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

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S. Amendment to H. R. 5769 (S. Amdt. 3130)

No. 147—Part II

Congressional Record

United States

PROCEEDINGS AND DEBATES OF THE 101st CONGRESS, SECOND SESSION

Vol. 136

WASHINGTON, WEDNESDAY, OCTOBER 24, 1990

No. 147—Part II

Senate

(Legislative day of Tuesday, October 2, 1990)

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, Durenberger, Simon, Jeffords, Dodd, Chafee, Simpson, 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 Senate (from Utah (Mr. Hatch), for himself, Mr. Kennedy, Mr. Pell, Mrs. Kassebaum, Mr. Metzenbaum, Mr. Durenberger, Mr. Simon, Mr. Jeffords, Mr. Dodd, Mr. Chafee, Mr. Simpson, 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:

"11) in subsection (a)(d), by striking '529' and inserting '3224';

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

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

"(4) by designating the second 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 inserting the ninth through the eleventh sentences of the existing subsection (a) as subsection (d);

"(7) in subsection (c) (as designated by paragraph (5)), by striking "clause (4) and inserting "section (a)(4)";

"(8) by striking the second sentence of subsection (c) (as redesignated in paragraph (5));

"(9) in subsection (g)(2) (as redesignated by paragraph (3)), by striking 'the last sentence of subsection (a)' and inserting 'subsection (d);' and

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

"(b) The Chairperson of the National Endowment for the Arts shall develop procedures that

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

"(i) creating an agency-wide panelist bank, containing names of both qualified arts professionals and knowledgeable laypersons that have been approved by the Chairperson of the National Endowment for the Arts, or the designee of such Chairperson;

"(ii) ensuring that such panels, where feasible, have knowledgeable laypersons serving on such panels at all times;

"(B) establish, where feasible, standardized panel procedures;

"(C) require, where necessary and feasible, the increased use of site visitsations to view, and issue a written report on, a work of an applicant in order to assist 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; and

"(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 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.

"(5) The Chairperson of the National Endowment for the Arts shall establish sanctions for groups or individuals who receive funds pursuant to the provisions of section 5, and use funds to create, produce, or support a project or production that is found to be obscene under State criminal laws or is found to be a criminal violation of State child pornography laws in the State or States in which the group or individual produced such project or production or in the State or States described in the grant award as the site or sites of the project or production, as determined by a court decision, after final appeal."

"(2) Except as provided in paragraphs (3) and (4), the sanctions described in paragraph (1) shall include—

"(A) repayment by the individual or organization that created or produced the project or production found to be obscene or to violate child pornography laws pursuant to the provision of paragraph (1) to the Chairperson of the portion of the funds received under section 5 that were used to create or produce such project or production in accordance with the provisions of section 5(3); and

"(B) ineligibility of the individual or organization that—

- This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Mr. President, I am proposing today adds to these requirements by specifying that the funds be returned to the NEA if a criminal court of law determines that the project funded by NEA is obscene or violates child pornography laws. The National Endowment for the Arts shall have the authority to prevent direct or indirect subsidies to projects of this nature. Artists will also have the right to refuse to receive funds from the NEA in cases where the whims of individuals in Government who may fashion a standard based on their personal values rather than on community values.

Additionally, NEA will have specific authority to recover grant money that was used to support projects offensive to taxpayers. However, the amendment I am offering further strengthens the efforts of the distinguished Senator from West Virginia...
people throughout our country. These significant achievements and the events that have strengthened our Nation and I think they have enriched our people.

In Utah, the National Endowment for the Arts in our State, a small
inermountain 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 Shakespearian plays in the summer. Arts festivals, and other approaches. Without us, just would not have had the quality of arts appreciation or life we have today. Today, Utah has become a colony for artists of all forms of art. It has uplifted all of us
out 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 experiences 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 1985; 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 a job as the Endowment has done. 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 ought to be proud

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 Utahns 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 in making all of these things possible. That is how good work the National Endowment for the Arts has been obscured by several highly controversial grants. The people of this country have been justly outraged by some of these grants and some of the
funding of a small number of highly objectionable artists and the questions and believe the inclusion of the language so overwhelmingly approved by our committee would have been the right decision. Of course, we began our work in earnest last spring with a series of hearings in the subcommittee that explored the Endowment grant process in detail. Witnesses testified from all corners of the political spectrum and offered thoughtful and useful insights into the controversy which has been with us for over a year and a half now.

The Committee on Labor and Human Resources carefully reviewed the testimony and began a long and ongoing effort to find the best way to make the Endowment grant process as accountable as possible to the public who is the ultimate sponsor.

Congress has to continue to encourage broad support of the arts ensuring that the Endowment assists projects that support the diversity, talent, beauty, and cultural heritage of 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 sure hope they 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 so often been in the arts.

Mr. FELL. Mr. President, it is a pleasure to rise as a cosponsor 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. We 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.

