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CRS Issue Brief

Arts and Humanities: Funding Issues in the 101st Congress

Updated October 16, 1990

by
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SUMMARY

Over 200 Federal Government programs provide resources, activities, and support for the arts and humanities, including programs sponsored by the National Foundation on the Arts and the Humanities and the Smithsonian Institution. However, funding for the arts constitutes less than 1% of the Federal budget.

One of the primary vehicles of Federal support for the arts and humanities is the National Foundation on the Arts and the Humanities, composed of the National Endowment for the Arts and the National Endowment for the Humanities, the Federal Council on the Arts and the Humanities, and the Institute of Museum Services. The authorizing legislation for the National Foundation on the Arts and the Humanities, due to expire at the end of FY1990, has been carried under continuing resolutions. The 101st Congress has considered both the arts budget and appropriations, as well as determining what level of funding should be authorized to sustain these arts institutions as part of the reauthorization of the National Foundation on the Arts and the Humanities (NFAH) Act.

An adequate level of funding for the arts is an issue in both the authorizing committees and appropriations committees of Congress. From the beginning of the two Endowments, appropriations have increased from a total of \$8 million in FY1966 to over \$300 million in FY1989. The funding debate will continue to be influenced by budget deficits. The major issue in a time of budget constraint is how much should be spent on the arts and how to determine what the proper Federal role should be in funding the arts. Controversial grants have put the National Endowment for the Arts funding into question, bringing forth some broader concerns of censorship on one hand, and accountability for the quality of grants on the other. As a consequence of the controversial grants, some Members of Congress have proposed eliminating funding for the National Endowment for the Arts.

ISSUE DEFINITION

How much should the Federal Government spend for the arts and humanities? Although it is difficult to determine all Federal dollars directed toward the arts and humanities, over 200 Federal Government programs provide resources and support for the arts and humanities. However, this funding constitutes less than 1% of the Federal budget. The major issue is what the Federal role should be in funding the arts. Controversial grants have recently put the National Endowment for the Arts funding into question; some Members of Congress have proposed eliminating funding entirely.

BACKGROUND AND ANALYSIS

Federal Funding for the Arts and Humanities

The rationale for Federal funding of the arts -- Federal funding for the arts began as early as 1817, when Congress appropriated funds for works of art to decorate the U.S. Capitol. John Trumbull was commissioned to paint large panels of the revolutionary war period. The granting of commissions for historical paintings predominated as the type of Federal Government patronage until the Works Progress Administration (WPA) programs were established. The rationale that developed over the years, and was expressed in hearings in 1965 at the time of the creation of the National Foundation on the Arts and the Humanities was that Federal funding for the arts was justified primarily because of the inadequacy of private support for artistic excellence and an apparent imbalance in Federal funding favoring pure sciences versus support for humanistic research and studies. The result was the establishment of the National Foundation on the Arts and Humanities to bring about better balance in funding.

Scope of Federal Support for the Arts -- Currently, the Federal Government provides financial support for the arts and humanities. Four major institutions providing arts support are the National Endowment for the Arts, the National Endowment for the Humanities, the Smithsonian Institution, and the Institute of Museum Services. They are by no means the only prominent programs involved in funding of arts and arts institutions. Other significant programs would certainly include the Kennedy Center, the National Gallery of Art, and the Historic Preservation Fund. (Appropriations for these appear in TABLE 1).

Federal support for the arts and humanities is also provided through programs such as the Department of Defense art collections, bands, and choruses, the Department of Education Arts in Education program, the Department of the Interior program for Indian arts and crafts, the Department of Justice prison recreation programs, the General Services Administration Art-in-Architecture (percentage for art) and Living Buildings programs, the Kennedy Center Alliance for Art Education, the Library of Congress American Folklife Center, the Smithsonian Traveling Exhibition Service (SITES) and the United States Information Agency Arts America program. The multitude of programs is one reason that it is difficult to estimate the total amount of Federal financial support for the arts and humanities provided in the

United States. It is also difficult to define "arts" and "humanities" with great precision to determine whether certain activities should be included or excluded in an estimate. A report prepared in 1980 provided a listing of Government programs for the arts and humanities and counted 300 programs, activities and services at that time, some of which have been eliminated or repealed. (*Cultural Directory. Federal Funds and Services for the Arts and Humanities*, Smithsonian Institution Press, 1980.)

Percent of the U.S. Federal Budget spent on the arts -- Although it is relatively difficult to track all Government spending on the arts and humanities, it is possible to calculate what the percentage of the U.S. budget some of the larger and more major arts programs would be (based primarily on Department of Interior Appropriations.) If the FY1990 appropriations (adjusted, post sequestration) for programs in TABLE 1 are totalled (\$718 million) then the total budget authority for those programs represents approximately .05% of the estimated U.S. total budget authority for FY1990 (1,336 billion). Therefore, generally speaking, less than 1% of the U.S. budget is spent on the arts.

