

## State Attorneys General: Policing or Politicizing Private Philanthropy?

*Using Law to Impose an “Extreme Makeover” on Society*

by Martin Morse Wooster

**Summary:** *Aiming to reshape society, state attorneys general wield ever-expanding powers over private corporations, foundations and nonprofits. Their activities—too often motivated by ideology and politics—frequently undermine the very institutions they are supposed to protect.*

**F**our years ago we reported on the increasing activism of state attorneys general, and the often-harmful effects their efforts were having on the nation’s economic and philanthropic life. (See Martin Morse Wooster, “How State Attorneys General Police Nonprofits,” *Organization Trends*, August 2000.) If anything, their activities since then have only underscored this concern.

State AGs are the principal regulators of nonprofits and charities. Their powers are formidable and growing in disturbing ways. For example, New York Attorney General Eliot Spitzer filed a lawsuit recently against the New York Stock Exchange, alleging that NYSE was paying the exchange’s head, Richard Grasso, too much money. Spitzer based his authority to regulate the private NYSE’s executive compensation levels on the fact that it is a nonprofit organization.

State AGs also file plenty of class-action lawsuits against private companies. Increasingly these suits produce settlements that mandate compulsory donations to politically favored charities. The now-famous settlement with the tobacco industry, for example, created a nonprofit, the American Legacy Foundation, with a billion-dollar endowment funded by the industry, and committed to the war against smoking. Similar state-based organizations have been set up to fight smoking.



Some ambitious state attorneys general, such as New York Democrat Eliot Spitzer (right), use their sweeping powers to force ideologically-based changes on society, while advancing their political careers.

Finally, state attorneys general are becoming more active in policing private charities. Buoyed by a 2003 Supreme Court decision that gives them more authority over telemarketing abuses, state attorneys general have begun to insist on exerting control over foundation boards. Last July, Texas attorney general Greg Abbott settled the first lawsuit charging a foundation with excessive executive compensation.

All this represents a troubling shift in the traditional role of state attorneys general. Policing corporations and nonprofits against fraud and corruption is a legitimate government function. But that mission has not proved to be enough to suit

the ambitions of many state AGs. Motivated by ideological and political agendas, many seek ever-expanding legal powers to reshape society. Yet frequently their efforts prove counterproductive, harming the very causes and institutions they are charged to protect

**October 2004**

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## The Tobacco Settlement—Up In Smoke

Six years ago, 46 state attorneys general settled with the tobacco industry, forcing these giant companies to pay billions of dollars and severely restrict how they advertise and conduct their business. It seemed as if state law officials now ruled the world. Having conquered tobacco, what industry would they go after next? Brewers? Gun manufacturers? Makers of fatty food?

It hasn't happened. With the notable exception of the politically ambitious New York State Attorney General, Eliot Spitzer—who is conducting a one-man crusade against Wall Street in anticipation of a 2006 run for governor—state AGs have been subdued in the past few years. For example, they shied away from joining class action suits against brewers and fast food companies.

There are several reasons for this sudden caution.

For one thing, Republicans captured five state attorney general seats in 2002, bringing the number of Republican AGs to 20—the largest tally since the 1960s. “Any time you have more Republicans in any organization, it tends to be more conservative, more business friendly, and more anti-regulatory,” explains Jerry Kilgore, chairman of the Republican Attorney Generals Association.

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Second, apart from their tobacco victory, AGs have a less than stellar record in court. Their lawsuit against Microsoft, which festered for years, finally collapsed in 2004. Suits that cities and a few state attorneys general brought against gun companies also fizzled, largely because of the tenacious efforts of gun manufacturers.

But the aftermath of the tobacco settlement itself may have deterred state AGs from attacking another large industry. It turns out that two recent reports from independent observers show that most of the money from the tobacco settlement has gone to activities *other* than reducing tobacco use.

Last September, analysts from the National Conference of State Legislatures (NCSL) reported on payments by the tobacco companies under the Master Settlement Agreement (MSA), and on agreements by four states that settled separately with the tobacco companies. The tobacco companies covered by the MSA agreed to pay “up front fees” which climbed from \$2.4 billion in 1998 to \$2.7 billion in 2003. These companies also pledged an annual payment, which rose from \$4.5 billion in 2000 to \$6.5 billion in 2003.

So where did the money go?