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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 win broad 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 we favor. By presenting this amendment, we offer Members of the Senate the opportunity to respond to the work of the Labor Committee that was developed 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. Obscenity 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 violating 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, that

"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 difficult 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 Interim or 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 use this time to commend the work that he and Senators PELL, KENNEDY, and KASSEBAUM have devoted to resolving the 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 co-sponsored, modifies that language with regard to who makes the determination. The compromise language was patented by the Committee on Labor and Human Resources. That compromise language addresses the question of Federal funding of child pornography and obscene pornography by deeming anyone convicted by a court of creating or producing such work from NEA funding for at least 3 years, and requiring Federal funds used to support 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 obscene 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 court 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 determine. Although private and congressional action have focused on "obscenity," the term is ambiguous. In a narrow, legalistic sense, obscenity involves the exact standards or proof prescribed most recently by the U.S. Supreme Court in Miller versus California. It is certainly appropriate for the courts to make these decisions.

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

Therefore, by requiring that the Chairman of the NEA be responsible for determining such an inexplicit term, we are creating a tremendous burden upon the Chair.

As the bipartisan independent commission, named by President Bush and led by Senator Kassebaum and Senator Hatch 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 it can make the necessary due process findings of fact and conclusions of law involved 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.

This is the conclusion of a commission that this body established in order to resolve a conflict that threatens to paralyze the National Endowment of the Arts. The Hatch amendment, which I co-sponsored, moderates that language in such a way as to place the responsibility of the courts. The Hatch amendment is a balanced approach to the problem that I urge my colleagues to support.

The Hatch amendment addresses a sensitive issue. They have worked out what I think is a very excellent reconciliation of the difficulties we have and, of course, make grants that comply with Federal and State law but the appropriate forum for the formal determination of obscenity is the courts.

By keeping the language as included within the appropriations bill, there is no question in my mind that it will fail a first amendment test. It would represent an impermissible attempt by the Federal Government to regulate speech through a Federal-funded program. I am afraid that we will have created an atmosphere in which artists will fear
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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 determining obscenity in the courts and further argued that such a system would uphold 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 extolled 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 thrill of being involved in the arts.

Between 1965 and 1988, the NEA reviewed approximately 302,000 grant applications and funded approximately $5,000 grants. Last year alone, more than 17,000 grant applications were considered, resulting in 4,600 grants to artists and art programs. The national attention focused on the NEA involved two particular artists. Together these grants account for less than 1/10 of 1 percent of the total 1988 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 1/10 of 1 percent to ensure that we do not stifle the potential of the next great 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.

The PRESIDING OFFICER, who yields time.

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

The PRESIDING OFFICER. The 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 this afternoon in support of his amendment.

Mr. President, I would like to pick up on a point the Senator from Utah made. I think he made it eloquently 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 commenting on the National Endowment for the Arts.

When you have a Federal agency after 25 years that extends $5,000-plus grants and at the end 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, $5,000 grants, has 20 cases they can point to where the Hatch amendment would have worked.

In cases the grants were not even made to artists. They were made to museums, who in turn, made the grants or awarded grants to artists. So that the Hatch amendment was not 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 around 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 $1.6 billion from private contributions to support artistic productions across this country.

That is a remarkable incentive for generating the private capital to support art in this Nation. In the absence of that kind of seed money, if you will, I suspect what he does, that that number would be vastly 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 we are going to produce 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, Mr. President, that we believe enough in you, if you will, 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 out to 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 the artists who are on sort of the cutting edge.

So when we hear of artists who are performing things or performing productions, or engaging in production 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 in this Chamber today, would recognize that, often, it 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.

As 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 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 was to be offered. My only hope 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 we are going to end up with an NEA that will 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.

I urge the adoption of the Hatch amendment, and hope we can finally put this issue behind us, and recognize the significant contributions 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 flatter around on the piano a little bit. Somehow my folks got their hands on a 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 that. But I did get it standing up for the violin. My folks encouraged my interest in music and spent less on groceries so I could get spend a little and learn the violin at the Pittsburgh Symphony Orchestra, and the old Syria Mosque in downtown Pittsburgh. I walked 2 miles, rode streetcars, transferred all the way over to Oakland, sat in Peanut Heaven in the Syria Mosque, and listened to the great Pittsburgh Symphony Orchestra play.

I saw all the great artists: Roberta Peters, Fritz Kreisler, Rubinstein, 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 loving mother and devoted father for the sacrifices they made for me. 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 schoolground.

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 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 love the arts, and play an instrument, see a symphony orchestra, ballet, opera, hear the reading of poetry, or other great works of fiction, attend debutante balls, live jazz, art exhibitions, art festivals, or museums, depends upon seed money from the NEA. The few dollars of seed money given to the NEA, add up 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 feels about pornography, obscenity, and, criticism of our fellow men. I do not believe that content restrictions will help further the Arts, that the restrictions will hurt the arts. Some will say that my amendment does not do enough. Others will say it goes 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 like the country experience the arts and I want to see them continue as a viable agency. This is an important decision; it 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 through all 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 the arts.

I have to say, to my dying day, I will be grateful to her, and for what she taught me. NEA exponentially has done more 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 do not want to offend any Senator. But if there was ever more irrelevant oratory about a matter in this U.S. Senate than we just heard from several Senators, I have never heard it.

First of all, let us click off a few things. You always hear that only 20 cents goes to the arts. It has been good to me—I have never heard it.

In any event, I say to my good friend Mr. Hatch. I will say, to my good friend—Mr. Helms often says she wants to adopt Orrin Hatch, because he is such a nice young man. But the hatchet about the violin. Well, I played the violin, too, when I was a boy, until the instructor called my mother and said "I cannot teach your kid any more."

Mr. HATCH. I can 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, the organ, and the piano. 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 at all.