Comparison with other countries' spending on the arts -- According to a study prepared in 1985 (*Supporting the Arts: An International Comparative Study*, by J. Mark Davidson Schuster, MIT, March 1985) that considers both direct and indirect tax expenditures in support of the arts, the United States (\$13), Great Britain (\$10) and Italy (\$14) spend approximately \$10 to \$14 per capita on the arts. In contrast, Canada, the Federal Republic of Germany, France, the Netherlands, and Sweden all provide approximately \$30 per capita for the arts. According to the Schuster report, the comparison should be used with caution, because "dollars per capita" are relative and reflect only generally the differences in the level of public support. One of the conclusions drawn from the study is that direct Government support is dispersed widely across all levels of government including local and regional governments. Schuster points out that national level support in most other countries works as a disincentive because arts institutions fear that their government dollars will be reduced if they seek private sources of support. In contrast, the United States has a large proportion of private giving to the arts, which is not reflected in these figures.

According to the Schuster study, private support was relatively low in all countries except the United States and, to a lesser degree, Canada and Great Britain. (See discussion below on private support). A comparison based on contributed private support in addition to government support would have reflected more accurately the picture of total support for the arts in the United States.

Private giving to the Arts -- According to *Giving USA*, the 35th annual report on American philanthropy, private giving in the United States totalled \$114.7 billion in 1989 from individuals, bequests, foundations and corporations, an estimated 10% over the amount (\$104 billion) in 1988. In inflation-adjusted dollars the donations represent an increase of 5.5%. Of the total 1989 amount, private giving to the visual and performing arts totalled an estimated \$7.49 billion in 1989, up 10% over the estimate (\$6.82 billion) given in 1988. The estimate of giving to the arts is based on surveys conducted by arts service organizations, representing art museums, theater, dance, opera, symphony orchestras, and public broadcasting.

Profile of organizations:

The National Endowment for the Arts is an independent agency in the Executive branch of the Federal Government and part of the National Foundation on the Arts and the Humanities with the purpose of promoting a broad national policy of support for the arts. The Endowment has a Chairperson and is advised by the National Council on the Arts, a body of 26 private citizens recognized in arts-related fields and appointed by the President. The National Endowment for the Arts has developed its programs toward achieving the goals of fostering artistic excellence by helping to develop the nation's finest creative talent," to encourage wider availability of the arts, to preserve our cultural legacy and to stimulate non-Federal sources of support for the arts." The definition for the arts in the National Foundation on the Arts and the Humanities Act is as follows:

. . . includes but is not limited to: music (instrumental and vocal), dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, motion pictures, television, radio, tape and sound recording, the arts related to the presentation, performance, execution, and exhibition of such major art forms, and the study and application of the arts to human environment.

The National Endowment for the Humanities is an independent agency in the Executive branch of the Federal Government and part of the National Foundation on the Arts and the Humanities, with the purpose of promoting a broadly conceived national policy for support of the humanities. The Endowment's Chairperson, with the advice of the National Council on the Humanities, gives grants in aid to institutions, individuals, and State and community groups to support projects in the humanities. The Humanities are defined as follows:

The term "humanities" includes, but is not limited to, the study of the following: language, both modern and classical, linguistics; literature, history, jurisprudence; philosophy, archaeology, comparative religion; ethics; the history, criticism, and theory of the arts; those aspects of the social sciences which have humanistic content and employ humanistic methods; and the study and application of the humanities to the human environment with particular attention to reflecting our diverse heritage, traditions, and history and to the relevance of the humanities to the current conditions of national life.

The Institute of Museum Services (IMS), established in 1976, is the primary Federal agency responsible for promoting the basic operations of all types of museums. It now comes under the umbrella of the National Foundation on the Arts and Humanities and its purpose is defined as follows:

. . . to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and post-secondary education and with programs of nonformal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public.

IMS provides grants for general operations and for conservation, and funds services provided to the field by museum associations. IMS supports all types of museums. Policy for the agency is established by the 15-member National Museum Services Board. The IMS Director is responsible for program administration. Both the Director and the Board are appointed by the President with the advice and consent of the Senate.

Smithsonian. Centered on the Mall in Washington, D.C., the Smithsonian Institution was created by an act of Congress in 1846 to carry out the terms of the will of James Smithson of England, who bequeathed his entire estate in 1826 to the United States to found at Washington, under the name of Smithsonian Institution, "an establishment for the increase and diffusion of knowledge among men." The Smithsonian is one of the world's leading research centers and encompasses the world's largest museum complex. The Smithsonian now consists of 13 exhibition buildings in the fields of science, history, technology and art, in addition to the National Zoo, an animal conservation center, the Anacostia Museum, and the Air and Space Museum.

The Smithsonian is both publicly and privately endowed with governance vested in an independent Board of Regents comprised of Federal officials, Members of Congress, and private citizens. Donations from both the public and private sector increase the Smithsonian's collections with continuing additions to its trust funds. Appropriations by Congress provide Federal support for the Smithsonian's services to the public.

