us click off a few things. You always hear that only 20 percent of the people in the U.S. Senate than we just heard from several Senators not very well, and I have been obscen- I tried to get the NEA to justify their assertion that there were 85,000 grants. They cannot do it. Nor can any Senator tell us that only 20 percent were obscene. The truth of the matter is that they do not know.

In any event, I say to my good friend—my good friend—Mr. Helms often says she wants to adopt Orrin Hatch, because he is such a nice young man. But the NEA helps lots of kids about the violin. Well, I played the violin, too, when I was a boy, until the instructor called my mother and said "I cannot pay for you any more—"

Mr. HATCH. I see from the Senator's technique that he did not play it very well. Neither did I, by the way.

Mr. HELMS. I did play the base drum or the base drum in the Utah band, and I was once on the board of directors of an opera association. I do not know whether that gives me any credentials to talk about this thing or not.

But we are not talking about violins or symphony orchestras or choral groups. We are talking about the kind of art that is a lot of Senators—I do not know whether there are a lot—but some Senators would like to do away with all the funding. I have never suggested that. The NEA has supported some very good things.

Behind the scenes in the Senate, Mr. President, I firmly believe that we ought to do this, but it seems relevant to me that Senators have come to me and said, "I agree with you, but my wife is active in the arts community, and she said, 'Buster, you better not vote for Hatch amendment.'" Then there are some Senators who date actresses, and the entertainment industry is solidly against any restriction whatsoever on the NEA's funding.

But Mr. President, we are not talking about one thing or another. Let that be made clear. We are talking about the use of the taxpayers' money to
Mr. HATCH. I yield 3 minutes to the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I would like to join with my colleagues on the Labor Committee in supporting this amendment regarding the National Endowment for the Arts, or NEA, I know that there is a great deal of concern in this body about the Federal funding of the arts via the NEA, and I do not take that concern lightly. But I believe that the amendment proposed by the Senator from Utah, myself, and others is a solid one, and I urge its adoption.

As we all remember, last year the NEA came under intense public and congressional scrutiny for having indirectly supported certain distasteful exhibits by two artists: Robert Mapplethorpe and Andres Serrano. As a result of the uproar, Congress struggled for months with the question of how to portray the relationship between art and Government should be.

Finally, after some heated floor debate, several rollcall votes, and a lengthy House/Senate conference, an uneasy compromise was forged. Yet, the compromise could not satisfy everyone, and thus it please no one. In the meantime, the NEA has spent a year under siege, unable to please anyone.

I was one of the two members who rose in July 1989 to speak against the first NEA amendment. Why did I do so? Not because I had planned to. Not because I am a big fan of the Mapplethorpe-Serrano art. Not because I think art should be offensive, or pornographic. And not because I believe so-called lascivious artists should prosper, if taxpayers' money.

I spoke because in my view, the amendment came dangerously close to prescribing what should constitute "art." And for me, that comes dangerously close to censorship—very, very slippery area. I do not endorse pornography. No one does. But I do not want to see doused our much-admired American spirit, our ability to express ourselves freely and creatively. As President Bush has said, I would prefer (not) to risk censorship, or (get the) Federal Government into telling every artist what he she can paint, or how he she can express himself.

There is another argument expressed—that the Government has no business funding the arts at all, especially during a period of budget deficit. Reinforcing that view is the constant reference made to the sick art and immoral trash funded by the NEA. Those references give many the impression that some radical, independent agency known as the NEA has been running amok promoting offensive and controversial art. I agree that we must be careful to spend money on only those programs that are worthwhile. But I do not think that that majority of the public realize, to what extent the NEA has touched their communities. It is an agency that has proven itself to be not only worthwhile, but exemplary.

The NEA was created with bipartisan support in 1965 with the goal of fostering professional excellence of our artistic and educational endeavors. For us, the NEA has had a far-reaching and positive impact on our children, our communities, and even our economy. Last year, aid cities, and towns across the country participated in arts programs, and more than 2.6 million people attended nonprofit arts events sponsored in part by the National Endowment for the Arts, or NEA. Rhode Island's economy received $796,000 in fiscal year 1989 NEA moneys, benefiting 128 organizations, 500 schools, and 60 artists. The net result: 915 public and private arts programs, and a boost of $72 million to the Rhode Island economy.

I might add that NEA moneys are often matched by private sector funds, thus generating a tremendous amount of support for, and stimulating public/private partnerships in, the arts. Last year, 415 Federal grants helped generate $1.4 billion in private sector arts funds. In fact, corporate support for the arts has skyrocketed from $438 million in 1986, to $4 billion in 1990. State support has risen likewise: from $26 million in 1986, to over $100 million today. Such partnerships bring jobs, and taxes for the enjoyment and benefit of all involved. Clearly, art activities often act as a catalyst for economic growth, while at the same time helping showcase America's cultural heritage.

We Americans enjoy the arts. In 1985, 29 million people were at least once to a musical, play or opera; 25 million watched dance performed on TV; 31 million listened to jazz on the radio; 36 million visited art museums. Since 1986, the arts have exploded in growth. The number of art museums nearly doubled in the past 25 years, from 375 to 700. The number of dance companies jumped sixfold, from 37 to 250. Nonprofit theaters went from 56 to 420. So
our interest in the arts is strong. Americans are taking active part in the cultural life of the country.

But you do not have to be a museum-goer to enjoy the arts. Many daily local activities are arts-oriented. Daily newspapers and radio stations make an effort to promote local arts projects. NEA funds are not reserved exclusively for art institutions. In fact, the broad, diverse range of individuals and groups receiving NEA support would come as a very big surprise to most. Schools, churches, community groups, groups for those with mental or physical handicaps, libraries, boys and girls clubs, parks, theaters, and even prisons receive help for their arts and arts-related programs.

NEA-sponsored projects are not elite, radical activities that are of interest to only a very few. They are projects that are accessible to everyone, projects that improve the quality and richness of our—and our children's—lives. Most of us have probably taken part in NEA-sponsored events without ever realizing it. For example, here are just some of the hundreds of NEA-supported Rhode Island projects:

- Providence "First Night" celebration
- The West Warwick "Chance to Dance" after school activity for over 100 fifth and sixth graders
- Tours and programs for 12,000 students at the RI Museum of Design
- A Pawtucket art program for persons with cerebral palsy
- The Providence "First Night" celebration
- The Langston Hughes Center for the Arts' performances on the cultural contributions of African-Americans
- The Rhode Society
- The Newport Music Festival; and
- The Cranston "Big Sister" Association

Nationally, NEA-sponsored projects are of equally high quality:

- The Boston Museum of Fine Arts' Renoir exhibit
- The Music Program and Opera-Musical Theater Program, which provide support to orchestras and opera companies who provide free or discounted tickets to older and disabled persons:
- Children's public television programs such as "Wonderworks"
- The Dance Theater of Harlem
- Philadelphia's WHYY television station's "Fresh Air" writers interview program
- The Vietnam War Memorial
- The Metropolitan Opera."Presents" and "Great Performances" on public television; and
- The American Film Institute.

That is an impressive list. One further example, which made an impression on me, is the Hatch amendment. Hatch amendment is named after the man who first proposed it. It is a proposal about the importance of the NEA. It should be framed in terms of the overall record of the agency, not in terms of a few individual grants that may have escaped careful scrutiny. A few rotten apples in the bunch should be viewed for what they are: any any apples—instead of being used as the yardstick by which the entire agency is judged.

The amendment that is here before us is a sensible attempt to address many concerns that have been raised. It would debar from NEA funding for 3 years anyone convicted of creating work that involves child pornography or child pornography. The ruling of whether or not a work is obscene would be made by the courts; that is where any debate on obscenity belongs. As they say, you know it when you see it. But getting a crystal-clear definition is next to impossible. So I think that leaving the obscenity question up to the courts is the wise and thoughtful solution.

This conclusion is bolstered by the Independent Commission that Congress set up last year to review the NEA's grantmaking and art standards. The Commission found that the NEA is "an inappropriate tribunal for the legal determination of obscenity," and that the Commission recommends against legislative changes to impose specific restrictions on the content of works of art." The report closes by saying that "[t]he NEA record establishes that a relatively small investment of Federal funds has yielded a substantial financial return and made a significant contribution to the quality of American life." And that is certainly true in my State, Mr. President.