But we are not talking about violins or symphony orchestras or choral groups. We are talking about the kind of art that my good friend—Mr. Helms 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, we just say that we want to do this, but it seems relevant to me. Senators have come to me and said, "I agree with you, my wife is active in the arts community, and she said, 'Buster, you had better not vote for Helms' 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 banning anything. Let that be made clear. We are talking about the use of the taxpayers' money to...
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...fund flow... Whether there have been 20 or 10 or 200 offensive grants, nobody knows. Nobody really knows if there have been 65,000 grants. I do not know about that. But I do know that even one pornographic photograph by Mapplethorpe is too many for the taxpayers to have to fund.

The amendment of the Senator from Utah will probably pass because it gives some political cover for the Senators who have just voted against my amendment. That is all it does. And all that it was meant to do.

But let me tell you something. If the amendment’s supporters are really expecting to get NEA grants back from artists who have been taken to court and convicted of an obscenity violation, I would advise them not to count on it. In the first place artists are not going to be taken to court. And even if they are, they are not going to be convicted. You just have to look at what happened in Cincinnati to know that.

Mr. President, we cannot duck our responsibilities. But the Senate is ducking it; the Senate ducked it last year and passed some fig leaf legislation to get around my amendment last year. And the Senate continued, unabated, of course.

I guess I am old-fashioned. Mr. President, but I do not like to talk on the Senate floor about the kind of stuff that has been funded and taxpayers’ money wasted on—like the woman who urinated on the stage and after the gynecological examination.

Inquiring about Mr. President. That is all I am talking about. That is all I have ever talked about.

We are not talking about the 85,000 good things. Mr. President. We are talking about the sleazeballs who have been getting money from the NEA under the pretense of having produced something that they cannot.

I submit to you that that is a farce. It is worse than a farce; it is a fraud upon taxpayers—5,000 grants. The United States of America. I will not be outvoted every time, I suppose, but I will keep trying, Mr. President.

I will say one more thing.

I have a friend who came to the office not long ago, and he stopped before the Archives Building on the way to the Capitol to see me.

He walked in, and said, “Jesse, I just had an interesting experience.” He said, “We stopped at the stop light in front of the Archives Building, and I looked on the marble there, and there were the words ‘What is past is prologue.’” He said, “I thought I would like to have that put on my gravestone. So I said, ‘Driver, what does what is past is prologue mean?’” He said, “I thought the cobbler would say I do not know. I did not. I am a cabinet officer, and he said, ‘That means you ain’t seen nothing yet.’”

Assuming that I am still in the Senate next year—I do not know whether I will or not; that is up to the Lord and the people in North Carolina—but assuming that I am here, I say that we are the best arts community, and all of the homosexuals and all the rest, who are upset about this amendment, what is past is prologue—You ain’t seennothing yet.

I thank the Senator for yielding.

Who yields time?

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 experiments by two artists: Robert Mapplethorpe and Andres Serrano. As a result of the uproar, Congress struggled for months with the question of what should constitute 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 pleased 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 controversy. Clearly, art should be offensive, or pornographic. And not because I believe so-called lascivious artists should prosper on taxpayers’ money.

I spoke because in my view, the amendment came dangerously close to prescribing what should constitute “art.” And for me, that came dangerously close to censorship—a very, very slippery area. I do not endorse pornography. No one does. But I also do not want to see doused our much-admired American spirit, our ability to express ourselves freely and creatively. As President Bush has said to a national radio or op-ed: 25 million watched dance performed on TV; 31 million listened to jazz on the radio; 36 million visited art museums, and 96 million Americans read short stories, poetry, or plays. Since 1986, the arts have exploded in growth. The number of dance companies doubled in the past 25 years, from 375 to 700. The number of dance companies jumped sixfold, from 37 to 250. Non-profit theaters went from 62 to 420. So
our interest in the arts is strong. Americans are taking active part in the cultural field.

But you do not have to become a museum-goer to enjoy the arts. Many daily local activities are arts-oriented. Libraries, museums, parks, theaters, and other facilities are open to all for their cultural enjoyment. NEA grants provide support for the arts in a variety of ways. The NEA funds are not reserved exclusively for art institutions. In fact, the broad, diverse range of projects and programs that receive NEA support would be a big surprise to most. Schools, churches, community 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 only to a very few, they are projects that are accessible to everyone. Among the projects that improve the quality and richness of our lives, our children's lives and ours. Most of us have probably never seen a number of the projects that NEA projects and programs have supported. Take for example, here are just some of the hundreds of NEA-supported Rhode Island projects: "Project Discovery," which allowed 18,500 students to attend 41 performances at Trinity Repertory Co. in Providence; 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 Art; 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 Playlets; 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 radio station's "Fresh Air" writers interview program; The Vietnam War Memorial; The Metropolitan Opera "El Premio" and "Great Performances" on public television; and The American Film Institute.

That is an impressive list. One further example: All four 1990 Pulitzer Prize winners—music, fiction, poetry, playwriting—received, at one point in their respective careers, NEA grants.

I strongly endorse the Hatch amendment because it addresses many concerns that have been raised. It would debar from NEA funding for 3 years anyone convicted of creating and/or participating in the distribution of child pornography. The rule 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's report states 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 "[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." And that is certainly true in my State, Mr. President.