Arts Appropriations:

Appropriations for the National Endowment for the Arts, the National Endowment for the Humanities the IMS and Smithsonian have grown since their inception. However, if appropriations are adjusted by inflation using a fixed weight price index for personal consumption expenditures, the following percentages result.

NEA -- National Endowment for the Arts' appropriations **increased** since 1980 in current dollars by 9% but **declined** in real value by 29%.

NEH -- National Endowment for the Humanities' appropriations **increased** since 1980 in current dollars by 2% but **declined** in real value by 33%.

IMS -- the Institute of Museum Services' appropriations **increased** since 1980 by over 100% but in terms of **real value** increased 33%.

Smithsonian -- the Smithsonian's total appropriations **increased** since 1980 by over 75%, but in **real value** increased 14%.

See TABLE 1 for a summary of appropriations and budget requests for FY1989 FY1990, and FY1991 for some selected arts programs. The focus is limited to programs under jurisdiction of Department of Interior appropriations.

**TABLE 1. Appropriations for Selected Arts and Humanities
Programs and Arts Institutions
FY1989-91
(in current dollars)**

Program	FY1989 approp.	FY1990 approp.	FY1991 Budget Request
Advisory Council on Historic Preservation	\$1,778,000	\$1,920,000 (1,894,000) adj.	\$2,238,000
Commission of Fine Arts	475,000	516,000 (509,000) adj.	549,000
Historic Preservation Fund	30,500,000	32,750,000 (32,308,000) adj.	33,665,000
Institute of Museum Services	22,270,000	22,675,000	24,000,000
Institute of American Indian and Alaska Native Culture and Arts Development	3,094,000	4,350,000 (4,305,000) adj.	4,347,000
Kennedy Center (National Park Service administration)	5,181,000	9,193,000 (9,118,000) adj.	8,150,000

* Note: Figures in parentheses under each appropriation are adjusted per P.L. 99-177 as reported in 1991 budget documents.

**TABLE 1. Appropriations for Selected Arts and Humanities
Programs and Arts Institutions
FY1989-1991 - Continued**

<u>Program</u>	<u>FY1989 approp.</u>	<u>FY1990 approp.</u>	<u>FY1991 Budget Request</u>
National Capital Arts and Cultural Affairs	\$5,000,000	\$5,500,000 (5,427,000) adj.	--
National Endowment for the Arts	169,090,000	171,255,000	175,000,000
National Endowment for the Humanities	153,000,000	159,130,000 (156,910,000) adj.	165,000,000
National Gallery of Art	38,731,000	42,517,000 (40,161,000) adj.	46,098,000
Smithsonian Institution (salaries and expenses)	(211,240,000)	(228,553,000) (225,480,000) adj.	(256,174,000)
Smithsonian Total *	245,935,000	273,376,000 (268,488,000) adj.	310,495,000
Woodrow Wilson International Center for Scholars	4,540,000	4,700,000 (4,639,000)	5,074,000

* The total Smithsonian figure excludes the National Gallery and Wilson Center but includes salaries and expenses, museum programs, repair and construction, and special foreign currency program where applicable.

Source: Department of Interior Appropriations 1990; H. Rept. 101-264; table from Congressional Record, Oct. 7, 1989, S12954; and FY1991 OMB budget documents.

Department of Interior and Related Agencies Appropriations for FY1990

As part of the FY1990 Interior Appropriations debate, two controversial grants sparked controversy that subsequently caused a reduction in funding for the National Endowment for the Arts. The two grants in question actually received indirect NEA support.

Controversial Grants

1. An exhibit of work by photographer Robert Mapplethorpe, 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 for the purpose of planning the exhibit) and ran in Philadelphia, and at the Chicago Museum of Contemporary Art. It was a retrospective of Mapplethorpe's work following his death from AIDS. The show was described in the press as including some homoerotic works and some nudes of children, as well as portraits and flower studies. There were approximately 175 works in all.

Sequence of FY1988 grant approval: The advisory panel under the NEA's Museum program originally met and provided recommendations in February 1988. According to NEA, the panel did see examples of Mapplethorpe's work, but these slides did not include the controversial "X Portfolio." The National Council on the Arts reviewed the recommendations in May, 1988, and the grant award letter was sent from the NEA Chairman July 14, 1988.

The NEA Museum program grant financed the original show by the ICA, although the show also was scheduled to tour in Chicago, Washington, D.C., 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, scheduled to be shown in Washington D.C. on July 1, 1989 was cancelled at the Corcoran Gallery in anticipation of what they considered to be possible political repercussions, including losing what Federal funding they currently receive. After protest on the part of the arts community, the show was presented at the Washington Project for the Arts with a warning that "some material may be unsuitable for children and some adults."