To be honest, I would have preferred a clear NEA reauthorization bill without any restrictions; and last June I joined nine of my colleagues in introducing such a bill. But if we are to be honest and realistic, I believe that the NEA record establishes that a relatively small investment of Federal funds has yielded a substantial financial return and made a significant contribution to the quality of American life. That is why I support the NEA. That is why I support the Hatch amendment. That is why I support the reauthorization bill that is before us. That is why I support the Hatch amendment.

I think that this amendment does that. There are many people in Kansas as well as in North Carolina who strongly support the development of the arts and humanities in this country and do believe that the Federal Government has a role to play. However, we obviously have encountered—and I think rightly so—questions of accountability. There is a certain arrogance that does not bode well for the fine work that has been done by the National Endowment for the Arts through the years. I think this amendment answers these concerns.

I deeply regret that we are not able to consider this issue as part of the full reauthorization bill. Because it appears to me that the appropriations bill offers our only opportunity to debate the NEA, I believe it is important that the work of the authorizing committee be considered.

This amendment sanctions accountability in two ways:

First, by assuring that tax funds will not be used to support which is obscene or is child pornography;

Second, by making a number of changes in NEA grant procedures.

In brief, the amendment would address the question of Federal funding of obscenity or child pornography by debarring for at least 3 years anyone for creating such a work and by recouping all Federal funds used to support such work. A determination of whether or not an art work is obscene or child pornography would be made by the courts.

The reasoning behind this approach is that:

First, it assures taxpayers accountability by making certain that any individual or group responsible for work which is obscene or is child pornography is punished through debarment, and it assures that the Government gets its money back.

Second, it addresses issues—obscenity and child pornography—for which clear legal standards do not exist. Such clear standards do not exist for other types of work which many of us might find offensive.

Third, it places decisionmaking authority in the hands of those most qualified to make such determinations—Congress.

The National Endowment for the Arts is not a judicial body and is poorly equipped to make legal decisions.

In short, we are seeking an approach that makes a strong statement regarding the appropriate use of tax dollars, which would establish clear standards, and which would be effective.

The Hatch amendment incorporates the approach taken by the Labor and Human Resources Committee in a reauthorization bill approved by a 15-to-1 vote in the Senate. The amendment is the culmination of the efforts of many to try to achieve a compromise that would address the question of accountability on the National Endowment for the Arts.
To broaden input into the process by adding lay people to review panels and requiring rotating panel membership;

To complete incomplete information available to panel members by requiring more site visits, followed by a written report to panelists;

To make the process more open by requiring a written record of all panel deliberations and by opening to the public all National Council on the Arts meetings;

To avoid any possible conflict of interest by barring from panel membership any individual with a grant proposal pending or any employee of an organization with a pending proposal.

Real accountability can be assured only by a sound and open process of grant review. I believe this proposal makes significant improvement in this area.

For 25 years, the NEA has helped nurture our Nation's rich cultural heritage by supporting our celebrated institutions, groups, and individuals but also extending the reach of the Arts to communities in all corners of our Nation.

Maintaining this proud tradition will be possible only if the American taxpayer can feel confident that the NEA will exercise good judgment in selecting award recipients. I believe this proposal will help bolster that confidence.

I believe this is an answer that we have heard before in both the House and the Senate to answer the concerns that some have felt, and I think rightly so, about the role and future of the Arts as a body, and then I wish to ask the members of the Senate to lend support to the Hatch amendment.

I yield the floor. The PRESIDING OFFICER. The time has expired.

Who yields time?

Mr. McCURE, Mr. President, I yield myself such time as I might consume.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. McCURE, Mr. President, first, I state how firmly I am in opposition to the amendment that is now before this body, and then I wish to ask the sponsor of the amendment one or two questions about the amendment because I want to make certain that I do not mischaracterize the amendment as I speak concerning it.

On page 6 of the amendment, if the Senate will refer to it, there is reference made to "violations of child pornography laws." That is found on page 6, lines 7 and 8, and again on page 7, lines 6 through 8, "found to be obscene or to violate child pornography laws." In those references I think it refers back to paragraph No. 1. Paragraph No. 1, I take it, is that paragraph found on page 5, lines 6 through 16. Am I correct?

Mr. HATCH. I believe the Senator is correct.

Mr. McCURE. The reason I ask that question is, in the paragraph it has referred to the child pornography laws. Are these criminal violations of child pornography laws?

Mr. HATCH. That is correct.

Mr. McCURE. So we are talking about criminal violations of child pornography laws, therefore criminal laws.

Mr. HATCH. I assume they are child pornography laws, capable of being criminal.

Mr. McCURE. I assume if they are criminal laws, there is a criminal statute and a criminal penalty and a criminal trial before they are found guilty of violating the child pornography laws.

Mr. HATCH. That is correct.

Mr. McCURE. I think that is the central thrust of that portion.

Mr. HATCH. It may not necessarily have to be a statute. However, the fact is, in most cases it is a statute.

Mr. McCURE. I assume you do not find some criminal violations unless there is a statute.

Mr. HATCH. Unless the State has a common law or something like that.

Mr. McCURE. I do not know that there is a common law violation of criminal law.

Mr. HATCH. I presume the Senator is right on that.

Mr. McCURE. I thank the Senator. What we really get down to in this debate is whether or not we establish any standards at all. It is not a question of whether or not the NEA has done good work, and I will not even quibble over the numbers of good grants that have been made. I do not care whether it is 50,000, 60,000 or 80,000 or 120,000. I think we would all stipulate, for the purposes of this debate, that the National Endowment's granting history has been good most of the time. That is not the issue. It is not the issue for this Senator. The issue is whether or not they have any responsibility to do anything or are they responsible for the content of the arts or the productions which they fund? And there are some who say, no, that it is not our business; they are entitled to do whatever they wish. Indeed, I have heard it said from members of the arts community, "You have a duty to give us money. It is none of your business how we spend it."

I suggest we cannot so easily evade our own responsibilities with respect to the expenditure of the taxpayers' money. Nor do I submit it is possible for us, as a National Endowment for the Arts, "You have no responsibility for the expenditures of the taxpayers' money." So a simple question, as far as I am concerned, is answered by saying: "Yes, indeed, you do have responsibility. Yes, indeed, you do have accountability, you, the Members of the Senate, you, the Members of the Senate of the United States."

The taxpayers out there whose hard money goes into these programs have a right to expect that we are trying to make sure that the money that we have taken from them and provided for the support of the arts is expended in a responsible fashion. That is the issue.

I can understand some who say, "No, you do not have any right." I disagree with them. I think we have a responsibility. The question does this amendment meet this responsibility? I think not.

We have a choice of saying there will be no standards at all or to attempt to provide some standards or direction to the National Endowment for the Arts so we can determine whether or not they are meeting what we believe is their responsibility. Or we could, as is done in this amendment, say the only standard we can set is criminal violation, as though we are saying that anything that is not criminal deserves our support. How silly can we be? To say that anything less than criminal deserves the taxpayers' financial support. It does not.

I do not mean it is unduly personal, but I will give a personal example: I suspect that if a private organization, not funded by the Federal Government through the National Endowment for the Arts, would have Annie Sprinkle performing in Temple Square in Salt Lake City, the Senator from Utah would object.

Mr. HATCH. I think the Senator would object. In fact, the Senator objects to Annie Sprinkle anywhere.

Mr. McCURE. I suspect if the Senator from Utah knew that Federal money was supporting the Annie Sprinkle performance in Temple Square, he would get some questions from his taxpayers who did not do something about that.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. McCURE. Because the taxpayers will look at us and say, "You are responsible for how the money is being spent."

Mr. HATCH. Will the Senator yield on that?

Mr. McCURE. I am happy to yield.

Mr. HATCH. I do not worry about Annie Sprinkle producing in Temple Square. That is not going to happen.

Mr. McCURE. No. Now, if the Senator will yield, why is that not going to happen?

Mr. HATCH. For many reasons, which I would just as soon not go into. One thing I do agree with the distinguished Senator from North Carolina is, that is some of these illustrations he brought up are very serious. They have to be paid attention to. I think Senator HAYES has done the country a service in raising the issue.