To be honest, I would have preferred a clean 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, if there remains concern about the NEA and its work, then I believe that the compromise crafted by the distinguished Senator from the Chuckles is a reasonable and workable solution. At least it is more workable than what we have seen in the past year.

So let it be the fires of originality burn. There might be some singing, but I think that is a risk worth taking if we want to allow American creativity to shine. I do not think we want to see safe art—that of the lowest common denominator—become the only art supported by the NEA. The NEA has helped our art programs flourish. That is what it was created to do. And it is working.

So I hope we will adopt the compromise, I think we should. Mrs. Kassebaum. Mr. President, I strongly support the Hatch amendment and I am indeed a cosponsor. This 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 House. In fact, the amendment is the culmination on the part of many to try to achieve a compromise that would address the question of accountability on the National Endowment for the Arts.

I think that this amendment does that.

There are many people in Kansas as well as I, would suggest, 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 those concerns.

I deeply regret that we are not able to consider this issue as part of the full reauthorization bill. Because it appears 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 assures accountability in two ways:

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

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 is 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 it money back.

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

Third, it places decision-making 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 made a strong statement regarding the appropriate use of tax dollars, which would establish clear standards, and which would be effective.

The Hatch amendment meets these goals. With respect to NEA procedures, we are proposing a number of reforms to be included in the basis NEA statute. The goals behind these changes are:
To broaden input into the process by adding lay people to review panels and requiring rotating panel membership; To include complete 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; and 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 national celebrated institutions, groups, and individuals but also extending the reach of the Arts to communities in all corners of the country.

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 been seeking 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 National Endowment for the Arts.

Let me urge my colleagues to lend support to the Hatch amendment.

I yield the floor.

The PRESIDING OFFICER. The time has expired.

Who yields time?

Mr. McCLEURE. Mr. President, I yield myself such time as I might consider necessary.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. McCLEURE. 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 Senator wishes to refer to it, there is reference made to "violating the 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 No. 1 is found on page 5, lines 6 through 16. Am I correct?

Mr. HATCH. I believe the Senator is correct.

Mr. McCLEURE. 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. McCLEURE. 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. McCLEURE. 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 law.

Mr. HATCH. That is correct.

Mr. McCLEURE. 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. McCLEURE. I assume you do not find something a criminal violation unless there is a statute.

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

Mr. McCLEURE. 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. McCLEURE. 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 that the 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 National Endowment for the Arts, 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 under the Constitution 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 the 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. McCLEURE. 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 why did he not do something about that.

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

Mr. McCLEURE. 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. McCLEURE. I am happy to yield.

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

Mr. McCLEURE. No, 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 on, is that some of these illustrations he brought up are very serious. They have to be paid attention to. I think Senator Helms has done the country a service in raising the issue.

Mr. McCLEURE. Let me recover my time.

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

Mr. McCLEURE. Surely.

Mr. HATCH. That is, the National Endowment has stated that it did not fund Annie Sprinkle.
Mr. McCLURE. Come on.

I recover my time at this point. I will respond to that.

Mr. HATCH. Just a moment, I will yield back in a minute.

Mr. McCLURE. 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 will not accept 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 our reviews and see that 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 the National Endowment's responsibility for the Arts has.

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

Mr. McCLURE. Yes.

Mr. McCLURE. 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 want 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, that's another matter here. Annie Sprinkle's show was 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 forever 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? 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 enumerated 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.

The PRESIDING OFFICER. (Mr. Bingaman). The time of the Senator from Kansas expired.

Mr. McCLURE. Mr. President, I would say to my friend from Kansas—and she is my friend and an excellent Senator and I have a very, very high personal regard for her, so my comments are not personal in any way. I heard what the Senator said. I think she is dead wrong.

Now I agree that the movement in this bill, in the amendment before us, is in the right direction. I think I 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, that I read the amendment to say that those panel members must be selected from a group who has been approved by the chairman.

Now if that is not a rubber stamp or lop-sided 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 say more about this 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 we have any right to even ask accountability.

That is why it is important, from the standpoint of this Senator, that we attempt, as feebly as it might be, to attempt to write something 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" 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 ever 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 paid 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 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 that 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 give attention that is focused on this subject by these kinds of debates, we will see more rather than less of the inappropriate expenditure of tax dollars.

I am not willing to see that happen. Therefore, oppose this amendment even though I think it moves in the right direction local’s I have a 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.

The National Endowment has in this country will, I hope, continue to focus on our activities, as to whether or not we have met our responsibility to make certain the attention on the National Endowment to make certain they have met their responsibility.

I am happy to yield the Senator 5 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 5 minutes.

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 apply 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 wife’s tax dollars and someone who represents 5.5 million people in the State of Indiana, many of whom have been deeply offended by the works of art, whether it be funds to works of art, whether it be funds to works of art, whether it be funds to works of art that were paid for by my tax dollars and my wife’s 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 for 2 years here. Do not see that we can, in the midst of a budget deficit crisis that is going to, unless we pass another continuing resolution, shut this body down in the night, that has caused months and months of anguish and negotiation over a Federal deficit, I do not understand how we can be standing here saying we have no basis to put any restriction whatsoever on how taxpayers’ dollars will be spent by an agency that frankly many people just do not know what it is we are doing, put some preconditions on dispensing the funds, they are going to be demanding that we shut down some of these programs. I do not think the amendment of the Senator from North Carolina is in any way unreasonable. We are trying to put some preconditions on dispensing of Federal funds, that we believe that the kind of tax dollars that we have been and are very offensive to the American public. I know the efforts of the Senator from Utah and others over several months to fashion a process solution to the problem have been laborious and toughly negotiated. But those are after-the-fact restrictions. The kind of line drawn in the sand to lines to the NEA as to how they shall dispense the funds before the fact. Simply saying if a court somewhere finds a work obscene, then the artist really do not think we should cut off the National Endowment’s funds to this body should 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 preconditions on HUD or the S&L’s and what money they can loan because they ought to have unfettered 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.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I yield 3 minutes to the distinguished Senator from Illinois.

