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Drastic Funding Cuts Proposed for the National Endowment for the Arts: The Necessary Limitation of Entertainment for the Cultural Elite or the Sabotage of the Sustenance of National Culture?

INTRODUCTION

In an effort to reduce the growing deficit, the current trend on Capitol Hill is to reduce the funding for many entitlement programs. One of many programs selected for cuts is the National Endowment for the Arts, commonly known as the NEA. Numerous bills are pending in both branches of Congress which address the future of NEA funding. The proposals within the current federal funding debates about the NEA are varied and include: (1) a thirty percent decrease in funding for fiscal year 1995; (2) mandatory privatization; (3) gradually reduced funding over four years, culminating in elimination of the NEA in 1999; and (4) immediate elimination of the program.¹ This legislative update will concentrate on a separate bill pending within each branch of Congress, and a proposal from a joint committee, including members of both the Senate and the House of Representatives. These three bills seem to have the greatest potential to not only win the approval of the full Congress, but also to be signed into law. Even if these specific bills are not passed by Congress, surely they will influence any legislation which is ultimately passed.

In Section I, this article will explore various aspects regarding funding, including the pending legislation, previous attempts at legislative funding cuts and content regulation, and related court controversies. In addition, this background information will examine opposing opinions regarding NEA funding cuts, and the significance of these opinions in modern American society. In Section II, the discussion will overview the provisions of the three bills pending before Congress. The foreseeable impact on the status of the NEA with the enactment of any of the proposed legislation will be discussed in Section II. Finally, this article will address the variety of responses one may expect if changes called for in the pending legislation are passed and signed into law.

¹ In addition to the bills which are the focus of this article, several other bills are pending before Congress addressing this issue, including: (1) Privatization of Art Act, H.R. 209, 104th Cong., 1st Sess. (1995) (proposing the elimination of the National Endowment for the Arts); (2) Privatization of Humanities Act, H.R. 579, 104th Cong., 1st Sess. (1995) (proposing the elimination of the National Endowment for the Arts); and (3) National Endowment Restructuring Act of 1995, S. 1071, 104th Cong., 1st Sess. (1995) (proposing to eliminate the National Foundation for the Arts and Humanities and to instead establish a National Endowment for Arts, Humanities, and Museum Services).
The proposed funding cuts and the possible elimination of the NEA come before Congress against a growing background of controversy and debate. During the Reagan era, legislative attacks on the arts began to increase in intensity. At the same time, the number of court battles attacking artistic product funded by the NEA as obscenity increased as well. Moreover, critics of the NEA attack it as being elitist, while its supporters claim that the program secures culture and our national heritage for all. To understand where the truth lies within this battle, the source of these controversies must be examined.

A. The Beginning

The National Endowment for the Arts was established in 1965 when the Act creating the National Foundation on the Arts and the Humanities was passed ("Foundation").\(^2\) The Foundation was created in response to a request from President Lyndon Johnson\(^3\) to help create and sustain freedom of thought and imagination, to encourage creative talent, and to promote popular awareness of art and associated cultural diversity.\(^4\) Funding for the NEA skyrocketed under President Richard M. Nixon.\(^5\) Nixon not only thought endowments to the arts were worthwhile, he also liked the irony of being the one to aid a cause so important to liberals.\(^6\)

The NEA distributes the federal funding it receives to a variety of artistic and cultural organizations throughout the nation, with the organizations ranging from state art agencies to private artists.\(^7\) The funding provides general operating and project support to museums, theaters, dance companies, opera companies, and symphony orchestras.\(^8\) The NEA also funds individual artists, focusing especially on the support of artists of diverse cultures and backgrounds. Another goal of the NEA funding is to educate children about the arts by distributing desperately needed resources to schools and classrooms.\(^9\) Furthermore, the NEA enriches the arts all over the nation by ensuring that funding reaches the remote recesses of the country to allow even the smallest, rural communities access to the joy and entertainment of the arts.\(^10\) Works created with NEA funds have been both praised and attacked.\(^11\) In fact, because of this divisiveness among the masses,
the NEA has survived an enlightening yet controversial thirty years.

B. The Reagan Era Attacks the Arts

Early in Ronald Reagan’s first term as president, his administration became determined to change the federal government’s involvement in the funding of the arts. Specifically, the Reagan administration thought that funding for the arts would best be handled by the private sector. In 1981, Ronald Reagan himself proposed substantial cuts in the NEA’s budget by demanding a fifty percent reduction in the funding allocated for the NEA. However, Reagan’s attack was unsuccessful. Congress not only refused the cuts proposed by Reagan, but it showed clear support for the program by actually increasing the NEA’s funding that same year. Attacks by the administration on the NEA’s funding were consistent throughout the Reagan years.