In fiscal year 2004, NCSL reported, states used 28 percent of the settlement payments (\$2.3 billion) on health programs, largely on Medicaid and prescription drug subsidies. Five percent (\$414 million) paid for long-term care for seniors. Another three percent (\$226 million) was spent on medical research, including studies on smoking-related diseases. In other words, 36 percent of the tobacco money went for health programs related at least tangentially to what the funds were supposed to be used for.

But only three percent (\$265.7 million) went for programs designed to cut tobacco use. Ironically, that's *less* than the four percent (\$294 million) spent on subsidies for tobacco farmers in nine states.

Still, all this accounts for only 43 percent of the total funds from the tobacco settlement. What happened to the remaining 57 percent?

Five percent (\$379.3 million) went into state education budgets, largely to scholarship programs. An additional three percent (\$231.3 million) was targeted for youth programs: “boot camps” for juvenile delinquents, school safety programs, preschool programs and Head Start. So the remaining 49 percent—\$3.9 billion, or half of all the tobacco

settlement money—went toward general unspecified expenses, including “rainy day” funds, endowments to be used in emergencies and general revenue items.

According to the NCSL, eight states—California, Connecticut, Massachusetts, Minnesota, New Mexico, New York, Tennessee, and Wisconsin—used their tobacco money for general expenses. Ohio used a whopping 82 percent share of its tobacco money for general expenses.

Eight states did something even more creative. California, Connecticut, New Jersey, New York, Oregon, Rhode Island, Washington, and Wisconsin “securitized” some or all of their tobacco money—i. e., they sold expected future payments from tobacco companies to investors as bonds. In fact, as a result of one legal case, you can expect that more and more of the tobacco settlement money will be distributed as interest payments to bond-buying investors. Last March the GAO—since renamed the Government Accountability Office—reported that in fiscal year 2004, the 46 states that get MSA funds planned to spend seven percent on interest payments to bond buyers. That's more than any other category except general purposes (54 percent) and health programs (17 percent).

These interest payments are at least three times more than what the states spend to reduce or prevent tobacco use—which receives *a mere two percent* of settlement funds.

This breakdown in how the states are spending tobacco settlement money shows that only a tiny amount has been used to reduce smoking. Would the Master Settlement Agreement have been signed if tobacco companies and state legislatures could foresee that more money would go to subsidize tobacco farmers than to anti-smoking efforts? Would they have inked the deal if they knew that increasing amounts of the settlement would be used to pay off bond investors?

## A Dubious “Legacy”

One clause of the MSA established the American Legacy Foundation. (See Martin Morse Wooster, “The American Legacy Foundation’s ‘Truth Campaign,’” *Foundation Watch*, July 2000). Under the MSA, the tobacco companies were forced to subsidize this organization with \$300 million in annual payments for a five-year period starting in 1998. According to the American Legacy Foundation’s 2002 IRS Form 990 (posted on

guidestar.org) these payments allowed the foundation to accumulate an endowment of \$997 million by 2002. The payments ended in March 2003, although the foundation still receives about \$25 million each year from the tobacco companies under a separate clause of the MSA, as well as an annual payment of \$25 million from smokeless tobacco companies under a similar agreement.

The foundation is fighting to force the large tobacco companies to continue to give it money. One of the four companies, Lorillard, is suing for a refund of all monies it paid American Legacy; it cites a clause stating that the Foundation would not produce advertisements that would “vilify” the tobacco companies. Lorillard objected to an American Legacy-funded advertisement in which someone stands in front of the firm’s corporate headquarters and offers to sell dog urine to the company (urea is an element in tobacco manufacture).

Under pressure from the National Association of Attorneys General (NAAG), Lorillard paid its share of American Legacy subsidies. “We are extremely grateful to the National Association of Attorneys General—and to its Tobacco Committee specifically—for taking the strong position that nonpayment would be a violation of Lorillard’s obligations under the MSA,” said American Legacy president Cheryl Heaton in a press release.

Rather than cutting the foundation’s spending or announcing a termination date for American Legacy, Heaton contends that the Foundation should continue indefinitely and tobacco companies should be forced to pay for it. She told the *Louisville Courier-Journal* in March that if the tobacco companies’ payments did not continue, American Legacy’s endowment would fall from \$750 million in 2004 to \$48 million in 2008. Heaton complained that with this reduced endowment, “a scaled-back anti-smoking campaign would not be possible.”

“The tobacco companies need to put their money where their mouths are and continue making payments,” she told the *New York Times*, “not because they’re required to, but because it’s the just thing to do.” And in case moral suasion doesn’t work, Heaton added that she would urge the Justice Department to mandate tobacco company payments to her foundation in any future agreement with the industry.

