

The US Supreme Court's ruling on the NEA

A "chilling effect" on art and democratic rights

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The recent Supreme Court ruling upholding a 1990 law requiring the National Endowment of the Arts to consider 'general standards of decency' and 'respect for the diverse beliefs and values of the American people' when awarding grants to artists is a serious affront to freedom of expression and freedom of speech. The law turns a government agency, whose creation in 1965 Congress declared was in part for the purpose of helping to 'create and sustain ... a climate encouraging freedom of thought, imagination, and inquiry,' into a sort of ideological police force working to see that artists receiving subsidies do not contravene prevailing morals and values.

The near-unanimous (8 to 1) vote of the high court also indicates the extent to which even a nominal commitment to elementary democratic rights within the political and legal establishment has been eroded.

One is struck in reading the 1965 Congressional debate, even taking into account the considerable gap between rhetoric and reality, by the shift to the right that has taken place in American bourgeois politics. One provision of the original legislation, for example, specifically forbade the NEA from exercising any direction or control over the policy determinations and curriculum of any arts group or school. The House Report described this provision as an 'assurance against federal interference in the arts.' The Senate Report devoted an entire section to 'Freedom of Expression.' It stated in part that it was the Senate committee's intent 'that in the administration of this act there be given the fullest attention to freedom of artistic and humanistic expression.... Countless times in history artists and humanists who were vilified by their contemporaries because of their innovations in style or mode of expression have become prophets to a later age.... [C]onformity for its own sake is not to be encouraged.'

The June 25 Supreme Court ruling is in some senses the culmination of a battle over the fate of the NEA--a fairly one-sided battle--that has been going on for nearly a decade. Controversy first erupted in 1989 over the arts agency's support for institutions that displayed the work of photographers Robert Mapplethorpe and Andres Serrano. For months Sen. Jesse Helms (R-NC) and others excoriated the NEA for subsidizing 'disgusting' and 'blasphemous' art with 'taxpayers' money.' Eventually they introduced the measure mandating the NEA to take standards of decency into consideration. There was no question about the intent

of the bill. Its sponsors intended the law as an act of censorship, i.e., they wanted the government arts agency to cease handing out cash to works of artists whose nonconformist behavior or anti-establishment views they disliked.

Four artists, Karen Finley, John Fleck, Holly Hughes and Tim Miller, whose requests for grants had originally been approved but were then withdrawn after Congress began its deliberations on the decency clause, sued. When Congress enacted the clause, the four 'amended their lawsuit to challenge the clause because of its chilling effect on their work,' as their legal brief to the Supreme Court explained. They were later joined by the National Association of Artists' Organizations.

In 1992 a federal judge in California declared the decency provision unconstitutional. The US Ninth Court of Appeals subsequently agreed with that ruling. The Clinton Justice Department then appealed the decision to the Supreme Court asking it to reinstate the law. It did so on behalf of the NEA. The arts agency, acting on the general principle that guides the entire work of the present administration, was quite prepared to wreck itself as a viable organization if that would spare it any further confrontation with the Right.

The arguments of the government before the high court were quite remarkable. For example, it asserted that the purpose of the bill was not to suppress dangerous or unsettling ideas, but merely to maintain 'public confidence' in the arts and to be 'sensitive to the nature of public sponsorship.' As the four artists' legal brief pointed out, however, 'former NEA General Counsel Amy Sabrin candidly acknowledged, the latter terms are merely 'coded language meaning, 'don't do anything too controversial.'"

The general thrust of the government's case was to argue that the clause was too indeterminate to be seriously harmful, that the NEA had considerable discretion in how it implemented (and, by implication, got around) the standards and that, in any event, the agency's funding was not very influential. The attorneys for the four responded to the last point by noting that 'even if the empirical claim were accurate, the First Amendment does not tolerate viewpoint discrimination in small doses.'

In any event, a majority of Supreme Court justices found the government's arguments convincing. They obliged the government and the NEA officialdom--and the Christian fundamentalist lobby, which applauded the decision--by upholding the law's

constitutionality. (Justices Scalia and Thomas voted to uphold the law on the grounds that it *did* discriminate against unpopular speech, as its designers had intended, and they were all for it. Only Justice Souter rejected the bill on the grounds that the standards it outlined are unconstitutional because they discourage certain viewpoints, and that artistic expression, even supported by government subsidy, must remain free of political control.)