C. Is the Art the NEA Supports Offensive?

During the 1980s and early 1990s, the artistic merit and content of NEA funded programs and works continued to be attacked. For example, conservative groups wanted to stop the production and display of artwork that they believed to be patently offensive; it did not matter whether the work was produced by individual artists receiving grants, or by museum funding which promoted a particular artist’s show. Congress also became involved in the controversy by attacking statutory content restrictions. Since NEA funding was contingent upon the subject or content of the art produced, artists would be forced to conform to what Congress deemed acceptable. Moreover, private organizations have demanded that art deemed “objectionable” be removed from display and even that the funding for such items be ceased entirely. The attacks by the various groups were generally unsuccessful because the courts consistently agreed that any interference with the work of these artists or the displays at museums would constitute First Amendment violations.

the Vietnam War Memorial. The NEA sponsored the contest which ultimately produced the winning design for the memorial wall that now stands in Washington, D.C., and attracts thousands of visitors each year.

13. Id. See also Healey, supra note 3, at 272-75.
15. Id. Another example was an attempt to cut funding by 12.5% in 1987.
17. Stychin, supra note 16, at 81-84. The 1989 congressional approval of content-based restrictions for the art produced from NEA funding “was a clear departure from the long established policy of independence in funding decisions” for the NEA. In 1990, Congress again conditioned the appropriation of funds to the NEA with content-based restrictions.
19. See Bella Lewitzky Dance Found. v. Frohmayer, 754 F. Supp. 774 (C.D. Cal. 1991) (declaring requirement that grant recipients certify that funds received from the NEA would not be used to
Although the attacks by these groups were not successful in stopping the production or showing of what some considered to be offensive trash, the complaints have added to the controversy concerning the type of art the NEA should fund. For example, each time new proposals to limit or cease funding for the NEA are raised, the discussion always includes a lengthy, detailed debate about specific works of “art” or programs funded by the NEA which constituents and congressional representative consider offensive. The members of Congress who hope to successfully attack funding allocated for the NEA describe these works in a negative light, in an effort to prove that consistent funding for the NEA is not money well spent.

D. The Debates

The critics of the NEA argue that the program itself is elitist, and as such, it is an unnecessary expenditure of the average citizen’s tax dollar. In fact, this elitism argument is supported by statistics indicating “that blue-collar workers make up just seven percent of the audience at art museums.” Moreover, the controversial nature of some of the art produced by the NEA’s patrons is also used to support the “elitism” argument, because the NEA primarily supports post-modern artists who reject all standards of quality and aesthetics, while consistently discriminating against traditional artists. Critics contend that the result of this bias in the distribution of funds is that the art produced does not appeal to everyone, and because of this fact, the program is elitist.

Furthermore, critics claim that the NEA can and should be funded by private agencies. They posit that this would help the NEA to avoid the dangers of changing political opinion. Many legislators contend that Americans do not want to support filth, and thus, the government should stop doing so. Finally, the simplest argument stands on the notion that budget cuts need to be made create obscenity was unconstitutional because it had a chilling effect on First Amendment rights); Finley v. NEA, 795 F. Supp. 1457 (C.D. Cal. 1992) (holding that release of funds to artists based upon general standards of decency was void for vagueness, and as such, it was inconsistent with due process. In addition, it violated the First Amendment because it prohibited more than obscenity. In so doing, it sanctioned protected speech).

20. Some past and current complaints include: the sado-masochistic and homo-erotic work of Robert Mapplethorpe during the 1980s (Farewell to the NEA, WASH. TIMES, July 23, 1995, commentary, at B2); a performance art center in California where plays have been presented about “dykes” and “fags,” and included a reference to “sex with Newt Gingrich’s mother” (Abraham, supra note 18, at A22; See also Jerry Gray, Funding Fade-Out on Course in the House/Arts, Humanities Funding Targeted, THE NEWS TRIBUNE, July 18, 1995, at A1; a show at New York’s Whitney Museum of Art entitled “Abstract Art: Repulsion and Desire in Art,” that displayed excrement and dead animals to “make a statement about the degrading of the purity of a museum art” (Abraham, supra note 18, at A23); and the display of blood on a cloth by an HIV infected artist before and over the heads of audience members (Jennifer Corbett & Janet Hook, Senate Approves Funding Cuts to Arts, Humanities, L.A. TIMES, Aug. 10, 1995, at 1).