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

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 yet. When my friend from Indiana says that we have guidelines for other agencies and he mentions HUD 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.

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

Out of 85,000 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 my 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 Tennessee, an equalizer to cosponsor, is sensible middle ground. I think we have an Administrator of the National Endowment for the Arts who is moving us in the right direction. I think this is the amendment that should be accepted, and then we can discuss and speak of 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: though 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 the arts as part of the pursuit of American greatness.

Because of the recent controversy associated with the National Endowment for the Arts (NEA), its aims have come to the forefront of discussion. If a government wish to support the arts, it must be careful to see that its action leads to an enhancement of the substance of American culture. The arts, like literature and the sciences, are a part of American identity. As such, the arts must be supported to maintain their vitality.

Federal involvement in the arts is not new. In the past, Government in- volveinent in the arts meant preserving it as a symbol of status and wealth and limiting its benefits to the elite. The NEA, on the other hand, is an effort to make access to the arts an important part of the American experience.

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 United States. By 1965 there were only 60 professional orchestras, today there are over 212; there were only 56 professional non-profit theaters, today there is a network of over 400. Today more people attend cultural events than attend sporting events.

The NEA promotes access by supporting the Prairie Wind Players in Barrett, the Chamber Music Society in St. Cloud, the Duluth Superior Symphony, 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 Giovanni Gourhan. 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 Daughters of Mary Help, on St. Paul's West Side. I am only too pleased to say that NEA funds have helped bring her story to life for the many individuals who have not been as fortunate as I to have been personally touched by her.

The second priority of national funding centers today, in the belief recognized by 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. What is now a national organization like the NEA can bring.

What does this recognition mean for different communities and different States? I keep in mind that 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 have not been the 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 transformed 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 exemplifying that artist and the arts community, but also acts as a catalyst for private sector support. In 1988 Endowment grants totaled $1.6 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 delimit our 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 New Deal. 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. The net result is that 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 unambiguous and unqualified rules. Works of art they find offensive or obscene. Obscene, as defined by Webster's dictionary is "offensive to modesty, or decency." I suppose a lot of art could be classified by some to be offensive to modesty, 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 and advisable to add restrictive language prohibiting the NEA from funding obscene art? The Independent Commission instructed by
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Mr. DURENBERGER. Mr. President, in summary, I rise in support of the Hatch amendment to substitute the language which we passed 15 to 1 amendment protection of freedom of expression.

The Endowment has an outstanding record of success and achievement. Not even its harshest critics can point to more than a handful of controversial, or questionable grants in the entire quarter century of its existence. The National Endowment has had an extremely positive impact on the lives of all citizens of our country. Before the Endowment came into being, awas mostly exclusive. now they reach every corner of America. Since 1965, 100 local arts agencies have grown to over 2,000. Total State arts budgets at that time

this country, for people who are poor as well as rich, people who live in rural areas, as well as in big cities. The folks in New York City and the folks in a little town called Barrett, MN, population 388, which has now a nationally recognized Prairie wind players in this little town of Barrett, MN, and because of the recognition to the people in New York City, and in Barrett, MN, today, as compared to 1965, there has been a growth in professional dance companies from 37 to 250; in 1965 there were only 60 professional orchestras in America; today there are 212. I could go on and talk about nonprofit theaters. We talk about individual artists. That is the responsibility that this body has and every one of us has to the taxpayers, to the people of this country.

Our second priority, is to bring recognition to the very best of America’s artists, and through a system of national recognition, made it clear that the cultural diversity of this country, that is so well represented by our artists, is conveyed from one generation to another. You cannot do that in Barrett, MN. You cannot do that just in St. Paul, MN. You can only do that through this National Government and the instrument of the National Endowment.

I strongly support the substitute language of my colleague from Utah. The PRESIDING OFFICER. Mr. Hatch. I yield 2 minutes to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I regret I was not here earlier in the debate as one of the principal sponsors, along with Senators HARK, KASSERMAN, and PELZ. We were in the conference on the immigration bill. I commend him for the excellent leadership he has provided in this extremely important area of American public policy.

The debate on the future of the National Endowment for the Arts has consumed this body for over a year. Were this truly a debate about the proper role of the Federal Government in supporting the arts, it would be significant enough. But even more significant, is this assault on the First Amendment protection of freedom of expression.

The Endowment has an outstanding record of success and achievement. Not even its harshest critics can point to more than a handful of controversial, or questionable grants in the entire quarter century of its existence. The National Endowment has had an extremely positive impact on the lives of all citizens of our country. Before the Endowment came into being, arts were mostly exclusive. now they reach every corner of America. Since 1965, 100 local arts agencies have grown to over 2,000. Total State arts budgets at that time
totaled $2.7 million; now the States spend a total of $268.3 million.