2. Andres Serrano, a New York photographer, photographed a plastic crucifix submerged in a container of urine. The title of the piece was "Piss Christ." The photograph was already part of a body of work that Serrano had produced at the time that he was awarded a \$15,000 grant by the Southeastern Center for Contemporary Art (SECCA) in Winston-Salem, North Carolina. Therefore, the fellowship did not finance the creation of that particular work. The NEA's Visual Arts (Special Projects) program had provided a \$75,000 grant to SECCA (matched by \$75,000 in funds from other sources) to help support a program called "Awards in the Visual

Arts Program 7." Serrano was one of 10 artists selected by 5 jurors to receive a \$15,000 fellowship. His works were to be part of a traveling exhibit that concluded at the Virginia Museum of Fine Art in Richmond in January 1989. The NEA had helped support SECCA's "Awards in the Visual Arts" (AVA) program since 1981. According to the current NEA Visual Arts program director, this is the only subgrant that the Visual Arts program currently gives. (note: this is not the same as the individual artists fellowship category of the NEA's Visual Arts program, which is a direct grant by the NEA to individual artists.)

Sequence of FY1987 grant approval: The Special Projects panel under the NEA's Visual Arts program met in March 1987, the National Council on the Arts met in August 1987, and the grant letter was sent from the NEA Chairman on Sept. 17, 1987 to SECCA. NEA did not select the individual artists and no specific artists were mentioned on the application form as possible recipients of fellowships.

A letter from 25 Senators voiced outrage at the Serrano fellowship on behalf of the taxpayers.

Helms Amendment to the Interior Appropriations Act FY1990

The Department of Interior and Related Agencies Appropriations bill 1990 contains funding for the programs listed in TABLE 1, including the National Endowment for the Arts. On July 12, 1989, the House, in considering the Department of Interior Appropriations FY1990 bill (H.R. 2788), voted to cut \$45,000 from the Endowment's funding to protest the \$15,000 and \$30,000 spent respectively on the two exhibitions of Serrano and Mapplethorpe. During the House debate on the bill, an amendment was proposed by Representative Rohrabacher (H.Amdt. 126) to totally eliminate funding for the National Endowment for the Arts (failed by voice vote). Representative Arney proposed a cut in the NEA budget by 10% (H.Amdt. 127). Representative Stearns' amendment to the Arney amendment proposed a cut of 5% in NEA funds (rejected, 95 to 328 noes.) Representative Stenholm's amendment to the Arney amendment passed in lieu (H.Amdt. 128, record vote no. 132 (361-65) to provide program funds of \$144,205,000 for NEA, a \$45,000 cut.

The Senate Committee bills in both the Subcommittee on the Interior Appropriations and the full Appropriations Committee had provisions to eliminate Federal funding to the Southeastern Center for Contemporary Art and the Institute for Contemporary Art (ICA) in Philadelphia for the next 5 years. In addition, the Senate voted in Committee to cut \$400,000 from the Visual Arts program of the NEA and authorized an additional \$100,000 for an outside consultant to study the process by which its grants are made.

On July 26, 1989, the Senate passed Senator Helms' amendment to prohibit the use of appropriated funds for "the dissemination, promotion or production of obscene or indecent materials or materials denigrating a particular religion." Obscene and indecent materials "included but were not limited to depictions of sadomasochism, homo-eroticism, the exploitation of children, or individuals engaged in sex acts, and material which would denigrate the objects or beliefs of the adherents of a particular religion or non-religion; or

material which denigrates, debases, or reviles a person, group, or class of citizens on the basis of race, creed, color, sex, handicap, age, or national origin."

Conferees on the Interior appropriations bill modified the controversial Helms amendment in response to House concerns. The Interior appropriations bill for FY1990 (H.R. 2788) (H. Rept. 101-264) conference report was adopted by both House (Oct. 3, 1989) and Senate (Oct. 7, 1989), although the House prior to conference would not accept the Helms language. The final conference agreement contained part of the language of the Helms amendment, but allowed that the Chairperson of the Endowment would make the final judgment on grants, and that work "as a whole" would have to have "artistic value." These provisions reflecting the Helms Amendment as they appear in law (P.L. 101-121) are as follows:

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

In addition, the Interior Appropriations law established a temporary independent commission (term expiring Sept. 30, 1990) to review the grantmaking procedures of the National Endowment for the Arts, including the panel system; and to consider what standards should be used for publicly funded art. The 12 member commission has 4 members appointed by the President, 4 members appointed upon recommendation of the Speaker of the House, and 4 members appointed upon recommendation of the President pro tempore of the Senate. The Commission is required to issue a report to the House and Senate.

Finally, the law provided that the House and Senate appropriations committees be notified 30 days prior to disbursement of a direct grant to either the Southeastern Center for Contemporary Art or for the Institute of Contemporary Art.