22. Id.

23. Abraham, supra note 18, at A23.

24. Id.
somewhere and that "unnecessary frills" should be cut first.\textsuperscript{25}

The supporters of the NEA respond by stating that the funding the NEA receives each year is a only minimal part of the entire national budget. The NEA's funding requires about one-tenth of one percent of the federal budget,\textsuperscript{26} which ultimately costs each American taxpayer the amount of two postage stamps annually.\textsuperscript{27}

Moreover, in response to the "elitism" charges, supporters contend that the funding manages to expose many to the arts who would otherwise miss the wonder, education, and enjoyment the arts can offer. The NEA does so by taking the arts to rural areas and into schoolrooms. The NEA contentions regarding the increased exposure of the arts is supported with statistics about the general increase in the accessibility to the arts.\textsuperscript{28} In support of the beneficial aspects exposure to the arts has to offer, a spokesperson for the NEA stated: "[n]ot everything that your tax dollars go for you will use . . . But if we all pay collectively for things that we all agree are universally beneficial, then there will be opportunities for those things that you're interested in."\textsuperscript{29}

Furthermore, supporters argue that privatization is an unacceptable option for several reasons. First, governmental seed money encourages donations from private organizations. NEA dollars spent in a community will usually generate $11 of private giving for every $1 invested in the NEA.\textsuperscript{30} Thus, the NEA is actually one of the most profitable uses of federal tax dollars. In 1992 alone, the NEA awarded grants totaling $123 million, which supported projects worth $1.37 billion.\textsuperscript{31} NEA supporters contend that "without the seed money, many of its programs would not exist because they are not the sorts of things the private sector would get into without some stimulus."\textsuperscript{32} Second, reliance on private donations for all revenue will result in censorship of art produced because only art that is popular with mainstream America will receive support.\textsuperscript{33} This result defeats the purpose of the NEA, and it stifles free speech.

Finally, supporters argue that government should be willing to make a valuable investment in our nation's cultural heritage because the funding required to support the NEA is so low compared to the work that the NEA has accomplished in the past thirty years and still continues to accomplish.
A. The Recommendation of the House of Representatives

The House proposal concerning the NEA was approved by the House Economic and Educational Opportunities Committee in June of 1995 by a vote of nineteen to two. Republican Bill Goodling of Pennsylvania is the chief sponsor of the bill. This House proposal calls for a gradual decrease in funding each year through 1998, after which the NEA would be eliminated completely. Funding would remain at $167.7 million for fiscal year 1995, but would decrease to $97.5 million in 1996, $58.5 million in 1997, and $46.8 million in 1998. Supporters contend that the “glide path” to elimination is the perfect proposal because it allows the NEA three years to line up alternative funding for its programs.

B. The Recommendation of the Senate

The Senate proposal is sponsored by Republican James Jeffords of Vermont and was approved in September 1995 by the Senate Labor and Human Resources Committee by a vote of twelve to four. Although the Senate approach includes funding cuts of thirty percent in the NEA budget, it does authorize the continuance of the organization through 2000, and it does not contain any provision for its elimination whatsoever. The bill sets funding caps of $162.5 million for 1995 and $153.9 million for 1996. In addition, it eliminates most direct funding to individual artists, in an effort to censor and control content of the projects produced from the NEA’s funds. The Senate, compared to the House, has clearly indicated much stronger support for the overall survival of the NEA.

34. Arts, Humanities, and Museum Services Amendments of 1995, H.R. 1557, 104th Cong., 1st Sess. (1995). The proposed bill declares that the encouragement and support of national progress in the arts is a matter better handled by private and local initiatives. Moreover, it specifically calls for the ultimate elimination of the NEA, which is described as an organization that distributes funding for arts projects, “with particular regard for traditionally underrepresented ones.” The National Foundation on the Arts and Humanities Act would be repealed as of October 1, 1998.


36. Id.

37. Arts, Humanities, and Museums Amendments of 1995, S. 856, 104th Cong., 1st Sess. (1995). Along with extending the authorization and funding of the NEA through the year 2000, the proposed bill requires the Chairperson of the NEA to study the feasibility of innovative types of fundraising. It limits administrative expenditures to 12% of funds, and it requires that distribution of funds be prioritized so that those programs increasing public access to the arts will receive the highest priority. The bill also proposes changes to the NEA advisory panels.