American Legacy’s efforts to preserve the forced tobacco payments entered another phase in April, when it announced the creation of a new nonprofit, the Citizen’s Commission to Protect the Truth. (American Legacy calls its television advertisements “the truth campaign.”)

The commission is funded by a \$1.5 million pass-through grant from the National Association of Attorneys General to the American Legacy Foundation. Its initial activities have been to establish a website (protectthetruth.org) that asks one million Americans to sign a petition demanding that tobacco companies restore their payments to American Legacy.

The commission is chaired by Joseph Califano, former Secretary of Health, Education and Welfare (HEW) in the Carter Administration, now director of Columbia University’s National Center on Addiction and Substance Abuse. Members include all living former surgeons general, former secretaries of HEW and the Department of Health and Human Services, and former directors of the Centers for Disease Control and Prevention. Other commission members include CEOs of the American Cancer Society, the American Heart Association, the American Lung Association, the Campaign for Tobacco-Free Kids and the National Association of Attorneys General.

### From Campus to Cinema

Two other recent activities of American Legacy involve charities. In November, Heaton denounced universities that received money from foundations created from tobacco fortunes. The schools included Duke University (founded by tobacco and electric-power entrepreneur James B. Duke and supported by the Duke Endowment), Wake Forest University (saved from bankruptcy in 1956 by the support of foundations created by R.J. Reynolds heirs) and the University of Richmond (where several business school professorships are endowed by Richmond-based Altria).

These schools no longer sell tobacco to students and restrict smoking on campus. In addition, Wake Forest has renamed its medical school, formerly named for donor Bowman Gray, an R.J. Reynolds president. Nonetheless, Heaton told the Associated Press that donations from tobacco companies or even from foundations distantly descended from tobacco fortunes would have “a chilling effect” on further tobacco reduction activities.

A more complex battle comes as a result of Clause 12 of the MSA, which

prohibits universities from accepting grants from tobacco companies if they also get money from American Legacy or its state equivalents. In January the *Columbus Dispatch* reported on a controversy at Ohio State University. In the summer of 2003, the Altria Group offered the Ohio State medical school a \$590,000 grant at the same time that the Ohio Tobacco Use and Prevention Control Foundation offered a \$540,000 grant to a researcher at Ohio State’s nursing school. Citing Clause 12, Ohio State accepted the Altria donation while declining grants from the state-administered foundation.

In December 2003, a researcher from the university medical school’s heart and lung institute acquired a \$6 million grant from Lorillard to study how cigarette smoke affects the lungs. After intense controversy, the Ohio Tobacco Use Foundation announced a modification in its rules: university departments could decide whether or not to accept tobacco money. Ohio State’s nursing school and its affiliated cancer center said they would never accept tobacco grants, while the university’s medical school accepted the funds and its public health school said it had not made up its mind.

The American Legacy Foundation denounced the Lorillard grant. It also threatened to cut off a grant to Boston University because some of the research was subcontracted to Ohio State. “We don’t want our money sitting side by side with tobacco money,” said American Legacy chief operating officer Lyndon Haviland.

MSA’s Clause 12 is putting universities in a bind. The *Dispatch* reports that several universities, including Boston University, the University of California, Michigan State, Columbia University’s Teachers College, the University of North Carolina, the University of Wisconsin (Madison) and Yale have asked to be exempted from the MSA’s Clause 12.

While these funding battles continue, American Legacy Foundation works with state attorneys general on other fronts. In March, the foundation—allied with the American Academy of Pediatrics, the Campaign for Tobacco-Free Kids and Smoke-Free Movies—called for restrictions on smoking depicted on the movie screen. These include issuing an automatic R rating for any film which features a character smoking, requiring movie theatres to run anti-smoking advertisements in any film where a charac-

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ter smokes and barring films from showing a specific brand of cigarette.

At a Washington conference last May held for advertising agencies and national advertisers, Vermont Attorney General William Sorrell—president of the National Association of Attorneys General (NAAG) and a member of the American Legacy Foundation board—announced that NAAG fully supported the foundation's efforts to cut down on smoking in movies. According to *Adweek*, Sorrell said state AGs would use a combination of “persuasion” and “litigation” to reduce the use of cigarettes in films.

It is sobering that the states' highest law enforcement officials are indifferent to the First Amendment implications of interfering with film content.