Quality and excellence have been the hallmark of Library Theatre.

The last 11 Pulitzer Prize winning plays were developed with the help of NEA grants. And film. Last fall, '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 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 Mstislav 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. MARY K. HATCH. 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 Senator from Utah 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 entire job that the Endowment has been doing. It's time to put this controversy into perspective once and for all.

Over the last 25 years, the National Endowment for the Arts has compiled an outstanding record of achievement, encouraging and supporting artists and groups 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 four dollars in private donations.

To a great extent, the Endowment has been responsible for the explosion of dance companies, theater groups, and opera performances which has occurred over the last 25 years. In 1965, when the NEA was authorized, there were only 27 professional dance companies in the United States; today there are at least 250. In 1965 there were 56 professional orchestras; today there are over 200 professional orchestras, and opera performances in the United States. Today, there are over 400, and the vast majority of new American plays and plays rights are secured from this nonprofit sector. In fact, the last 11 Pulitzer Prize winning plays were developed at NEA-funded nonprofit theaters.

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 Alvin Alley.

The Ohio Arts Council used NEA funds to support the presentations of master folk artists Lois E. Eide, a quilter from Bucyrus, Donald McConnell, a woodworker from Mount Vernon, and Robert Radeck, a musician from Wellston, and their apprentices.

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

A 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 schools, and to develop a 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 edu-
Endowment support has also contributed to economic development, revenue generation, and the creation of jobs. Cleveland's well-known Playhouse Square, for example, which has brought important cultural and economic advantages to my own home city, was begun with a challenge grant from the National Endowment for the Arts.

The Cleveland Ballet, which has enjoyed Endowment support, employs nearly 300 men and women, and estimates its contribution to the local economy at more than $12 million annually.

These are just a few examples of the many ways in which the Endowment has helped to generate support and enthusiasm for American arts.

It is important to note that the Endowment's peer review system of awarding grants has generally worked well, while protecting artistic freedom from Government control. It is the rare exception when public funds are used to support art which elicits widespread public opposition. Throughout the 25-year history of the Endowment, it has awarded more than 35,000 grants, only some 20 of which have stirred controversy. That is a pretty good record. I wonder how many other Federal agencies or departments can match it. Certainly not HUD or the Pentagon.

No doubt, like any system, there are always ways it can be improved and fine-tuned. The Chairman of the Endowment has already taken a series of steps in this regard. And the amendment I have proposed from Utah includes a number of procedural reforms approved by the Labor and Human Resources Committee to increase accountability.

In addition, our amendment addresses responsibly the concerns which have been raised regarding funding of obscenity. The amendment will substitute the compromise language on obscenity which was approved by the Labor and Human Resources Committee in its reauthorization bill. This language, offered in committee by Senator HATCH, ensures that no Federal funds will be used to support obscenity or pornography. By deeming from NEA funding for at least 3 years anyone convicted of creating or producing such work and by recouping all Federal funds used to support such work.

Frankly, this approach was not my first choice. I cosponsored and strongly supported the original legislation proposed by President Bush to authorize the Endowment without any changes in this area.

But I believe this is a reasonable and workable compromise, which addresses concerns about obscenity, but puts the issue where it belongs—in the courts, in the country, and in the children's chorus.

Mr. President, it is ironic that, when we are all focusing on the task of 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 newly 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 that kind of real creativity entails. But an artist must challenge, must controvert the establishment. To put that creativity in the name of public sensibility is to deny to society one of its most significant resources.

It could not have been said better, and it was said well to heed the words of Vaclav Havel. I urge my colleagues to support the amendment.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator from New York is recognized for 2 minutes.

Mr. MOYNIHAN. Mr. President, I believe there is 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 the floor, 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 the floor, 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.

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Mr. President, I believe this is a reasonable and workable compromise, which
year is passing. We saw it from the last vote.

We received good recommendations from the Independent Commission. The Senate committee requests those recommendations. Peas were given to the legislative process and the artists are once again on their own to be as perplexing and aloof as they have ever been in our lives.

I thank the Chair.

Mr. McCLURE. Mr. President, I yield the Senator from North Carolina 5 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 material that is subsequently, subsequently, found to be obscene by a court.

But do you know the flaws 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 offender 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 was convinced that the homosexual Mapplethorpe photographs were as the juror put it, "gross," and that the photographs appealed to a prurient interest, and thus the first two prongs of the definition of obscenity were violated.

Now, Mr. President, this is a juror talking, talking 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 obscenity because the law requires that materials lack artistic merit to be obscene.

Now, if that is not newspeak and doublespeak, I do not know what is. In fact, it is how the jury argued at trial that the photographs had artistic merit—now get this—because the photos had been funded by the National Endowment for the Arts.

Since the NEA is prohibited by law from funding anything that their experts do not consider artistic, and because those experts recommended funding for the Mapplethorpe show, the photos had to have artistic merit and was argued. And, therefore, by definition they could not be legally obscene; 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 provide funding if a work is found to be obscene by a court. On the other hand, the works cannot be considered 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 Endowment 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 taxpayer to pay public money for self-proclaimed artists, who produce sleaze, filth, and perversion.