Other Controversies:

Artists Space: There was a test case for the Helms prohibition of obscene art provision soon after it became law. It involved a \$10,000 FY1989 NEA grant to Artists Space in New York City which was designated to fund an exhibition titled "Witness: Against Our Vanishing." The exhibition focused on the AIDS crisis and the impact it has had on the work of contemporary artists. The exhibition included some homosexual images and images of the tragedies of AIDS victims. One section of the text appearing in the exhibition catalogue, "Postcards from America: X-Rays from Hell", written by Wojnarowicz, criticized certain public figures for "keeping safe-sex information from appearing on local television programming and mass-transit advertising spaces." Wojnarowicz also criticized other public figures for "trying to dismantle the NEA for supporting . . . Serrano and Mapplethorpe." In a statement of Nov. 8, 1989, NEA Chairman John Frohnmayer took action to withhold payment of the grant. Technically, the Helms provision covered only

FY1990 funding and the Artists Space grant was obligated from FY1989 funds. Because the Artists Space would not withdraw their grant claim, the matter was turned over to the Justice Department. Since that time Chairman Frohnmayer reversed his decision and agreed to restore the \$10,000 grant to the New York gallery for the art exhibition. In addition, he indicated that he would work to repeal the Helms provisions.

"Tongues of Flame": Illinois State University received \$15,000 for the "Tongues of Flame" exhibition by David Wojnarowicz from the NEA's Museum Program FY1989 funds.) The NEA's Museum program grant of \$15,000 was given to the University Galleries at Illinois State University "to support a touring exhibition and accompanying catalog of the work of contemporary artist, David Wojnarowicz." The grant supported a special exhibition, a retrospective of David Wojnarowicz's work including of 60 works of painting, sculpture, photography, video, collage and prose. Wojnarowicz's works are expressions about AIDS, homosexuality, the AIDS crisis, and about contracting AIDS himself. Some of the more controversial works included a crucifix with large ants crawling over it, and a series of large paintings called "Earth, Air, Fire and Water" with small sexually explicit scenes in each. There were photographs called the "Sex Series" with very small sexually explicit scenes in the corner of each work. According to the University Galleries of ISU, a warning was issued to teachers, parents and other group leaders that their exhibition contained some "sexually explicit images" and that parents or teachers of younger children should visit the exhibit before bringing children in for tours.

Sequence of FY1989 grant approval: The University Galleries at Illinois State University applied to the NEA Museum program in November 1988. In March 1989 a Special Exhibitions Advisory Panel of the Museum program chose this grant. There were examples of Wojnarowicz' work shown to the panel, not necessarily those that appeared in the exhibit. In May 1989 the National Council on the Arts reviewed the recommendation, the grant award letter was sent from the NEA Chairman to Illinois State University in September 1989. The exhibit opened Jan. 23, 1990 and closed Mar. 4, 1990. According to NEA there were no specific pieces of art chosen for the show by ISU at the time that the application was reviewed.

Annie Sprinkle's Performance at the Kitchen Theatre: According to NEA's press releases, the NEA was not involved in any way in approving a grant for Annie Sprinkle's performance at the Kitchen. The Kitchen presented Annie Sprinkle's performance entitled "Post Porn Modernist." The Kitchen describes her performance as an "on-going examination of gender issues as they relate to the mass media." Press accounts described the show as Annie Sprinkle "performing live sexual acts on stage."

Both the NEA and the New York State Council on the Arts provided funding to the Kitchen Theatre. The NEA provided through the Inter-Arts program what they call a "seasonal support grant" of \$60,000 to the Kitchen Theatre for FY1989, an operational grant helping the theatre pay "fees and related costs for their presentation season." (Source: NEA grant letter.) This did not involve the NEA in selection of presentations nor was the NEA aware of what the Theatre would present. According to NEA, FY1989 funds for this grant were already expended by the time of Annie Sprinkle's performance in 1990.

Sequence of FY1989 Grant approval: The NEA's InterArts panel met in May 1988, the National Council on the Arts met in November 1988, and the NEA Chairman's grant letter went out Jan. 4, 1989.

The NEA's InterArts grant to the Kitchen was for FY1989. According to the Kitchen Theatre, Annie Sprinkle's performance which took place as part of a "performance art" series, did not involve the use of public funds from the NEA or the New York State Council on the Arts.

The controversy sparked by Mapplethorpe, Serrano, Wojnarowicz and others involves broad concerns of what constitutes obscenity, what constitutes censorship, governmental interference, and congressional control over the arts; and what constitutes proper accountability and responsible use of Federal funds. Further discussion of these issues is beyond the purview of this issue brief. However, some arguments follow that have been specifically directed toward the Helms provision of the current law.