## Minnesota Malfeasance

At least one state counterpart to American Legacy also has been embroiled in controversy. In January 2003, Minnesota Attorney General Mike Hatch sued the Minnesota Partnership for Action Against Tobacco (MPAAT), charging that the organization misused its \$202 million endowment by spending \$1.4 million to lobby for smoking bans in restaurants instead of promoting smoking cessation activities. Hatch also charged that many members of the MPAAT board had conflicts of interest, since they represented organizations receiving MPAAT grants. He demanded that MPAAT cease to exist and the organization's funds be divided between the Minnesota Health Department and the University of Minnesota.

MPAAT was the subject of a second controversy at about the same time. A television commercial it funded depicted a bald-headed woman cradling a baby while she announced “Mommy is really sick,” and sang “You Are My Sunshine” to the child. Cancer survivors attacked MPAAT for failing to disclose that the woman was an actress, not an actual cancer patient.

After several rounds of litigation, MPAAT and the state settled in February 2003. MPAAT agreed to expand its board to include members who weren't grant recipients and to open its board meetings to the public. It also promised not to spend any more money lobbying for smoking bans.

But this May the *Minneapolis Star-Tribune* reported that two nonprofits—

Clean Air Minneapolis and the Association of Nonsmokers—Minnesota—received \$450,000 in grants from Minnesota MSA funds to lobby for smoking bans in Minneapolis and St. Paul.

Minnesota state senator Tom Wilkin, a Republican, denounced the state for allowing tobacco funds to be used for lobbying. “There's a fundamental unfairness in using taxpayer dollars to advance one side of an issue,” Wilkin told the *Star-Tribune*. “I think the Legislature would have some serious problems if there weren't restrictions to these grants. We may need to close a loophole.”

## State AGs and Charity “Donations”

Besides using their power to promote favored foundations and charities, state attorneys general also use their legal powers to cause charities trouble and unfairly penalize donors. For example, when state AGs forced companies and individuals that lost suits to “donate” to certain select charities, they were responsible for some perverse and unintended consequences.

In 2002, five large record companies lost a lawsuit brought by 40 state attorneys general who accused them of refusing to allow music chain stores to discount compact discs below a minimum price set by the industry. The music companies were ordered to pay customers \$63 million in rebates and send \$76 million worth of compact discs to libraries.

The rebate checks went out in 2003. Anyone who claimed he bought a compact disc between 1995 and 2000 received a check for \$13.86. No proof of purchase was required; even minors were eligible.

The library donation worked differently. “Libraries and other institutions will reap some auditory rewards,” *Library Journal* crowed in 2002. But when the discs began to arrive this past July, libraries were far less enthusiastic. It seemed that to comply with the decision, music companies simply emptied out their warehouses. Librarians at the Newton (Massachusetts) Free Library were trying to figure out what to do with 26 copies of an album by Eagle-Eye Cherry and 47 copies of Dame Janet Baker performing George Frederick Handel's opera “Dido and Aeneas.” In Iowa, libraries were scheduled to receive 739 copies of Whitney Houston singing a

rhythm and blues version of “The Star Spangled Banner” (protests from state library officials blocked that particular “donation”).

Steve Fosselman, head of the libraries in Grand Island, Nebraska, also warned that the “free gift” offered by the music industry was not necessarily free, since librarians would have to spend a great deal of money cataloging or discarding the discs. “Obviously, we don't want 600 copies, or even 20 copies, of anything,” Fosselman told the *Omaha World-Herald*. “Getting something for free should never be scoffed at, but people need to realize it costs money...for things like processing.”

In another lawsuit, an attorney general personally selected the “donation” to be made by the party he decided was guilty. In 2003, New York Attorney General Eliot Spitzer brought a case against Philip Anschutz, former chairman of Qwest, which alleged that Anschutz profited from what Spitzer said was insider information that Salomon Smith Barney provided in return for his business. Anschutz chose to settle the case without admitting any wrongdoing by agreeing to give \$4.4 million to various charities (without taking tax deductions).

According to the *New York Daily News*, Anschutz—who already gives \$50 million to charity each year—was allowed to select 32 charities to receive \$100,000 checks; these included the American Museum of Natural History, the Metropolitan Museum of Art and the Girl Scouts of America. But Spitzer demanded even more: he selected six law schools to receive \$200,000 checks from Anschutz to pay for securities arbitration clinics. (Anschutz denied that Qwest steered business to Salomon in exchange for IPOs.)