Mr. McCURE. Let me recover my time.

Mr. HATCH. If I could just say one other thing.

Mr. McCURE. Surely.

Mr. HATCH. That is, the National Endowment has stated that it did not fund Annie Sprinkle.
Mr. McCLURE. I recover my time at this point. I will respond to that. Mr. HATCH. I am not saying they did not.

Mr. McCLURE. I want to respond to that right now.

For the National Endowment to say that we did not hand her the check, therefore we are not responsible for what she did, is just an absolute evasion of the kind of responsibility we think they ought to have.

Now, I do not agree for 1 minute the idea because they did not hand her the check their hands are clean. If the National Endowment were to say to me and to say to the American public, we are sorry for what happened: If the National Endowment were to say, we accept responsibility for this and we are going to tighten up on the reviews and see this does not happen again, many of us would feel differently about it.

Now I do not agree with my friend from New Hampshire, who came in a moment ago and in a brief speech indicated he would do away with the whole thing, because I agree with the Senator from Utah, from personal experiences, which I could recite but will not take the time to do so, how much the arts mean to this Senator. I share many of the experiences that many people across this country share with respect to the enrichment of our lives because of the arts, and I support what the National Endowment is supposed to be doing and ought to be doing and most of the time does.

I reject the idea, however, that the National Endowment, because they do good things, should not have responsibility for the bad things which they permit to happen with taxpayers' money.

Mr. HATCH. Will the Senator yield on that point?

Mr. McCLURE. Yes.

Mr. HATCH. I do not mean to take the Senator's time, but I think he has quite a bit of time.

Is the Senator familiar with the GAO report requested by the distinguished Senator from North Carolina? In that GAO report, he asks them to investigate Annie Sprinkle.

As a preface to my comments, I want to say that I do not condone Annie Sprinkle.

Mr. McCLURE. May I yield on your time?

Mr. HATCH. Sure.

I do not condone Annie Sprinkle. I do not believe that type of performance. But I think to use that example, when the GAO report shows that the money was given to the Kitchen and was spent for a performance, which included an inter sex show, produced, may not be quite totally fair. Whether that is true or not, I do not know. All I can say is, I do not like performances like Annie Sprinkle's any more than the distinguished Senator from Idaho does, or the distinguished Senator from North Carolina does.

The procedures we have in this bill will result in the NEA making grants which clearly identify where the funds go. I think that is going to eliminate questions later or not a project is funded by NEA. It is one of the things we tried to do. The procedural changes are as important as, if not more important, than the sanctions we have proposed.

I also think its fair to ask questions about any of the 29 exceptions that have been raised. Suppose there are 100 that are suspect, very questionable and open to criticism. I am not sure any of us would disagree with each other about our right and responsibility to criticize them. The point is, how do we want this agency with an excellent record to be run? Where do we want it to go? Do we want to destroy it or do we want freedom of expression in this country?

I think freedom of expression is very important. I want to support freedom of expression. Be that as it may, I reserve the remainder of my time.

Mrs. KASSEBAUM. Mr. President, I wonder if the Senator--

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. McCLURE. Mr. President, I would be happy to have the Senator from Utah yield to the Senator from Kansas.

Mrs. KASSEBAUM. Will the Senator from Utah yield just a minute so I may respond to the Senator from Idaho?

Mr. HATCH. Yes.

Mrs. KASSEBAUM. The Senator from Idaho made some very good points, and I agree totally with his comment that there is a responsibility that comes with funding. That is a responsibility that we have, that is a responsibility that the National Endowment for the Arts has.

You ask what, then, has improved as far as accountability—because that is what we are aiming at when you mention a show such as the Annie Sprinkle show. In other words, what would there be in the particular amendment that we are discussing that would not have allowed this type of performance? I would simply say I think the procedural changes that are in the amendment really prove the answer, because real accountability can only be assured by a more open and broader review process. I think it has already been enunciated what that review process is and what changes have been made there.

I clearly believe, and would say to the Senator, that I think with the change in those procedures, such a performance would have been questioned before any money was given to fund the project.

Now I agree that the movement in this bill, in the amendment before us, is in the right direction. I think the process changes may yield some favorable results. I will note for the record that on page 3 of the amendment, where it describes the lay members, I read the amendment to say that the lay panel members must be selected from a group who has been approved by the chairman.

Now if that is not a rubber stamp or favor process, I do not know what it is. That does not strike me as being an independent review or independent analysis. So as much as I would like to move without process in the right direction, and it does, it does not move it far enough.

Now, to say that, yes, we think they ought to be accountable, I agree with that. I am glad that others agree with that. But what does this amendment do to make them more accountable? I do not think I see that.

I think the process is improved and may yield improvements in accountability, but what I hear from the arts community is that it is none of your business what we do with the money you have provided. They do not wish us to hold them accountable. They deny that we have any right to examine accountability, because they do good things.

That is why it is important, from the standpoint of this Senator, that we attempt, as feebly as it might be, attempt to write some safeguards against which that accountability will be judged. And writing into this amendment the process that if you violate a criminal law you have to pay it back falls far short of the standards of accountability that I think are necessary when it comes to the expenditure of taxpayers' funds.

I think the statement made by the distinguished Senator from Rhode Island about you shall not apply any restraint that has absolutely nothing to do with the appropriate process by which you judge whether or not taxpayers' funds should be spent.

A moment ago, I said, would you want Annie Sprinkle on Temple Square in Salt Lake City? My friend from Utah says, well, she will not even appear there. Well, whether she does or does not appear there, or whether that particular program would or would not be shown in Salt Lake City, is illustrative of the problem that we have when we start trying to say, let us fund the arts but have no standards at all.
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If the National Endowment had in the past said these few—and they are few—grants that have been made, that have caused the problem, are aberrations and we are going to stamp them out, I would have trusted the Endowment to indeed attempt to stamp them out. I have a great deal of respect for John Frohnmayer. I have talked to him upon a number of occasions about this very problem.

When he first arrived in town he said he was going to take steps to stop this. The minute he said he was going to take steps to stop this the arts community descended on him like a ton of bricks and said, what do you mean you are going to do this? You have no right to try to stop this.

Will he? I do not know. But I have the very strong and grave suspicion that if we take that kind of attention that is focused on this subject by these kinds of debates, we will see more rather than less of the inappropriate expenditure of our tax dollars.

I am not willing to see that happen. I, therefore, oppose this amendment even though I think it moves in the right direction locally. I do not see the sincere attempt to improve the process but will have the result of diverting attention away from something upon which attention should be focused.

Let us not adopt this amendment and say now we have solved this problem. Let us keep a focus on the problem so we do solve the problem.

Mr. COATS. Mr. President, I approach this issue as did in committee as a supporter of the National Endowment. The National Endowment has provided significant amount of financial help to some very important institutions in Indiana: The Indiana Museum of Art, the Fort Wayne Philharmonic—I can go on and on naming important things that the National Endowment has provided. So I approach this issue as someone who wants to see the agency survive and flourish if possible in these tough budget times, but continue its work.

But I also approach this as someone who has personally been deeply offended by some of the works that have been funded with my tax dollars and my way that I have voted, and someone who represents 5.5 million people in the State of Indiana, many of whom have been deeply offended that the Federal Government has spent tax dollars, have gone on to support works that are called art but that I think every one of us knows is not only objectionable but for the most part obscene.

To me this does not seem to be a difficult issue, because we do not have to stand on this floor and debate what the definition of obscenity is. We do not have to delve into the Supreme Court cases and make a determination as to what is allowed under the first amendment and what is not.

Our responsibility as elected Representatives is to make wise use of the taxpayers’ funds that are entrusted to us. I do not understand how we can make wise use of our tax dollars, I can, in the midst of a budget deficit crisis that is going to, unless we pass another continuing resolution, shut down the government, that has expired, that has months and months of anguished negotiation over a Federal deficit, I do not understand how we can make wise use of our tax dollars, we are going to do that?

But I think that if we do demonstrate to the American people that we can make wise use of their tax dollars, they are going to be demanding that we shut down some of these programs. I do not think the amendment that the Senator from North Carolina is in any way unreasonable. We are trying to put some preconditions on dispensing of funds and I do not see that that is going to stop. That is how it is going to be spent by an agency that will have the result of diverting the attention that is going to, unless we pass another continuing resolution, shut down the government.