Supporters of the provisions argue:

- The Federal Government's -- taxpayers' -- money should not be spent on exhibiting works that are offensive to the general public. Senator Helms stated that his initial amendment "does not prevent the production or creation of vulgar works, it "merely prevents the use of Federal funds to support them."
- There is a substantial need for the provision because these are not the first controversial grants by the NEA and this is not the first time the issue has had to be dealt with legislatively. Funding of pornographic poetry was one of the issues in the 1985 reauthorization.
- The guidelines for the NEA and the peer review system have ultimately caused a "monopoly" to exist on public funding for a "relatively small group of artistic elite." Some critics argue that if anyone is directing and controlling artistic taste, it is the Endowment that is being a kind of censor in favor of politically radical and obscene work. James Cooper, a New York art critic, states that "one should try to nourish those arts that will celebrate the American nation and its values -- that would be a mission for which public funding would be appropriate."
- It is logical that Congress should be instituting such a provision because the NEA has been established by, authorized by, and receives appropriations from Congress. NEA should therefore answer to Congress and be responsible and accountable for its actions. There is ample precedent for Congress to apply standards as part of the authorization or appropriations process.
- Constitutional scholars have testified at hearings (Nov. 15, 1989) that the Helms amendment language is constitutional and that it does not violate First Amendment rights. Further, the First Amendment says nothing about the right of artists to be subsidized. Finally, creative arts do not require Government subsidies to flourish.

Opponents of the provision argue:

- A restriction of this nature on Federal funding for the arts constitutes censorship. If restrictions are placed on the type, style and content of art to be funded, that constitutes a moral censorship of an individual's work and

stifles creative talent. Representative Yates calls it "the start of George Orwell's Big Brother and the Communist approach to art." (CR H5632).

- Some constitutional scholars argue that by denying artists equal access to funding, a kind of censorship develops. As artist Robert Rauschenberg recently stated, "the job of the artist is to keep the individual mind open, discouraging a mass agreement on an enforced point of view." (For an analysis of legal issues, see *First Amendment Implications of the Prohibition against Federal Funding of Obscene Art*, by Henry Cohen. CRS Report 89-576 A.)
- The Helms provision violates the original intent of the legislation to create a National Foundation on the Arts and the Humanities. Prior to and at the time of the establishment of the National Foundation on the Arts and the Humanities, Members of Congress expressed concern that Government support of the arts would ultimately mean Government control of the arts. As an assurance against Federal control a clause was made a permanent part of the legislation as follows: "4(c) In the administration of this Act no department, agency, officer, or employee of the United States shall exercise any direction, supervision, or control over the policy determination, personnel, or curriculum, or the administration or operation of any school or other non-Federal agency, institution, organization, or association. (20 U.S.C. 953(c)) Section 4(c) of P.L. 89-209 as amended.)"
- The Helms provision is a drastic measure for a small number of questionable grants. The National Endowment for the Arts' record has been exemplary in making grants to artists -- only 20 controversial grants from over 85,000 in 25 years is an excellent record.
- Because of the Helms provision a climate of fear and anger pervades in the art world and this is not healthy for the country. If the language remains, critics contend, then it will continue to inhibit the arts. Chairman Frohnmayer has indicated that he would work "for the removal of the recent law restricting endowment grants for art considered obscene."

Hearings on the Helms Provisions -- On Nov. 15, 1989 the House Postsecondary Education Subcommittee held hearings on the constitutional questions related to the Helms provisions. Some witnesses argued that these provisions impose what is already law. They note that the Supreme Court has held that obscene material enjoys no constitutional protection and may be regulated up to and including total prohibition (see *Miller v. California*, 413 U.S. 15 (1973), which formulated the present definition of obscenity). According to this argument, no additional laws are necessary. Other testimony indicated that the Helms provision strikes at the core of the First Amendment and the language of the Helms provision constitutes a kind of moral censorship over any work that is controversial, radical, or political, and not necessarily obscene. There was no consensus reached in the hearings.

Reauthorization of the National Foundation on the Arts and the Humanities Act. The authorizing legislation for NEA, NEH and IMS, due to expire at the end of FY1990, is being carried by appropriations under continuing resolutions. Hearings were held in both the House and the Senate on the National Foundation on the Arts and the Humanities Act. Because of the funding controversy, the hearings focused on

whether or not the restrictive language concerning obscenity should remain in the legislation, whether or not the panel system should be altered, whether individuals should still receive grants, and whether the distribution of funding should remain the same. (See chronology for dates of hearings). On May 9, 1990 Representative Crane introduced H.R.4759, a bill to abolish the NEA. On May 15, 1990 Representative Williams introduced the Bush Administration's bill (H.R. 4825), which would eliminate the restrictive Helms provision, and would provide a five-year authorization. Earlier in the session, Representatives Coleman and Gunderson announced a proposal that would reserve 60% of NEA program funds for the States while leaving only 40% for the NEA. The Coleman-Gunderson substitute amendment would have provided increased funds for access to the arts through rural and inner-city arts programs. The Coleman-Gunderson substitute contains some language to ensure that the grants would not be deemed obscene in accordance with the application of contemporary community standards.