Under the Hatch language Mr. President, we 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 Prohmann—a very pleasant man I met with two or three times—nobody, including him, has been able to give me even one example of what the modern arts community would be willing to concede is obscene.

In fact, it is one of the primary premises of the art world. Mr. President, that there is no such thing as obscenity. Mr. President, there is 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. Byron and I met with Mr. Prohm­nayer, I guess, an hour and a half, and I was more impressed with him than anybody I was with the way Senator By­nour 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.

Mr. President, the Hatch amendment will leave things exactly as they have been since the NEA was created. This was true of the coverup job perpetrated on the taxpayers a year ago.

It is true of this coverup this year.

In 1988, for example, the NEA gave over a $1,000 for the one word poem "Flatt." The NEA's supporters in response to the outrage told us to trust the NEA's experts.

In 1971, a group called the Living Stage published public obscenities 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 Shepherd. NEA's supporters response: 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 Biaggi 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 support to 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 recommend for funding ONLY applications which in the expert's view, have serious literary, scholarly, cultural, or artistic merit." (20 U.S.C. 959(a)).

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

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

As a result, the NEA's art experts have funded a number of sex-positively explicit and works. In fact, the NEA's Visual Art's director says, "art is always on the cutting edge, and
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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 restraint 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.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. 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 tax payer dollars go toward funding obscenity or pornographic art work. Accordingly, I cannot support the amendment.

This amendment is similar to S. 2734, 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. 2734, the bill on which the present amendment is based, to the Senate. That bill represents an effort to stabilize and strengthen 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. 5669, the Interior appropriations bill—represent the better approach to this matter. These guidelines are similar to provisions contained in the Interior appropriations bill—ultimately 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 and their 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. McCLELLAN. 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 be 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 it fails 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 Senate did not do as much as it is of the arts community, with whom they must live and interact daily, we continually say that it our money. And the very debate over this issue erodes public support for the funding of the arts.

It was never said better than in an article for the Boston Globe newspaper company by Ellen Goodman, which was reprinted in the Washington Post on Tuesday, October 9. Mr. President, I will not read the entire article, but put in two or three things that will make the point splendidly well, and I will emphasize that portion of my concern.

There were times when the Mapplethorpe trial in Cincinnati produced testimony worthy of the title attached to the museum exhibit: "The Perfect Moment."

Perfect Moment No. 1: Prosecutor Frank Prouty holds up two photographs, one of a male genitalia and one of the art director who chose these images for the show: "Would you call these sexual acts?" His answer: "I would call them figure studies."

Perfect Moment No. 2: Prouty questions the author of the amendment, Dennis Barrie, about this photograph of a man with his finger inserted in his penis: what is the artistic content of that?

He responds: "It's a striking photograph in terms of light and composition."

She goes on in the same article to say:

The seven photographs at issue in this trial contain some grotesque subjects. In one of them a man urinates into another man's mouth. Show me somebody who can look at that photograph and think about the composition, the symmetry, the classical arc, recognize there's an advanced degree in fine arts.

Further on in the article, she says:

But even in the moment of victory, there is a sense of waming here, 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 an art community whose members prefer to live in a rarefied climate, talking to each other, subject only to review and attack by those who translate the word "art" into "smut."

Mr. President, I ask unanimous consent that the entire article be printed in the Record at this point.
I think it is important, before we finish, that I review what this amendment does. I have done it obliquely up to now, but I will go into a little more depth. The amendment addresses the question of Federal funding of obscenity or child pornography. It debars an entity from receiving NEA funds for at least 3 years—they can do it for more than 3 years—anyone convicted of creating or producing such work, and recouping all Federal funds used to support such works.

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 3 years or until the grant money is repaid, whichever is longer.

The Mapplethorpe trial in Cincinnati produced testimony worthy of the title attached to the show: "The Perfect Moment." Perfect Moment No. 1: Prosecutor Frank Prouty holds up two photographs, one of a man with a small whip in his rectum. He asks the art director who chose these images for the show: "Would you call these sexual acts?"

She answers: "I would call them figure studies.

Perfect Moment No. 2: Prouty questions museum director Dennis Barrie: "This photograph of a man with his finger inserted in his penis, what is the artistic content of this?"

He responds: "It's a striking photograph in terms of light and composition.

Perfect Moment No. 3: This one occurs when even the most devoted defender of free speech was momentarily left speechless by the page from the lawyer's closing argument to the art community: "As a result of the trial, the composition, the symmetry, the classical structure, and public acceptance of the result.

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 support for the arts. I do not wish to see this happen.

Mr. President, this amendment is a classic compromise. There are those who do not believe 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, as I have said, has some teeth in it that will get the attention. If the taxpayer says, 'I do not wish to see this happen,' we will have succeeded.

Mr. President, this amendment will not be perfect. As I have said, it is a case of the proverbial "a hair out of a Mapplethorpe show would be like leaving the tortured black paintings out of a retrospective of Goya's work. It wouldn't be legitimate to pick and choose the sunny side of the work—the Callas photos and celebri­ties—and leave out the whole.

Mr. President, that gives me the opportunity to talk about a few of the provisions of this amendment.

First, a determination of whether or not an art work is obscene or is child pornography will be made by the courts.