I am very unhappy to yield the Senator 5 minutes.

Mr. COATS. Mr. President, I think it is important to get to the bottom line. The bottom line is what responsibility do we have to the taxpayers that any precondition in the expenditure of their funds?

This argument has nothing to do with whether or not some artist can go off on his own and create whatever he wants. If he wants to do that on his own time and can stand the muster of a potential court test, more power to him. I do not think we have to fund his effort. I do not think we have to go to the taxpayer and fund his effort when some of these efforts have been profoundly offensive to the American people; that have profoundly attacked my religion.

I cannot stand for it. My constituents cannot stand for it. I do not think this body should stand for it.

These are the most minimalistic of restrictions. We impose guidelines on every other agency and every other expenditure of Government. Why can we not impose one here? Can you imagine us here saying we cannot put any conditions on H.U.D. or the S & L’s and what money they can loan because they ought to have unfeathered ability to loan that, and if they make a mistake they will not make loans in the future? I cannot imagine us saying that. I support the Senator. I yield the floor.

Mr. SIMON. Mr. President, I Join my colleague from Indiana in being deeply offended by two of the things that have been funded. But, in fact, we have not. When my friend from Indiana says that we have guidelines for other agencies and he mentions H.U.D. and the savings and loan, there is a totally different thing when you are talking about guidelines for agencies and what they do and when you are talking about expression by people making art on their own.

Yes, we have had a couple of things that have offended me, frankly. I do not think they should have been funded.

Out of 65,000 grants in total by the National Endowment for the Arts over
the years there have been about 20 that have been controversial.

I think we have some guidelines implicit here. They are loose, but they do precisely what our colleague from Idaho has suggested and that is tightening procedures. If you want to reflect on what we are doing and why we ought to do it, I suggest anyone who is in doubt in this body—and I do not know if anyone is—but go back and read the speech by Senator DANFORTH from Missouri when this issue first came up. It was one of the most eloquent speeches I have heard in my years in the Senate.

Basically, what he was saying is, if we err, let us err on the side of freedom. I think that is not bad advice for this body. I think the proposal from my colleague from Maine, an equalizer like that, is quite pleasing to cosponsor, is sensible middle ground. I think we have an Administrator of the National Endowment, a Mr. Frohnmayer who is moving us in the right direction. I think this is the amendment that should be accepted, and then we see how it goes and spend the funding for the National Endowment for the Arts.

Mr. HATCH. I yield 2 minutes to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 2 minutes.

Mr. DURENBERGER. Mr. President, the National Endowment for the Arts (NEA) and the National Endowment for the Humanities (NEH) were created 25 years ago this month. At that time President Lyndon Johnson declared that government can seek to create conditions under which the arts can flourish: through recognition of achievements, through helping those who seek to enlarge creative understanding, through increasing the access of our people to the works of our artists, and through encouraging the arts as part of the pursuit of American greatness.

Because of the recent controversy associated with the National Endowment for the Arts (NEA), I think it is a good time reviewing the original mission of the NEA.

Federal involvement in the arts is not new. In the past, Government involvement in the arts meant preserving it as a symbol of status and wealth and limiting its benefits to the elite. Today, Government involvement in the arts means an equalizer of access and an identifier of quality and achievement. While access and recognition has primarily been the role of the NEA, it's important to remember that the Federal Government has also supported the arts through other means including tax exempt status and other preferential treatment under the Tax Code.

I believe the top priority of Federal funding should be to facilitate access to the arts for most Americans—both as the rich, people who live in New York City as well as people who live in Barrett, MN, population 388, has the NEA been successful on this count? It certainly has. When the NEA was established 25 years ago, there were only 37 professional dance companies in the country. Today, there are over 200. In 1965 there were only 60 professional orchestras; today there are over 212; there were only 56 professional non-profit theaters; today that network is over 400. Today more people attend cultural events than attend sporting events.

The NEA promotes access by supporting the Prairie Wind Players in Barret, the Chamber Music Society in St. Cloud, the Duluth Superior Sympony, St. Francis Music Center in Little Falls, the Fargo-Moorhead Symphony, the Hengel Museum in New Ulm, and many other small town and rural community arts organizations who might not otherwise exist without the help and support of the NEA. Yes, the NEA has been successful in expanding access to the arts for all Americans.

Mr. President, I would like to share with you one particular instance of NEA funding involving a production by the Great North American History Theater in St. Paul featuring Sister Mary Johnson. The Great North American History Theater is a unique theater that presents works by contemporary artists that explore human stories of real people as a way of connecting us to each other and our common future. Last summer, this theater received NEA support through the State arts board to present four one act plays entitled "Homegrown Heroes." One of the plays celebrated the life of Sister Giovanni, who is a personal heroine of mine. Sister G. as those of us who know her call her, is best known for founding and leading the Guadalupe Area Project on St. Paul, and many other small town and rural community arts organizations who might not otherwise exist without the help and support of the NEA. Yes, the NEA has been successful in expanding access to the arts for all Americans.

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The second priority of national funding today is to support the very best of America's artists. It is an opportunity to acknowledge the success of the applicant and to challenge the artist and others to produce. This recognition not only helps a struggling artist get off the ground but also helps facilitate new works and new artists. The private sector will always support the established artist, but it is the aspiring artist, that needs the seed of support and recognition. To the national organization like the NEA can bring.

What does this recognition mean for different communities and different States? I know it is meant for my own State of Minnesota. We have always held a deep interest in the arts, but until the last couple of decades we have not been a leader in the arts. But the efforts Minnesota has taken at the State level in arts education and community involvement has earned it the recognition of the NEA. And this recognition from the NEA has helped transform Minnesota into a nationally recognized cultural center. Today it receives the third largest amount of NEA funding behind only New York and California.

National recognition not only has the benefit of delineating the artist and the arts community, but also acts as a catalyst for private sector support. In 1988 Endowment grants totalled $1.9 million generated over $41.6 billion in private funds. National recognition serves as an endorsement of quality and achievement, which enhances the fundraising capabilities of grantees and other arts organizations.

Much of the controversy which has endangered the NEA stems from how we define and delineate quality art and deciding which artists will receive national recognition. It is this question that I think is difficult for us as legislators to answer.

I was reminded recently of the incident of the Rivera mural within the Rockefeller Center during the days of the McCarthy scare. Nelson Rockefeller commissioned Diego Rivera to paint a mural in the entrance hall of the main building. The work was done in fresco, in which the plasterer lays up the surface just ahead of the painter who uses water soluble pigments that penetrate the wet plaster—so when the plaster dries, the painting is permanent. When Rivera finished and went to sign his name, he painted a large head of Lenin and the hammer and sickle, then signed his name.

There was a great uproar and the mural was ultimately destroyed. E.B. White wrote a poem about it which I ask unanimous consent to print in the Record following my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. DURENBERGER. Mr. President, while this work does not cross the line of obscenity which is the center of the debate today, I think it illustrates clearly the difficulty one has—especially a legislative body—defining offensive art. Had Rivera painted his mural today, I doubt that it would get a second look.

Those who support restrictions would like us here in Congress to unambiguously define what works of art they find offensive or obscene. Obscene, as defined by Webster's dictionary is "offensive to modest, or decency." I suppose a lot of art could be classified by some as to be offensive to modest, or decency, as the Rivera mural was years ago, but still not obscene in the pornographic sense of the word. How is an artist to know, if his or her work will meet this standard?

Is it possible or advisable to add restrictive language prohibiting the NEA from funding obscene art? The Independent Commission instructed by
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Congress to look into the controversy surrounding the NEA said no. They reported that if the Federal Government chose to fund the Endowment that legally “what it may not do * * * is to choose those to be funded—and, often more important, those not to be funded—in a manner which punishes whose views as dangerous as it may think it—"That the nature and structure of the Endowment are not such that it can make the necessary due process findings of facts and conclusions of law involved in these determinations.”