## Policing or Politicking?

In a 2003 article, Stephanie Strom, who covers charities for the *New York Times*, reported several instances in which elected state attorneys general ordered nonprofits to appoint individuals to their boards who were contributors to the AGs' political campaigns.

● In Illinois, the Terra Museum of American Art in 2001 named Fred Krehbiel to its board at the request of Attorney General James Ryan. Krehbiel contributed \$750,000

to Ryan's campaigns between 1994-2002, including \$250,000 after his nomination to the Terra Museum board. When the Terra Museum tried to leave Chicago in the 1990s, the attorney general launched a protracted lawsuit that forced the museum to stay in place.

- In Minnesota, a lawsuit filed by state Attorney General Mike Hatch against Alina Health Systems, a nonprofit health insurer, accused Alina of wasteful spending. As part of the settlement, Alina was required to spin off a new company, Medica Health Plans. Hatch then appointed eight "special administrators" to serve as Medica's board. Four of the eight were campaign contributors.

- In Pennsylvania, a titanic battle took place in 2002 inside the boardroom of the Milton Hershey Foundation. At issue: whether to sell the foundation's multi-billion dollar controlling interest in Hershey Foods to the Wrigley chewing gum company. (See Martin Morse Wooster, "The Milton Hershey School: The Richest Orphans in America," *Compassion and Culture*, April 2003.)

After the board decided against selling the Hershey Foods shares, the president of the Milton Hershey Foundation and ten board members resigned. Pennsylvania Attorney General Mike Fisher, who had weighed in to block the sale, then requested that four new members replace the ten members who resigned. The Foundation agreed to Fisher's request—even though two of the four were friends of Fisher's and one was a campaign contributor.

Texas Attorney General Greg Abbott told the *Times* reporter that his colleagues shouldn't be placing their campaign contributors on foundation boards. "We really don't have the authority to say to a board, you must hire or appoint someone," Abbott said. "That's a decision that belongs to the courts."

Abbott has not positioned his campaign contributors on foundation boards, but he has had few qualms about suing foundations for "excessive" compensation. Recently, he filed a lawsuit against the former president and former secretary of the Carl B. and Florence E. King Foundation, a Dallas-based family charity with \$37.6 million in assets. The suit charged that former Foundation president Carl Yeckel's 2002 salary of \$975,000 and former secretary Thomas

Vett's salary of \$452,000 was excessive, and it challenged Yeckel and Vett's expenditures of \$750,000 on a foundation credit card, which was used, among other things, to pay for European vacations and pet food.

Last July the *Austin American-Statesman* reported that a Travis County, Texas jury agreed with the Texas AG. It ordered Yeckel to repay the foundation \$10.5 million in punitive damages and Vett to pay \$3.5 million. In addition, Yeckel and Vett were ordered to reimburse the foundation an additional \$6 million in excessive salaries and credit card abuse.

Under the tax laws, foundations are private organizations that serve the public. As such, they should accurately report their income, expenses (including telemarketing expenses) and the compensation of their members. They should make this information easily available through Form 990s and through such organizations as Guidestar. Of course, it is also helpful when they promptly and accurately answer questions from the press about their organizations' finances.

But as private organizations, nonprofits should be free to determine for themselves how much their employees are paid and who sits on their board.

Cato Institute senior fellow Robert A. Levy points out other instances in which state AGs are "overreaching" by exceeding their rightful legal authority. Recently eight state attorneys general, led by New York Democrat Eliot Spitzer, decided to sue the nation's five largest public utilities, even though none of the utilities are located in any of the eight states. Their objective? To force a three percent annual reduction in carbon dioxide emissions during the coming decade.

"Never mind that the AGs have neither the authority nor the responsibility to act in the broader national interest," Levy points out. "And never mind that the power with that authority and responsibility, the U. S. government, has enacted federal statutes that pre-empt state laws."

The activities and agendas of state attorneys general raise serious questions about the intersection of politics and policing powers in law enforcement.

What do we want our state attorneys general to be: law enforcement agents,

dedicated to combating force and fraud in corporations, nonprofits and foundations? Or should they be partisan activists, imposing their ideological visions and political agendas on society by force of law?

Correspondingly, what do we want our nonprofit organizations to be: flexible and dynamic organizations capable of meeting the charitable needs of millions? Or should they become rigid, politically directed machines, whose activities, programs and personnel must be approved and controlled by a state attorney general who relentlessly pursues his own version of the public interest?