In their ruling the majority of justices voting to reverse the lower courts' decisions ignored both the socio-political circumstances in which the bill was introduced into Congress and passed and the *professed* aims of Helms and his allies.

Neither did they spare anything in the way of sophistry and tortuous logic. The six argued, agreeing with the government, that the law does not *preclude* grants to projects that might be deemed 'indecent' or 'disrespectful,' nor place explicit conditions on grants, or specify that decency and respect be given any particular weight in the review of an application, but simply adds 'considerations' to the grant-making process. All the arguments pointing out the sort of 'chilling effect' this would have on artists and grant-givers alike did not move the majority justices. They announced that *they* did not perceive a realistic danger that the regulation would be used to block or punish the expression of particular views. Until such time as it was used in a manner that might raise concern about the suppression of disfavored viewpoints, the Court would uphold it.

(If I place a fairly fierce guard dog outside a property and someone objects on the grounds that this is rather intimidating, I might say, 'Well, until such time as someone chooses to challenge the dog and has his leg chewed on I will assume that his presence is entirely benign.')

As a result of congressional attacks and the cowardice of the Clinton administration and the NEA tops, the arts agency is largely a spent force. Its funding has been slashed, and it has virtually abandoned the practice of distributing individual grants. It takes care as much as it can to subsidize only the bland and innocuous. Equally, very few artists with provocative or innovative projects would approach the NEA. They would know where they were not wanted.

The June 25 ruling fits a general pattern of attacks on democratic rights and pandering to the religious right. Republican Senate Majority Leader Trent Lott of Mississippi has already launched the first of what will no doubt be many attacks on homosexuals as the 1998 election campaign gets into gear. The Republicans intend to place 'cultural' issues--unorthodox sexuality and lifestyles, abortion, drugs, etc.--at the center of their campaign. The right wing will attempt to channel the disaffection of wide layers of the population against carefully selected and vulnerable targets. Such attacks also serve to divert attention from enormous social problems, problems for which neither major party has any progressive solution.

One thing is certain. The assault on democratic rights will not end with attempts to suppress the rights of artists to dissent. The social crisis threatens to provoke large-scale opposition to the policies of government and big business. New witch-hunts will be launched against all sorts of people who refuse to abide by government-established standards of 'decency' and 'respect.'

The NEA controversy raises a number of other questions. They

can only be mentioned here.

First, one must make no concession to the reactionary and philistine argument that the government 'shouldn't be in the business of subsidizing art.' In America, in any case, it hardly is in that business at present. The US spends 38 cents per capita to support the NEA; in Canada and France, by comparison, per capita support for the arts is \$32. *The city of Berlin provides \$130 million alone to its two major opera companies; the 1999 budget of the NEA will be \$98 million.*

The alternative to government support is art's becoming entirely dependent on its ability to earn a profit. Particularly at this moment in history, when the general cultural level is relatively low, this would mean the virtual extinction of serious artistic work. This reality is recognized in nearly every country in the world.

If one wants to see the results of 'letting the market do its work,' all one has to do is consider the significance of the place-names Hollywood and Broadway, bywords today, for the most part, for intellectual degradation. The big business politicians, of course, would like to see nothing but market art both because it is politically harmless and distracts the public and because it makes a great deal of money for their friends in the entertainment industry.

On the other hand, it is certainly not our view that the solution to the problems confronting artists in the US was ever represented by the NEA. There is no doubt that reliance on government grants tends to produce a particular kind of art and a particular kind of artist. The dependence of 'artistic' success on the ability to carefully craft grant applications and create the sort of art work that government agencies find attractive, encourages high-flown double-talk, self-promotion and toadyism.

There is no going back to the old system of NEA grants. The period in which that was economically and politically sustainable has passed. We live in far more bitter and difficult times. Relying entirely on the wisdom and benevolence of the market is not a realistic option for most artists either, at least not the interesting ones.

There is another alternative, which, unfortunately, hardly enters into the consciousness of most contemporary artists: determined struggle against the political and aesthetic status quo. In the course of such a struggle new means of expression, new methods of distributing and exhibiting art works and new audiences will inevitably emerge. The *World Socialist Web Site* will certainly do whatever it can to advance that sort of effort.

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