I would like to emphasize that my support for this legislation does not mean that I believe we as a nation should be required to put up with art that is obscene or pornographic, in order to allow artistic freedom. That a concern reflected in thousands of letters and letters of concern received over the past year from constituents. I share with those constituents an abhorrence of pornography and obscenity and the degradation of respect for persons—especially women—in society—and the threat it represents to the moral values we all strive to pass on to our children.

Plain and simple, I could not support this legislation if I felt it somehow sanctioned, supported or encouraged child pornography or obscenity. Obscenity and pornography are illegal and should not be tolerated period. I believe this legislation is consistent with that intolerance and illegality— even strengthening leverage now available through the courts to discourage obscenity and pornography and to punish and remove it when it occurs.

The legislation before us says that we should rely on the long history we have in our courts of defining, discouraging and removing both obscenity and pornography. The legislation says we should rely on the body of law to guide us to mean sure artists are not rewarded with Federal funding for art that has been found in violation of law. And imposes tough sanctions against an artist who is found guilty of violating obscenity or child pornography laws. The bill also makes needed and necessary changes to the grant-making process to increase accountability and to open the process for greater public involvement and understanding.

Mr. President, I want to compliment the work of Senators Pell, Hatch, and Kasembaum for their hard work on this bill. I am finding a solution that will preserve all the many good things the Endowment has given us over the years. The bill before us is a good one, and I urge my colleagues support.

Mr. DURENBERGER. Mr. President, in summary, I rise in support of the Hatch amendment to substitute the language which we passed 15 to 1 in the Labor and Human Resources Committee for the content restrictions in the underlying bill. There has been a fair amount of conversation here this afternoon about responsibility to the taxpayer. I rise to say if this is the place that is going to be responsible for the taxpayer, we have not done a good job of demonstrating the capability of doing so. I urge my colleagues to reject the Hatch amendment.

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totaled $2.7 million; now the States spend a total of $268.3 million. Quality and excellence have been the hallmark of liberty. The last 11 Pulitzer Prize winning plays were developed with the help of NEA grants. The most recent, splendidly, "Driving Miss Daisy," a recent released Oscar-winning film, was developed with Endowment support. A quarter century ever since its creation in 1965, the Arts Endowment has enjoyed broad bipartisan approval in Congress. Our support has been overwhelmingly reaffirmed every 5 years since then—and now is surely not the time to walk away from our essential public commitment to the arts and free expression.

Around the world, new freedoms are being won by peoples who have endured censorship and repression all their lives. In Eastern Europe and even the Soviet Union, demands for liberty are being heard and heeded. At a time when Berlin Walls are coming down, in other lands, it would be shameful for the United States to fail the test of liberty by erecting new barriers against free expression here at home.

During the final day of the hearings which the Committee on Labor and Human Resources held on the reauthorization of the Endowment, Maestro Mitislav Rostropovich took time to share with the committee members, his personal observations on the tragedy of suppression of ideas and expression. He recounted for us that the works of many brilliant composers in the Soviet Union were censored, and his fellow countrymen were deprived of the power and beauty of this part of their national cultural heritage.

Mr. J. H. H. I yield 2 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. Metzenbaum. Mr. President, I rise in support of the amendment of the Labor and Human Resources Committee and in support of the National Endowment for the Arts.

With a relatively small investment of Federal dollars, this much maligned agency has made an enormous contribution to the cultural life of our Nation, bringing theater, ballet, symphonies, public television shows, and great works of art to millions of Americans in their own communities.

It would be a tragic mistake to continue to allow the furor over a few controversial art awards to overshadow the excellent job that the Endowment has been doing. It's time to put this controversy into perspective once and for all.

For the past 25 years, the National Endowment for the Arts has compiled an outstanding record of achievement, encouraging and supporting artists in dance, theater, music, the visual arts, and other fields. It has helped to make the arts accessible to an ever wider audience, and has leveraged millions of dollars of support for the arts from the private sector. Each Federal dollar invested through the NEA generates 40 in private donations.

To a great extent, the Endowment has been responsible for the explosion of dance companies, theater groups, orchestras, and opera performances which has occurred over the last 25 years. In 1965, when the NEA was authorized, there were only 37 professional dance companies in the United States; today there are at least 250. In 1965 there were 60 professional orchestras; today there are over 200 professional orchestras. Today our Nation boasts 113. In the early 1960s there were only 27 opera companies in the United States; today our Nation boasts 113. In the early 1960s there were only 27 opera companies in the United States; today our Nation boasts 113. In the early 1960s there were only 27 opera companies in the United States; today our Nation boasts 113. In the early 1960s there were only 27 opera companies in the United States; today our Nation boasts 113. In the early 1960s there were only 27 opera companies in the United States; today our Nation boasts 113.

In my own State of Ohio, the Endowment has provided support for a wide range of programs and institutions across the State— including art museums, ballet companies, symphony orchestras, dance groups, folk arts festivals, opera companies, and theater groups. Let me cite just a few examples of projects which the Endowment has supported recently in Ohio.

The Dayton Contemporary Dance Company, a black modern dance repertory company, received a grant from NEA which helped support its 21st season, highlighting a new ballet by Alvin Ailey, a rising choreographer who has worked with Alvin Alley and the Paris Ballet.

The Ohio Arts Council used NEA funding to support engagements of master folk artists Lois K. Ide, a quilter from Bucyrus, Donald McConnell, a woodworker from Mount Vernon, and Carole York and her Rendell, a music trio who have worked with Alvin Alley and their apprentices.

The Endowment provided a grant to the Mad River Theater Works, which creates new plays based on the culture of the rural midwest through interviews and oral histories from people of the area.

This NEA grant enabled the Fairmount Theater of the Deaf to tour outside of Ohio, offering performances in schools and elsewhere, often providing its audiences with their first exposure to deaf actors.

The Arts Commission of Greater Toledo received a grant to bring together major arts institutions, small arts groups, arts professionals, and individual artists to collaborate with educators in planning a curriculum for including the arts in public school for the creative and performing arts to open in the fall of 1991.

A grant to the Columbus Symphony Orchestra allowed it to expand its education program.
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Mr. President, it is ironic that, when we are hard-pressed by the challenge of the changing world, we are also embracing the idea of freedom, we are facing these challenges to free expression here in the United States of America. Earlier this year, Vaclav Havel, playwright, and new President of Czechoslovakia, sent a moving letter to the American artistic community. He said:

"We know first hand how essential is a fierce, independent, creative artistic spirit to the attainment of freedom. Through a long night of repression and control, the artistic community in our land helped keep alive the unquenchable flame of freedom. And artists played a central role in helping organize our final transformation to a new democratic state."

There are those around the world, indeed, even in those democracies with the longest tradition of free speech and expression, who would attempt to limit the artist to what is acceptable, conventional, and comfortable. We are unwilling to take the risk that real creativity entails. But an artist must challenge, must controvert the established order. To stick or the work in the name of public sensibility is to deny to society one of its most significant resources.

I could not have said better. I urge my colleagues to support the amendment.

THE PRESIDENT OF OFFICER. Who yields time?

Mr. MOYNIHAN. Mr. President, I believe the distinguished manager yielded 2 minutes to me.

Mr. MOYNIHAN. Mr. President, I will use no more than 2 minutes to rise as a cosponsor to thank those who crafted this very thoughtful and balanced position and to note that it does, indeed, follow the recommendations of the Independent Commission which worked so ably under the direction of our former colleague from Connecticut, John Brademas, President of NYU, and Leonard Garment, who is so important a person in the history of the national endowments, both of the arts and humanities.

Mr. President, I was here in Washington at the time these concerns began. For what it has to do with it, it involved no more than 2 minutes to rise as a cosponsor to thank those who crafted this very thoughtful and balanced position and to note that it does, indeed, follow the recommendations of the Independent Commission which worked so ably under the direction of our former colleague from Connecticut, John Brademas, President of NYU, and Leonard Garment, who is so important a person in the history of the national endowments, both of the arts and humanities.

Mr. President, I believe the commission is exactly right. True, a small number of grants have been made which some have found offensive or inappropriate. And controversies arise again in the future. Yet, in the long run, I strongly believe that continuation of the peer review system, with its commitment to the artistic excellence, will serve us better than any alternative. This Senator, for one, does not believe that the Congress should be in the business of telling artists what is art, or requiring them to take loyalty oaths. And the American people agree. Several polls conducted since this controversy erupted have indicated that the American public overwhelmingly opposes censorship of controversial art, even if they find it personally offensive. And effective placement of content restrictions on Endowment-funded projects. Clearly, the American people recognize the importance of freedom of expression and the value of the arts.
year is passing. We saw it from the last vote.