Representative Williams called for a "summit" meeting of major arts groups on May 22, 1990 to seek a consensus on reauthorization. After four days of deliberation these arts groups, called the "United Arts Group" presented recommendations in a document entitled "Artistic Freedom: Our American Heritage." These recommendations included reauthorizing the NEA for five years; maintaining the current State funding formula; codifying of existing accountability standards of the endowment; expanding education in the arts.

On June 6, 1990 some of the participants in the United Arts Group testified along with representatives from GAO before the House Postsecondary Education Subcommittee. GAO was asked to analyze the legal sufficiencies of Section 304a restrictions related to obscenity on FY1990 NEA funds. GAO concluded that NEA had met its legal obligation; that the current controls are "appropriate" to and follow the language in the law; and that only the NEA can ultimately determine at the grant stage what works may be deemed obscene, with guidance from the *Miller vs. California* decision. However, GAO also concludes that a potential problem exists because it is not possible to judge on those materials not yet produced. Robert Alley asserted that by using restrictive language over content that one is "presuming the guilt" of an applicant.

Also on June 6, 1990 NEA Chairman Frohnmayer testified before the Senate Appropriations Committee that he has favored a five-year extension, but given the current climate would also find acceptable a three-year or one-year extension in the hope that the 12-member "Independent Commission on the Arts" co-chaired by John Brademas and Leonard Garment would have a chance to assess the current controversies surrounding grant award processes.

On June 13, S. 2724, the Arts, Humanities, and Museums Amendments of 1990, a bill to extend and improve arts and humanities programs, museum services, and arts and artifacts indemnification was approved without amendment by the Senate Subcommittee on Education, Arts and Humanities for full committee consideration.

On June 19, 1990 after being discharged from the Subcommittee on Postsecondary Education, H. R. 4825, the Arts, Humanities, and Museums Amendments of 1990, was ordered reported (H.Rept. 101-566) by the Education and Labor Committee, without amendment, by voice vote. The Committee asked that amendments be withheld until the bill is considered on the House floor, providing the opportunity for all members of the House to be involved in the debate. The debate was postponed due to the large number of amendments submitted to the House Rules Committee.

On September 12, the Senate ordered reported S. 2724 with an amendment in the nature of a substitute, reauthorizing the NEA, NEH, and IMS for five years. The amendment would require repayment of funds to the NEA if any recipient of grant were found by a court of law to have violated obscenity or child pornography laws in production of his or her work.

Technically, the authority for the National Foundation on the Arts and Humanities expired Sept. 30, 1990. However, it is being sustained at the present time through appropriations bills and continuing resolutions that maintain current funding levels.

The Independent Commission submitted their report to Congress on Sept. 11, 1990, A Report to Congress on the National Endowment for the Arts. The Independent Commission was created by Congress, co-chaired by John Brademas and Leonard Garment, to review the grant making procedures of the NEA and to consider whether the standard for publicly funded art should be different from the standard for privately funded art. The Independent Commission recommended against specific content restrictions on works of art supported by the NEA. It also recommends that the NEA rescind their current requirement that grantees certify that the works of art they propose to produce will not be obscene. With regard to standards for publicly funded art, the Independent Commission indicates that the standard for publicly funded art must go beyond the standard for privately funded art. When measured solely in terms of artistic qualities there should be no difference in the standard of artistic excellence. However, "publicly funded art must take into account the conditions that traditionally govern the use of public money." The NEA as a public agency "has a responsibility to serve the public interest and promote the general welfare."

On Oct. 11, 1990, the House passed H.R. 4825, as amended by the Williams-Coleman substitute, by a vote of 349 to 76. The Crane amendment to abolish NEA funding failed by a vote of 361 to 64. The Rohrabacher amendment to add restrictive language failed by a vote of 249 to 175. The House-passed bill alters the allocation to states by allotting 25% of program funds to states in 1991 and 1992. This percentage will increase to 27.5% in 1993. An additional 5% in 1991 and 1992 up to 7.5% in 1993 will be allotted for a program to expand public access to the arts in rural and inner city areas. The House-passed bill adds a definition that work is considered obscene if it is deemed obscene in the final judgment of a court. Artistic excellence and artistic merit are the criteria by which applications are judged. If work produced with an NEA grant is found to be obscene the grant money must be repaid.

On Oct. 15, 1990, the House passed the Interior Appropriations bill 1991, H.R. 5769, allowing \$180 million for the NEA with no restrictive language. On Oct. 16, 1990, the Senate reported the Interior bill (H.Rept. 101-534) reinstating the restrictive language of "obscenity in art" that appeared in the 1990 Interior Appropriations Act.

LEGISLATION

P.L. 101-121, H.R. 2788

Department of Interior and Related Agencies Appropriations 1990. Reported from Appropriations June 29, 1989 (H.Rept. 101-120). Provided appropriations for major arts institutions and programs including the National Endowment for the Arts, National Endowment for the Humanities, IMS and Smithsonian. The language of the Helms "obscenity in art" Amendment was agreed to with amendments. Passed House amended July

12, 1989; Roll No. 135: 374-49. Reported with amendments July 25, 1989 (S. Rept. 101-85). Passed Senate with amendments July 26. Senate insisted on amendments. House disagreed and agreed to conference (H.Rept. 101-264). House agreed to conference report Oct. 3, 1989. Senate agreed to conference report Oct. 7, 1989. Signed into law Oct. 23, 1989.

