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## Legislative History of the Reauthorization of the National Endowment for the Arts (NEA) (1990): Report 16

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# CRS Report for Congress

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## National Endowment for the Arts: Background on Grant Issues

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### SUMMARY

The controversy over certain National Endowment for the Arts (NEA) grants supporting projects regarded by critics as inappropriate and possibly obscene continues. The purpose of this report is to give background on previous NEA grant controversies, to explore the current grant controversies, to delineate some of the court decisions related to NEA grants, and finally, to outline the congressional consideration of NEA grant issues. On July 15, 1993, the House voted to cut NEA's FY 1994 appropriation by 5 percent. On September 15, 1993, during passage of the FY 1994 Interior appropriations, the Senate tabled an amendment to eliminate NEA individual fellowships. The issue of appropriate grant support and whether there should be content restriction language will continue to be both a legal and political issue during the appropriations and the reauthorization processes, both under consideration by the 103rd Congress.

### NEA

The NEA is an independent agency in the executive branch of the Federal Government and, with its 26-member National Council on the Arts, is part of the National Foundation on the Arts and the Humanities. NEA's purpose is to promote a broad national policy of support for the arts. It was established by the National Foundation on the Arts and the Humanities Act of 1965 (NFAHA).

### 1993 REAUTHORIZATION

On June 29, 1993, the House Education and Labor Committee ordered reported H.R. 2351, the Arts, Humanities, and Museums Amendments of 1993 (H. Rept. 103-186). Three proposed amendments to the Committee bill were not agreed to: one to eliminate NEA, NEH and IMS, one to increase the NEA's State allocation from 27.5 to 65 percent, and one to eliminate increases in NEA funds for States that reduce their State arts appropriations (with some exceptions.) On July 14, 1993, Senators Pell and Jeffords introduced S. 1218 to extend the NFAHA for 2 years.



## NEA's RESPONSE AND RECORD

In response to its critics, NEA asserts that only a small number of grants are in question out of one hundred thousand given since its inception. Responding to sensationalized headlines, NEA contends that some of the exhibits, films, and performances characterized as pornographic that have been attributed to NEA grants have not been their responsibility. No NEA project has been judged obscene by the courts. Ironically, in some cases when NEA has been blamed, the grants were often not direct individual artist fellowships but rather were grants to larger organizations that ultimately made the final decisions on what to exhibit. NEA points to a successful record. Since 1966, NEA has awarded grants totaling over \$2.6 billion with the private sector contributing approximately \$4 billion in matching funds. In 1992, approximately 13,000 artists-in residence reached about 4 million students and teachers through NEA arts education projects. NEA supports successful television series like "Live from Lincoln Center." NEA support for local non-profit theater productions has helped make successes of "Driving Miss Daisy," "Children of a Lesser God," and "Annie," among others. Of the 11,000 artists fellowships given, many have won awards including Pulitzers, National Book Awards, Obies, Guggenheim fellowships and other distinctions.

In response to critics who want to abolish the NEA, some have proposed to make a cabinet level post for the arts and humanities. In a recent survey "The importance of the Arts and Humanities to American Society," by the National Cultural Alliance, 81 percent of the public surveyed felt that the arts and humanities contribute to the economic health and well-being of society. The survey concluded that "government and businesses could do more to ensure that the arts and humanities are available to everybody."

## PREVIOUS GRANT CONTROVERSY

The current controversy over the NEA stems in part from several previous grants that were characterized by some critics to be obscene. The mechanism for dealing with the NEA controversy has been through reductions in appropriations to the NEA, isolated court cases, and statutory changes through NEA's reauthorization. As part of the FY 1990 Interior Appropriations debate two grants sparked controversy that subsequently caused a reduction in funding for the NEA. The two NEA grants in question were the grant for the Mapplethorpe exhibit and the subgrant to Serrano.

1. **Mapplethorpe Exhibit.** An exhibit of work by the late Robert Mapplethorpe, photographer, called "Robert Mapplethorpe, the Perfect Moment" was assembled by the Institute of Contemporary Art in Philadelphia (which received \$30,000 from NEA's Museum program in FY 1988 for the purpose of planning the exhibit). It was a retrospective of Mapplethorpe's work and included what were characterized as homoerotic works. According to NEA's Museum program, the advisory panel did see examples of Mapplethorpe's work, but those slides did not include the most controversial "X" Portfolio. The NEA Museum program grant financed the original show by the ICA, although the show was scheduled to tour in Chicago, Washington, Hartford, Berkeley, Cincinnati, and Boston. According to ICA there was no controversy at the time they presented the exhibition nor when the show went to Chicago. The touring show was canceled at the Corcoran Gallery in Washington due to political repercussions, but after protests was presented at the Washington Project for the Arts. When the exhibit arrived in Cincinnati the director of the Contemporary Arts Center was charged with pandering obscenity for showing Mapplethorpe's exhibit. On October 5, 1990, the director was acquitted.

Humanities, and Museums Amendments of 1990, P.L. 101-512 that dealt with the grants process as follows:

**State allocation**--The law reserved up to 27.5 percent in 1993 of the total NEA program funds to be allotted to States (as compared to the previous 20 percent of that allotment going to States.) In addition, an allotment (up to 7.5 percent of program funds in 1993) is targeted to programs related to access to the arts in rural and inner city areas. The rationale for the change in the allocation was in part because it 1) would increase States' responsibility for grantmaking; 2) would make States more accountable for grants within their own States; 3) would emphasize that States know best how to distribute funds within their States; and 4) would allow States to make appropriate decisions on grants.

**Obscenity**--P.L. 101-512 provided that a work would be considered obscene if it were deemed obscene in the final judgment of a court. The term "obscene" was defined with respect to a project as: "1) the average person, applying contemporary community standards, would find that such project, production, workshop, or program, when taken as a whole appeals to the prurient interest; 2) depicts or describes sexual conduct in a patently offensive way, and; 3) when taken as a whole lacks serious literary artistic, political or scientific value." There were repayment provisions whereby the NEA would have to be repaid if the work receiving a grant were deemed obscene by the courts. Further, no Federal payment could be made unless it took "into consideration general standards of decency and respect for the diverse beliefs and values of the American public."

**Panel System**--The statute requires that the NEA panels of private citizens (artists, administrators, and lay persons) who review NEA grants reflect a wide "geographic, ethnic and minority representation" from "diverse artistic and cultural points of view."

## COURT DECISIONS

In September of 1990, four artists (Karen Finley, Holly Hughes, John Fleck and Tim Miller) filed a lawsuit in District Court for the Central District of California against the NEA following then Chairman John Frohnmayer's rejection of the artists' applications for performance art fellowships. The artists' claim at the time was that their applications were rejected for "inappropriate" reasons. On June 4, 1993, the NEA reached a legal settlement with the four artists on that portion of the lawsuit that claimed their grant applications were rejected for "inappropriate reasons." The four artists were awarded a total of \$50,000, plus attorney's fees of \$202,000.

**The Tashima Decision**--On June 9, 1992, Los Angeles Federal District Judge A. Wallace Tashima announced that 1) government funding of the arts is subject to the constraints of the First amendment; 2) the grant procedure followed by Chairman Frohnmayer of the NEA violated the First and Fifth amendments; and 3) the change in the NEA which would require the agency to deny funds to art projects based on "public standards of decency" violates due process and freedom of expression. This decision is still pending appeal by the Justice Department.

(For further general information on cases dealing with obscenity and pornography, see U.S. Library of Congress. Congressional Research Service. *Federal Obscenity and Child Pornography Laws*. CRS Report for Congress No. 93-702, by Henry Cohen. Washington, 1993.)