We received good recommendations from the Independent Commission. The amendment reflects those recommenda-
tions. Peasants to the legislative process and the artists are once
again on their own to be as perplexing and fragmentant as they have ever been in our lives.

I thank the Chair.

Mr. MCCURe. Mr. President, I yield the Senator from North Carolina 3 minutes.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 5 minutes.

Mr. HELMs. Mr. President, I thank my friend from Idaho.

I am not much of a forecaster, but I will make one prediction without any fear of being contradicted: We will be in the same fix 1 year from now with respect to the National Endowment for the Arts that we are in right now. This amendment, as everyone knows, is a fig leaf. It is political cover for Senators who do not want to face up to the issue of whether the National Endowment for the Arts shall be required to be responsible.

We have heard all the arguments— we heard them last year—about the compromise language, which was itself a fig leaf and did not restrain the NEA at all. We are hearing the same false arguments today in connection with the amendment from my friend from Utah, and he is my friend.

Oh, it is going to take care of the situation: It is a step in the right direction, and all that good stuff. But I predict that such predictions are without merit.

Mr. President, the pending amendment basically provides that the NEA can and must recover its subsidies from any organization that uses NEA funding to produce materi-
als that are subsequently, subsequently, found to be obscene by a court.

Do we know the facts in that proposal? First off, the amount of money the Government would recover in most cases would be miniscule compared to the cost of bringing an off-
fender to trial. So, I make another prediction that the Government will not initiate even one lawsuit. I may be wrong. There may be one somewhere. But I expect there will be none.

Now, the second problem with the pending amendment is demonstrated by the outcome of the recent obscenity trial in Cincinnati. Just bear in mind that in that case one of the jurors acknowledged that the entire jury never felt that the homoerotic Mapplethorpe photographs were as the juror put it, "gross," and that the photographs appealed to a puri-
ment. We are told that the two prongs of the definition of obscen-
ity were violated.

Now, Mr. President, this is a juror telling us more of his fellow jurors felt. But, he said, since some experts had testified in the trial that the materials had "artistic merit," the jurors felt obliged to find that the materials did not meet the legal definition of ob-
scene because the law requires that materials lack artistic merit to be ob-
scene.

Now, if that is not newswise and double-wise, I do not know what is. In fact, it is a step at trial that the photographs had artistic merit—now get this—because the photos had been funded by the National Endow-
ment for the Arts.

Since the NEA is prohibited by law from funding anything that their experts do not consider artistic, and be-
cause those experts recommended funding for the Mapplethorpe show, the photos had to have artistic merit it was argued. And, therefore, by defi-
tion they could not be legally ob-
scene; even those photographs I have described two or three times on the floor this afternoon.

So Mr. President, this amendment of my friend from Utah creates a classic catch-22 situation. On the one hand, the amendment would require the NEA to recover its funding if a work is found to be obscene by a court. On the other hand, the works cannot be con-
sidered obscene if the NEA funds them. That, Mr. President, does not even make good nonsense.

So with all due respect to my friend from Utah, the pending amendment is nothing more than another attempt by supporters of the National Endow-
ment for the Arts, and specifically Mapplethorpe, Serrano, and all the rest, to perpetuate a snow job on the American people by hiding behind the technicalities of the Supreme Court's test for banning obscenity.

But, read my lips. We are not talking about banning anything. We are talking about requiring the American tax-
payer to subsidize the work of self-proclaimed artists, who produce sleaze, filth, and perversion.

Under the Hatch language Mr. Presi-
dent, the NEA would have to continue to fund patently offensive depictions of sexual or excretory activities and thus its support for attacks on the moral fiber of America. And that is the bottom line.

Nobody, nobody, not even Chairman Prohnmayer—a very pleasant man I met with two or three times—nobody, including him, has been unable to give me even one example of what the modern arts community would be will-
ing to concede is obscene.

In fact, it is one of the primary premises of the art world. Mr. Presi-
dent, that there is no such thing as ob-
scenity. The belief that any art can be obscene is a kind of cramp in the consciousness of the unenlightened (read that middle-
class American) mind.

Mr. President, Senator Roscoe C. Byrd, and I met with Mr. Prohm-
ayer. I guess, an hour and a half, and I was more impressed with him than anybody I was with the way Sena-
tor Byrd spelled out his feelings about the public funding of the filth that is being passed off as "art." He made it very clear in one-syllable words.

As a practical matter—and this is a

thing that I am making and I do not make it lightly, but I do make it unhe-

atingly—the Hatch amendment, which will be approved. It will be ap-

proved because it is a catch 22 for Senators who want to say "I did some-
ting about taxpayer funded pornog-

raphy" even though they did not and have not.

Mr. President, the Hatch amend-
ment will leave things exactly as they have been since the NEA was created. This was true of the coverup job perpetuated on the taxpayers a year ago. It is true of this coverup this year.

In 1989, for example, the NEA gave over a $1,000 for the one word poem "night." The NEA's supporters in response to the outrage told us to trust the NEA's experts.

In 1971, a group called the Living Endowment publicaly funded children ob-
scenities as part of a performance. The NEA's supporters response: trust the experts.

In 1973, the NEA helped Erica Jong write her book "Fear of Flying" which, among other things, recounts her having sex with a German She-

peter. The NEA's answer: trust us, we'll take care of the problem.

In 1977, William Proxmire gave the NEA the Golden Fleece Award for paying an artist to throw crepe paper out of an airplane. Again, we were told to trust the NEA, don't restrict it.

In 1983, Representative Mario Biagi objected to NEA support of a play with "disparaging ethnic images" and once again, the cry went out to trust the NEA.

In 1985, Congress finally lost its patience with the NEA's refusal to stop the NEA's support for homosexual poetry with descriptions and illustrations of men having sex with one another and with animals. Congress finally put a restriction into law which stated that the NEA's art experts shall recom-

mend for funding ONLY applications which in the expert's view, have seri-

ous literary, scholarly, cultural, or ar-

tistic merit." (20 U.S.C. 995(a).)

Well, what did we get from the NEA's experts as serious artistic merit after 1985? They gave us Andres Ser-
rano's blasphemous work and Robert Mapplethorpe's repulsive photos as examples of artistic merit worthy of funding.

What Congress disagreed with those offensive NEA judgments of artistic merit, we passed last year's watered down restriction, and once again the fatal mistake of leaving in a giant loophole.

As a result, the NEA's art experts have funded a number of patently offensive depictions of sexual or excretory activities and thus its support for attacks on the moral fiber of America. And that is the bottom line.

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tistic merit." (20 U.S.C. 995(a).)

Well, what did we get from the NEA's experts as serious artistic merit after 1985? They gave us Andres Ser-
rano's blasphemous work and Robert Mapplethorpe's repulsive photos as examples of artistic merit worthy of funding.

What Congress disagreed with those offensive NEA judgments of artistic merit, we passed last year's watered down restriction, and once again the fatal mistake of leaving in a giant loophole.

As a result, the NEA's art experts have funded a number of patently offensive depictions of sexual or excretory activities and thus its support for attacks on the moral fiber of America. And that is the bottom line.
October 24, 1990

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anything that is on the cutting edge is going to offend someone."

So, Mr. President, the Hatch amendment will continue the mistakes of the past and will not prevent the NEA from outraging the American public once again. It is time to put a real restriction on what the NEA may and may not fund in the way of sexually explicit materials.

The Hatch language does not do that, my amendment would have.

Mr. McLURE, Mr. President, I yield to the Senator from South Carolina 3½ minutes.

Mr. THURMOND. Mr. President, I rise in opposition to this amendment.

Under the amendment, the primary focus of the issue of funding of controversial art work and exhibits would be shifted to the courts. I believe the amendment falls short of ensuring that no Federal taxpayer dollars go toward funding obscenity or pornographic art work. Accordingly, I cannot support the amendment.