Second, after a final court ruling that a work is obscene or is child pornography, the person or group which has received or used NEA funds for the work must repay the grant funds to the Government. If for any reason they do not repay these funds, the grantor which gave NEA funds to them will have to repay. Any person or group liable for repayment of NEA funds who fails to do so will be ineligible to receive NEA funds in the future. 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 until they do. That is tough. It is going to be an incentive not to 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 of professional art experts 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, the opening to the public of all National Council on the Arts meetings. Seven, the requirement of "peer review" and on the National Endowment for the Arts to consider what it is doing in every way, shape, and form.

It is important to focus on 85,000 grants. Of the 85,000, only 20 are criticized. Probably, if you get it down to grants that are really offensive, you probably have 10 out of 85,000. Any agency in Government with a record that good is well on its way to becoming a superagency of Government. Through the freedom of expression, you are going to have some of the things funded that shouldn't be funded. We can handle those problems when they arise. Let us not ruin the whole agency.
Mr. HATCH. Will the Senator yield on that point?

Mr. MCCLURE. I yield to the Senator an additional minute.

Mr. HATCH. The fact that the grantor is responsible for the recoupment of funds is going to be a strong temptation for the grantee who get the funds to 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 someone.

As a young district attorney, I once was asked by a prosecutor to sign a murder indictment. It was sent to theني plete the Congressional Record.

Mr. HATCH. Mr. President, may I yield the remainder of my time?

Mr. McCLURE. Mr. President, may I ask for a bill that in reality censors artists by defining what may be considered obscene so broadly? That, I submit, is not our job.

Mr. HATCH. The other restraints are procedural restraints which make it very clear that offensive art should not be funded. Everybody in the NEA and everybody that serves on any of these panels knows their decision on grants will be scrutinized in every way. Again, I think the distinguished Senator from Idaho is correct in pointing out that sanctions are limited to convictions under criminal law. However, I think NEA will be very careful about what they fund in the future.

Mr. MCCLURE. I say that I agree that they know. They better know. The concern I have is that they will feel free to follow the passage of the amendment that the Senator has just talked about. The present circumstances. And there is no other standard expressed in the amendment.

Mr. HATCH. 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 just 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. Mr. President, what is this controversy about? Is it about of artistic works. Only 25 out of a grand total of 85,000 grants ever awards 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 I Pulitzer Prize winning plays were developed at NEA funded nonprofit theaters.

Since 1985, 100 local arts agencies across our country 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. I urge my colleagues to support the pending amendment by Senator Harman.

Mr. KOHL. Mr. President, I rise today in support of the amendment offered by our colleagues from Utah, Senator Harken. 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 the arts—where which appears to be the assumption most artists are inclined to embrace—may I be sympathetic to it. But Mr. President, the purpose of the National Endowment is to support the arts not artists. The Endowment is designed to help programs which brings 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 funding our capacity for growth.
During fiscal year 1989, it was possible to closely analyze the NEA grants and conclude that less than one-half of one percent of them were found to be offensive to some Americans, and those grants were mostly made as a result of mistakes. On the basis of $478 million of expenditure out of a $170 million budget, Congress embarked on this overly tred 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 eight 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 Chair- man of the NEA has usurped the decisionmaking 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 obligations 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 we are again. Our distinguished colleague, Mr. Cannon, 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 work, and that 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 of offensiveness on the American people.

I believe Supreme Court Chief Justice Burger was correct when he propounded the issue of obscenity in one California case, "The people in different states vary in their tastes and in their attitudes, and this diversity is not to be strangled by the absolutism of imposed uniformity."

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

I took a year of hearings and consultations and compromises to develop the amendment now before us. It is the best that we can hope for under the 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 Hatch. 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 over the years 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, how 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. In particular, 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 the funding of an NEA grantee if a court finds the art work in violation of obscenity laws.

I would like to commend again the initiative of Senator Bumpers from Arkansas for his active role in finding a balanced solution to this problem. The amendment is the result of months of compromise. Senators, I sense agreement 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 Senate 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. CRAINSTON) 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.]

CONESSIONAL RECORD — SENATE

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The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from North Carolina (Mr. HELMS).

AMENDMENT NO. 3131

(Purpose: To forbid the use of appropriations provided for arts assistance by individuals above a certain income level.)

Mr. HELMS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 3131.

At the end of the amendment, add the following: "Provided further, That none of the funds appropriated under this Act may be used by the National Endowment for the Arts to provide financial assistance to an individual whose family income exceeds 1500 percent of the income official poverty line, as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2))."

The PRESIDING OFFICER. The Senator from West Virginia.

TONGASS TIMBER REFORM ACT—CONFERENCE REPORT

Mr. BYRD. Mr. President, I ask unanimous consent that the Chair lay before the Senate the conference report on H.R. 987, the Tongass timber reform bill; that there be a 15-minute time limitation thereon; and that the 15 minutes come out of my time on the pending amendment.

The PRESIDING OFFICER. Is there objections? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the Tongass timber reform act be under the control of Senator Stevens and Senator MUKAWAKI, equally divided.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 987) to amend the Alaska National Interest Lands Conservation Act, to designate certain lands in the Tongass National Forest as wilderness, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conference.

The PRESIDING OFFICER. Without objection, the report will proceed to the consideration of the conference report.

The conference report is printed in the House proceedings of the Record of October 23, 1990.)

Mr. JOHNSTON. Mr. President, I rise in strong support of the conference agreement on H.R. 987, the Tongass Timber Reform Act. The conference agreement is a fair and reasona-