H.R. 5769 (Yates)

Department of Interior and Related Agencies Appropriations 1991. Reported from House Appropriations Oct. 2, 1990 (H.Rept. 101-789). Passed House Oct. 15, 1990. The House passed measure would allow \$180 million for the NEA. On October 16, the Senate Committee reported a bill (S.Rept. 101-534) with restrictive language on obscene art, the same as the language appearing in the 1990 appropriations. The Senate measure would allow \$170 million for NEA.

H.R. 4825 (Williams)

Arts, Humanities, and Museums Amendments of 1990. To amend the National Foundation on the Arts and the Humanities Act of 1965, and for other purposes. H.R. 4825 As introduced initially would have provided a five-year authorization. As passed by the House in the form of the Williams-Coleman Substitute would provide a three-year reauthorization with appropriations of \$175,000,000 for NEA for FY1991, \$165,000,000 for NEH for FY1991, and \$24,000,000 for IMS for FY1991 and "such sums as may be necessary" through FY1993. Original bill introduced May 15, 1990; referred to Committee on Education and Labor. Ordered reported June 19, 1990 from Committee on Education and Labor with no amendment (H.Rept. 101-566). On Oct. 11, 1990 the Williams-Coleman substitute to H.R. 4825 passed the House by a vote of 382 to 42 and H.R. 4825, as amended, passed the House by a vote of 349 to 76 (roll no. 449).

S. 2724 (Pell)

Arts, Humanities, and Museums Amendments of 1990. To extend and improve arts and humanities programs, museum services, and arts and artifacts indemnification, and for other purposes. Introduced June 12, 1990. Approved without amendment by the Subcommittee on Education, Arts, and Humanities June 13, 1990 for full Committee consideration. Sept. 12, 1990, ordered reported favorably from Committee on Labor and Human Resources with an amendment in the nature of a substitute. The amendment would reauthorize NEA, NEH and IMS for five years. It would require that any grant recipient convicted in a court of law for producing work that is violating obscenity or child pornography laws return grant money to the NEA.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. House. Committee of Conference. Making appropriations for the Department of the Interior and related agencies for FY1990. Oct. 2, 1989. Washington U.S. Govt. Print. Off., 1989. 100 p. (101st Congress, 1st session. House. Report no. 101-264).

U.S. Congress. House. Committee on Education and Labor. Subcommittee on Postsecondary Education. Hearing on the rights of artists and scholars to freedom of expression and the rights of taxpayers to determine the use of public funds.

101st Congress, 1st session. Nov. 15, 1989. Washington, U.S. Govt. Print. Off., 1990. 57 p. Serial No. 101-61.

CHRONOLOGY

- 10/16/90** --- H.R. 5769, the Interior and related agencies appropriations bill for FY1991 was reported in the Senate with the same restrictive language on obscenity used in the FY1990 appropriations and providing \$170 million for NEA.
- 10/15/90**--- H.R. 5769, the Interior and related agencies appropriations bill for FY1991 passed the House, providing \$180 million for NEA.
- 10/11/90**--- The Williams-Coleman substitute to H.R. 4825 (The Arts, Humanities, and Museums Amendments of 1990) passed the House by a vote of 382 to 42, and H.R. 4825, as amended, passed the House by a vote of 349 to 76. The Crane amendment to abolish NEA funding failed by a vote of 361 to 64 and the Rohrabacher amendment for restrictive language failed by a vote of 249 to 175.
- 09/12/90** --- S. 2724 (the Art, Humanities, and Museums Amendments of 1990) ordered reported from the Committee on Labor and Human Resources with an amendment in the nature of a substitute that would reauthorize the NEA, NEH and IMS for five years.
- 09/11/90** --- The Independent Commission released its *Report to Congress on the National Endowment for the Arts*.
- 08/04/90** --- NEA's National Council on the Arts met and voted to withhold approval of five grants, including grants for two performance artists, Karen Finley and Holly Hughes. The Council agreed to submit the applications to a new review panel and reconsider the applications in November. The Council did approve two grants to the Institute of Contemporary Art (ICA) who had assembled the Mapplethorpe exhibit.
- 07/31/90** --- NEA Chairman Frohnmayer declared that the National Council on the Arts meetings would be open to the public.

FOR ADDITIONAL READING

U.S. Library of Congress. Congressional Research Service. First Amendment implications of the prohibition against Federal funding of obscene art, by Henry Cohen. Washington 1989.

CRS Report 89-576 A

The Independent Commission. A Report to Congress on the National Endowment for the Arts. September 1990, Washington, D.C.