This amendment is similar to S. 2714, the National Endowment for the Arts (NEA) reauthorization bill recently reported from the Labor and Human Resources Committee. Under the amendment, persons or entities which receive NEA funds, and use them in creating or producing work found by a court to be obscene or in violation of child pornography laws, must repay the funds used to create the work. Additionally, the individual or organization could be debarred from receiving further NEA funds until it does repay the funds in question.

As a member of the Labor and Human Resources Committee, I do not oppose reporting S. 2714, the bill on which the present amendment is based, to the Senate. That bill reemphasizes and strengthens NEA accountability. However, I made clear, in the committee report, my concerns with respect to guidelines for NEA grant recipients.

In short, Mr. President, I believe the proposed NEA guidelines for receipt of Federal grants—as contained in H.R. 5769, the Interior appropriations bill—represent the better approach to this matter. These guidelines are similar to provisions contained in the Interior appropriations bills last year which I was pleased to support. Very simply, the guidelines would ensure that no Federal funds are used to promote, disseminate, or produce materials which may be considered obscene, and which, when taken as a whole, do not have serious literary, artistic, political, or scientific value.

I believe the establishment of guidelines for the voluntary acceptance of public funds, by duly elected representatives of the people of this country, is neither censorship nor a violation of constitutionally guaranteed freedoms. In my opinion, it is part of our responsibility, as elected officials, to ensure that limited Federal funds are used appropriately. The Interior appropriations guidelines would do just that.

The guideline mentioned above could serve as a reasonable check on the actions of the NEA, while allowing funding for appropriate projects to continue. Accordingly, I support the Interior appropriations guidelines and oppose this amendment.

Mr. McLURE, Mr. President, I yield myself such time as I may consume.

I might say parenthetically I have discussed this with the distinguished author of the amendment. He knows of no other speakers on his side of the issue. We may wish to have a little time to sum up his position.

I know of no other speakers on our side who desire recognition. I will just advise Members that, if that continues, we ought to be prepared to vote before too much longer.

Mr. President, I do not want to labor the point, but I want to reiterate that I think this amendment moves in the right direction in terms of reforming the process of adding to the process, but fails it in the central requirement of establishing responsibility in the NEA.

The NEA resolutely says: Do not bother us; we will take care of it. If they had been taking care of it, that is where the matter would rest. I think they are doing a better job. I think they will, so long as they are under scrutiny, do a better job.

I give Mr. Frohnmayer very much credit for having attempted to meet the obligation I believe that they have. What concerns me, however, is that the NEA does not see as much as it is of the arts community, with whom they must live and interact daily, how we continually say that it is none of their business if they spend our money.

I agree that they have the right, within the limits of the law, to do whatever they wish as individual artists. They have the right to draw, to produce, to exhibit, to perform, within the limits of the law. But they do not have the right to expect us to subsidize whatever it is they wish to do without regard to the desires of the American taxpayer to fund it.

I do not support any member of the arts community who will give the Senator from Idaho any credit for having fought off some of the efforts that have been made to slash the funding for the National Endowment for the Arts, because there are such efforts. There are people who wish to see that the work of some individual artist is not supported.

But even in the moment of victory, there is a warning here. For the fiscal year 1991, and the funding woes of the NEA, are not just the fault of Jesse Helms on the rampage. They are the fault as well of the art community whose members prefer to live in a rarefied climate, talking to each other, subject only to "peer review" and not to the American people who translate the word "art" into "amuse."

Mr. President, I ask unanimous consent that the entire article be printed in the Record at this point.
There being no objection, the article was ordered to be printed in the Report of the Same.

(From the Washington Post, Oct. 9, 1990)

A WARNING FROM THE MAPPLETHORPE TRIAL

(By Ellen Goodman)

BOSTON—There were times when the Metropolitan Museum of Art in Cincinnati, a single museum-goer, asked how art was determined—was it the culture at large, the circle of the art world itself, or just the art community? The museum's room—an art gallery—was tame enough.

But even in the moment of victory, there is still the worry here. This trial, and the funding woes of the NEA are not just the fault of Jesse Helms on the rampages. They are the fault as well of an art community whose members prefer to live in a rarefied climate, talking to each other, subject only to the restrictions and values that they translate the word "art" into "smut."

In many cities, there is still the knock on the museum's door. Having failed to make its case in public, the art community ends up making it in court. In the history of art, this is not a perfect moment.

Mr. McClure. Mr. President, that is the moment. Public support for the arts, which I wholeheartedly support, must be based upon an understanding of what is, what its value is, and public acceptance of the result. When you destroy public acceptance of the result, when you undermine the confidence of the process, you must inevitably reduce public support for what most of us believe is overwhelmingly in the national interest but cannot support if the taxpayers rebel.

Mr. President, this amendment will help push this away from public attention. And in doing so, it will invite further abuse, which will inevitably reduce public confidence, and therefore public support, for the funding of the arts. I appeal to my friend, it moves in the right direction, though it does not move far enough. The myth contained in the amendment that no action which is not criminal is worthy of support, simply is not supportable as a matter of public conscience or responsible public representation. Let's not in the United States do this. I hope the amendment is defeated.

I reserve the remainder of my time.

Mr. Hatch. Mr. President, this amendment is a classic compromise. There are those who do not believe that it goes far enough, and there are those right here in this body who do not want anything at all. The fact of the matter is that this amendment, has some teeth in it that will, get the National Endowment for the Arts to consider what it is doing in every way, shape, and form.

It is important to focus on 88,000 grants. Of the 88,000, only 20 are criticized. Probably, if you get it down to grants that are really offensive, you probably have 10 out of 88,000. Any agency in Government with a record of funding laws will be debarred for not less than three years or until the grant money is repaid, whichever is longer.

Mr. President, that is not in the Byrd amendment. That is not anywhere in the statute today. That is a tough sanction. Specifically, No. 1, a determination of whether or not an art work is obscene or is child pornography will be made by the courts.

No. 2, after a final court ruling that a federally funded work is obscene or is in violation of child pornography laws, the person or group convicted for violation of the obscenity or child pornography laws will be debarred for not less than three years or until the grant money is repaid, whichever is longer. So if NEA grants funds to a grantor in Utah, and if they grant it to somebody convicted of obscenity or child pornography, the grantee is supposed to pay it back. If they cannot, the NEA grantor is supposed to pay it back. If they do not, they are debarred for the rest of their lives and for the rest of the NEA in the future. So if NEA grants funds to a grantor in Utah, and if they grant it to somebody convicted of obscenity or child pornography, the grantee is supposed to pay it back. If they cannot, the NEA grantor is supposed to pay it back. If they do not, they are debarred for the rest of their lives and for the rest of the NEA in the future. That is tough. It is going to be an incentive to not allow this to happen.

We put in a lot of procedural changes, which I think are even more important. The amendment includes a series of changes in NEA procedures and basic NEA statutes. I will discuss a few of them. Number one, creation of a panel bank of art professionals and knowledgeable lay persons, and the addition of knowledgeable lay people to the review panels, not done in the past.

Two, standardization of panel procedures. No. 3, a requirement of site visits where necessary and feasible to view works, followed by a written report to the panels. Four, a requirement for a written public record of all panel deliberations and recommendations. No. 5, a requirement for rotating panel membership, so we do not keep the same people on the panel. No. six, a requirement for site visits, where necessary, and feasible to look at the work. No. seven, a requirement to have some sort of service on a review panel by any individual with a pending application for NEA assistance or by any employee of an organization with a pending application. We
Mr. HATCH. Will the Senator yield on that point?

Mr. MCCLURE. I yield to the Senator on an additional point.

Mr. HATCH. The fact that the grantor is responsible for the recoupment of funds is going to be a strong disincentive to grantees who get the funds use them appropriately. I think this amendment does have teeth—I know it does. The procedures we have in here are going to make everybody aware of what has to be done. I personally believe that this is the appropriate way to go, I hope our colleagues will vote for it.

Mr. MCCLURE. I yield back the remainder of my time.