39. Id.
C. The Joint Committee Proposal

A joint House and Senate committee reached a compromise concerning their differing opinions about how to handle funding concerns for the NEA. They agreed to reduce overall funding by thirty-nine percent to $99.5 million, but included no provision which would totally eradicate the program. Although this proposal does not call for the elimination of the NEA, it does contain content-based restrictions similar to those which were implemented and judicially overturned in the recent past. The joint committee’s recommendation bars federal support for artists who denigrate a particular religion or produce sexually explicit materials.

IMPACT

Clearly, funding cuts that range between thirty and thirty-nine percent will have a drastic result on the amount of social and cultural arts programs the NEA can support. What is not so clear is how the NEA will determine which programs will suffer from the loss of funding. The federal legislators are quick to cut funding, but the NEA will be left with troubling decisions, including the determination of exactly which groups will lose most or all of their funding. Decisions must be made carefully in order to avoid accusations of discrimination. In the end, it is likely that most recipients of funds from the NEA, if not all, will suffer in one way or another.

First, in light of drastic funding cuts, the NEA may have to cut its support staff drastically, and therefore, may not have the administrative capability to distribute its limited funding. Moreover, funding recipients from rural areas who are unable to draw funding from elsewhere will be the most likely to suffer from such drastic cuts. Without enough government seed money to generate private donations, these smaller communities may lose their art programs completely. Additionally, artists who may be considered avant garde will be likely to suffer because they may not find support from the mainstream. As a result, this will prevent the continuous evolution of the arts. Creativity may not be able to grow, change, and reflect our ever evolving society. The reduction of funding and potential mandatory censorship may not only cause the elimination of grants to individual artists, but it may also encourage the creation of watchdog committees to ensure the “proper” use of funding.

The continued threats from various groups ultimately will force the NEA itself to sacrifice its commitment to creativity and art for the sake of its survival. Furthermore, self-censorship is not only a threat within the NEA; it is also a danger

42. Wells, supra note 35, at 1331.
44. Id.
for the individual artist, company, and museum in the fight to survive. Finally, the possible success of outright elimination seems incredibly dangerous. History has taught us that no civilized advanced culture has existed without supporting the arts and culture. The NEA contributes to the national culture by entertaining, teaching, creating and recording history; therefore its elimination would sacrifice all of those benefits. “Art may attract or create an elite, but it is also accessible to all and indeed should be a basic part of civilized education that produces civilized citizens.”

CONCLUSION

The funding cuts proposed for the budget of the NEA, even in their most generous form, will have an impact that is more far reaching than government officials will admit or perhaps even realize. Funding cuts of these extremes will surely decrease the amount of art that is funded. In addition, accessibility to the arts, which has always been a longstanding goal and success of the program will clearly decrease. Moreover, because funding cuts have been threatened before and attacks have been constant, the art that is actually produced will likely be affected. Specifically, in an effort to retain funding from the NEA, museums, writers, and artists may be forced to edit their work in an effort to ensure that they will receive funds to produce work in the future.

The NEA itself will also be impacted. Those artists who do not sanitize their work may be cut off from funds altogether in an effort to save the NEA. This would undoubtedly alter the message the artists are sending through their work, and consequently the message the public receives. However, in light of the past attacks on the specific works and artists who were supported by the NEA, this result may not be one that is offensive to all. Unfortunately, this attack on the First Amendment, controversial content, and our diverse culture is hidden within the rhetoric of deficit reduction and the elimination of wasteful spending. As a result, the agenda supported by the proposed legislation is not obvious to all. Thus, it is not clear what the ultimate consequences of this sort of legislation will be and what sort of precedent it will set for future attacks on artistic expression. Sadly, it will be some time before the ultimate impact of any of these changes on the arts and artistic expression in this country is understood.

The attacks on the NEA, instigated mainly by a number of private conservative groups, have been especially persistent throughout the last decade. Thus, it is clear that the attacks on the NEA are not likely to end anytime soon. This is because many of the NEA’s opponents will not be satisfied until the NEA is completely abolished or at least censors the art that is produced. Consequently, the resolution of this controversy, whatever it may be, during the 1995-1996 congressional term, will not likely be the ultimate end of the battle for the

45. Stage Notes, THE KANSAS CITY STAR, July 2, 1995, at I2. Artist Melia Bensussen, director of the Heart of America Shakespeare Festival production of “The Taming of the Shrew” stated, “… [T]here has never been an advanced society without a theater.”

NEA's supporters and its opponents. It is not clear which side will eventually emerge victorious in this battle surrounding the arts and creativity; for this reason, the long term survival of the National Endowment for the Arts remains ultimately unclear.

Dawn Best