Our Founders believed that the authority of government officials must be legally limited, so that individuals could act and associate freely. However, many state AGs seem eager to invert things, so that they may act freely while they legally limit the liberty of everyone else.

State attorneys general discharge their legal obligations admirably when they police companies, nonprofits and foundations against fraud, coercion and misrepresentation. However, they overreach when they use the force of law to subject our society and institutions to their own notions of an "extreme makeover." **FW**

*Martin Morse Wooster is a visiting fellow at the Capital Research Center.*

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# PhilanthropyNotes

**Lewis Lapham**, editor of *Harper's*, has been taking it on the chin for his article in the magazine's September issue. First, *Reason* magazine's "Hit and Run" blog noticed that in the article, Lapham described and critically commented on alleged speeches and events at this year's Republican National Convention. The problem: Lapham's article was in print before the convention had even convened—an embarrassing fact that earned him widespread mockery and criticism. Then **Jack Shafer**, editor of the online political journal *Slate*, dissected the thesis of the article, titled "Tentacles of Rage." Lapham, says Shafer, "would have you believe that conservative foundations both outweigh liberal foundations and suppress the liberal message with their big spending. But that's not the case." Lapham's cited source "estimates assets of \$2 billion for the eight major conservative family foundations in 2001, which sounds gargantuan. But that's chump change compared to the holdings of liberal foundations...[N]one of these conservative foundations rank in the top 10 American foundations measured by assets, and most don't even break into the top 50. [By contrast] [t]he liberal **John D. and Catherine T. MacArthur Foundation**, which reported assets of \$4.2 billion in 2003, made grants of \$7.5 million to various liberal media projects, including **Public Radio International** (\$2.5 million), **WNET** documentary films (\$800,000), **WGBH** documentary film (\$400,000), and other TV, documentary, and radio initiatives...**The Schumann Center for Media and Democracy** (assets of \$60 million in 2002) gave money to liberal media organizations in 2003 at rates that would make a [conservative] **Scaife [Foundation]** faint. The group's federal Form 990 records it giving \$4.3 million away to **TomPaine.com/the Florence Fund** (\$2 million), **Sojourners** magazine (\$500,000), an investigative fund for **Salon.com** (\$277,785), the **Nation Institute** (\$115,000), and various radio, film, and magazine projects...It also paid **Bill Moyers**, host of **PBS's Now**, \$200,000 to serve as its president." In fact, Shafer points out, *Harper's* itself survives only "thanks to a subsidy that now runs to more than \$2 million annually from the liberal **J. Roderick MacArthur Foundation**."

House Speaker **Dennis Hastert** (R., Ill.) got into a public tussle recently with billionaire **George Soros** over the financier's backing of liberal, anti-Bush 527 groups, such as **MoveOn.org** and **Americans Coming Together (ACT)**. On the eve of the Republican convention, Hastert told **Chris Wallace** of **Fox News**, "You know, I don't know where George Soros gets his money. I don't know where—if it comes overseas or from drug groups or where it comes from." Soros sent Hastert a letter demanding a public apology "for attempting to defame my character and damage my reputation." He didn't quite get that. In his reply, Hastert wrote, "I never implied that you were a criminal and I never would, that's not my style." But he used the word "radical" four times to describe Soros' political agenda. Soros again insisted on an apology. But a Hastert spokesman retorted, "I think we have written all the letters we are going to write."

Conservative opposition to continued funding of the **National Endowment for the Arts** has been muted, mainly due to **President Bush's** support of chairman **Dana Gioia**. According to the September 7 *New York Times*, Gioia—"a poet, music critic and former corporate executive appointed by President Bush in 2002—[has] to a large degree has won the Congressional approbation that eluded his predecessors." Gioia has so mollified conservatives that in January the President asked Congress to increase the endowment's budget by \$18 million for the 2005 fiscal year, the highest percentage increase in a quarter-century. Congress will likely approve the funding by year's end. "Critics remain of course," the *Times* notes, "including a legislative faction, led by **Representative Thomas G. Tancredo**, Republican of Colorado, that seeks to abolish the endowment on the grounds that the federal government shouldn't be in the business of deciding what art to support any more than it should be deciding what religion to support. But even Mr. Tancredo acknowledges that the spunk has gone out of much of the opposition. Mr. Gioia's administration has eliminated 'what some have called egregious violations of someone's idea of good taste,' Mr. Tancredo said, adding, 'So for a lot of people it's just not worth the fight anymore.'"