Mr. ADAMS. 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 art that "may be considered obscene"? Almost anything may be considered obscene by some. As a young district attorney, I once was asked by attorneys to prosecute a man signing his name as Hugo M. Frye for sending a photo to a minor, through a mail carton to the mails, an image that in the eyes of the Federal courthouse was obscenity. 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 that would have given the Endowment the authority to decide whether an image was obscene. I voted for this bill with a heavy heart. But the compromise was necessary in order to prevent further constitutionality problems with 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 appropriation bill and to support the amendment offered by Senator Harkin.

The amendment before you is similar to the compromise adopted by the Labor and Human Resources Committee. The House has supported this language twice. Once during the consideration of the NEA reauthorization, and again during consideration of the Interior appropriations bill. Moreover, the amendment is also similar to language recommended by the independent commission that Congress created last year to review the Endowment controversy.

The amendment before the Senate today leaves the decision regarding obscenity up 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 certain sanctions. They would be prohibited from receiving a grant for up to 3 years. What is the controversy about? Its 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 programs that enjoys the kind of support and record of achievement as does the NEA.

The last 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 made in the NEA's 25 years of existence, but only a handful have created this controversy.

The NEA's record of achievement speaks well for itself. We must not abandon our support of the arts. I urge my colleagues to support the pending amendment by Senator Harkin.

Mr. KOHL. Mr. President, I rise today in support of the amendment offered by our colleague from Utah, Senator Harkin.

There are, it seems to me, a number of issues which have been raised and need to be responded to as we consider this issue. I have heard from constituents who want to abolish the National Endowment, who ask why we should spend anything to support the arts when we spend so little to support education or health care or some other noble cause. Now that is a legitimate question. And is Federal spending in support of arts—which appears to be the assumption behind much of the argument—I might be sympathetic to it. But Mr. President, the purpose of the National Endowment is to support the arts, not just the artists. The Endowment is designed to help programs which bring the arts to our children and our communities. As a result, our society benefits from the program more than an artist does. We don't fund the NEA to keep artists from starving; we fund the NEA to keep feeding our capacity for the arts.
During fiscal year 1989, it was possible to closely analyze the NEA grants and conclude that less than one-half percent of such items might be found offensive to some Americans, and those grants were mostly made as a result of mistakes. On the basis of 1,470 objectionable expenditures out of a $170 million budget, Congress embarked on this overly trod and ill-fated path of attempting to define obscenity for the purpose of funding the arts by adopting section 304(a) of Public Law 101-121: “None of the funds authorized to be appropriated for the National Endowment for the Humanities may be used to promote, disseminate, or produce materials which * * * may be considered obscene, including but not limited to, depictions of sadomasochism, homoeroticism, the sexual exploitation of children, or individuals engaged in sex acts and which when taken as a whole do not have serious, literary, artistic, political, or scientific value.”

During the past two years the National Endowment for the Arts has engaged in the highly criticized effort of attempting to comply with those restrictions. The restrictions have clearly impacted the funding of the arts. The Chairman of the NEA has usurped the decision-making authority of Council panels. Some of our outstanding artists have refused to play any part in a process that requires them to take an oath concerning the content of their work. And in June 1990, the General Accounting Office testified before the House Subcommittee on Postsecondary Education that the National Endowment had, “met its legal obligation to adopt reasonable controls designed to prevent violations of section 304(a) and that it has the ability to seek recovery of any grant funds that may be used in violation of section 304(a).”

Yet, here was we are again. Our distinguished colleague from North Carolina seeks further restrictions of the arts. Where, Mr. President, is the broken system that needs fixed? Why must we continue to politicize the arts, to debate the definition of obscenity, knowing full-well that matter is best determined by the courts? The amendment before us addresses the concern of reasonable Americans; it assures that their hard-earned dollars will not be spent to fund obscenity and child pornography.

The amendment states clearly that works determined by the courts to be obscene or in violation of child pornography laws are not eligible for Endowment support. It goes further to impose sanctions, including repayment of NEA funds that supported such smutty work and withholding of all future funds if those funds are not returned, the recipient is permanently barred from eligibility.

This is a strong and fair proposal, Mr. President. It protects the use of taxpayer moneys without sacrificing the first amendment to political whims. It sets into motion a process that will effectively prevent funding for art found to be obscene. And it protects the 99 percent of all projects which deserve the grants they receive.

The amendment also allows us to leave the definition of obscenity where it belongs: in the courts and local communities. The last thing the people in this country should want is Congress imposing its definition of obscenity and offensiveness on the American people.

I believe Supreme Court Chief Justice Burger was correct when he said, “The people in different States vary in their tastes and in their attitudes, and this diversity is not to be restrained by the absolutism of imposed uniformity.”

The amendment before us preserves for Americans, in all communities, the right to decide their own standards of decency. It prevents any American from having her or his tax dollars used to fund obscenity.

I back a year of open hearings and consultations and compromises to develop the amendment now before us. It is the best that we can hope for under these circumstances, Mr. President and I urge my colleagues to support it.

Mr. KERRY. Mr. President, I rise today in support of the amendment offered by Senator Helms. I believe it deals best with the issue of obscene and offensive art which receives federal grants from the National Endowment for the Arts. Therefore, I will oppose the amendments offered by Senator Helms which, while perhaps well-intended, are too broad in scope and would have unintended consequences.

I would like to commend my colleagues on the Labor and Human Resources Committee for their enormous effort in trying to forge a delicate and bipartisan compromise that allows the NEA to operate without imposing “content restrictions” on grant recipients while also providing the government with the necessary tools to recover money from those artists who produce “obscene” work, as defined by the courts.

It seems to me that there are two vital questions to consider regarding NEA funding for the next fiscal year. First: Can Congress reform the NEA grant process to make it more accountable to the American taxpayer? And second, how can Congress ensure that the NEA continue to provide millions of Americans with the important contribution it makes to our nation’s culture. I believe this amendment addresses both concerns by establishing enforceable mechanisms in the grant process without restricting the freedom of speech vital to artistic creativity.

Since its creation 25 years ago, the NEA has immeasurably enriched the lives of all Americans and has built a...
proud heritage of artistic accomplishment on which we all can stand. Let us not tear down the NEA by imposing content restrictions on grant recipients and forcing the Congress to micro-manage every single grant and determine whether it deems it obscene. However, I do not believe that the American taxpayer and the NEA will be best served by imposing content restrictions.

Instead, I hope we will support the Hatch amendment and implement the new standards and regulations it establishes regarding the awarding of grants. It opens the peer review system to ordinary people, not just those in the arts community, and in doing so, I believe the NEA and the American public will be better served. Moreover, unlike the proposal offered by the Senator from North Carolina, this amendment establishes accountability. It allows the government to reconsider a grant based on whether a grantee if a court finds the art work in violation of obscenity laws.

I would like to commend again the distinguished Senator from California for his active role in finding a balanced solution to this problem. The amendment is the result of months of compromise, and I'm pleased by the bipartisan Independent Commission. I urge my colleagues to adopt the amendment.

Mr. HATCH. Mr. President, 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.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Utah. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MITCHELL. I announce that the Senator from California (Mr. CRANSTON) is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Minnesota, Mr. BOSCHWITZ and the Senator from Oregon (Mr. HATFIELD) are necessary absent.

The result was announced—yeas 73, nays 24, as follows:

(Rollcall Vote No. 308 Leg.)

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The amendment (No. 3130) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, we are going to have a series of votes this evening. We have already had several today. All Senators are aware they are going to be votes. There are limitations on these amendments and yet we have had to hold these votes for very long times because Senators are late getting here. I have tried very hard, and I believe without exception that the yeas and nays have accommodated every Senator who has been anywhere near the Capitol, and held votes for a long period of time.

We are right down to the end now. When Senators know votes are going to occur, it is not too much to ask Senators to be at 15 minutes late so that we can expedite the business of the Senate.

One of the things we are going to have to consider next year is whether to revert to the strict 15-minute rule that was in existence in the previous Congress. But for now it seems to me that it is not unreasonable, not an imposition on any Senator, to ask Senators to come to the Senate floor as soon as a vote begins so that we do not have to hold these votes for a long period of time and thereby guarantee that we will be here even later than we have to be, which is already much too late.

I would just like to ask Senators out of courtesy to their colleagues to, over these next several hours and next few days, be thoughtful and considerate of others and to get there in prompt time for these votes.

I thank my colleague.

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

The Senate continued with the consideration of the bill.