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Divider Title: **III. MAJOR ISSUES**

IS FUNDING FOR THE ARTS AN APPROPRIATE FEDERAL ROLE

BACKGROUNDER

Prior to creation of the NEA in 1965, many Americans had little or no access to the arts. Federal grants have led to a flowering of arts organizations in small cities and rural areas, and renewed efforts to preserve folk and traditional arts throughout the country. Federal grants provide funds for dance troupes, theater companies, orchestras and other arts organizations to leave their big city stages and tour other areas. In addition, Federal grants support arts education and leadership initiatives like the Mayors' Institute on City Design, international programs, literacy and writers' projects and other important programs. Federal funding and influence led to development of state and local arts agencies and a unique Federal-state-local partnership reaching into every corner of the United States.

ALLEGATION --State and local government funding of the arts has been increasing.

NEA RESPONSE -- State appropriations for the arts are unpredictable and governed by economic conditions, falling from a high of about $290 million in 1990 to $210 million in 1993. The $267 million appropriated in 1996 is still below the level appropriated six years ago, a decline of 25 percent in constant dollars. Furthermore, smaller states are highly dependent on Federal grants. NEA dollars represent 50 percent of the total arts budget of states like Alaska, Maine, Montana, North Dakota, Vermont and Wyoming.

Measures of local funding for cities large, medium and small estimated by Americans for the Arts indicate local funding has not kept pace with inflation between 1992 and 1997. This contrasts with much larger increases between 1983 and 1992.

ALLEGATION -- Private funding of the arts has been rising consistently since 1965.

NEA RESPONSE -- According to Giving USA 1996, there was a significant decline of $270 million in real dollar private funding of the nonprofit arts between 1992 and 1995. In addition, private sector giving to the arts and humanities as a percentage of private sector giving across-the-board declined from 7.7 percent in 1992 to 6.9 percent in 1995.

On May 28, 1997, the AAFRC Trust for Philanthropy, which publishes Giving USA, reported an increase in arts and humanities giving in 1996, the first such increase since 1992. Nevertheless the proportion of total giving going to the arts and humanities (7.2 percent) is still below that reported in 1992 (7.7 percent). Finally, between 1992 and 1996, total private giving rose by 10.3 percent - but private giving to the arts and humanities rose by only 3.8 percent.

According to a 1996 report jointly prepared by the President's Committee on the Arts and Humanities and the Rockefeller Foundation, NEA is still the largest single source of funding for the nonprofit arts in the United States. Corporate and foundation givers place priority on projects in their own communities. Smaller communities and rural areas have little access to foundation and corporate support for the arts.

ALLEGATION -- The arts are a healthy industry.

NEA RESPONSE -- Grants from the Federal government are only part of a system of funding that includes ticket sales, program advertisements, corporate and foundation giving, gift shops, membership fees and other fundraising techniques. While earned income is a substantial part of any organization's budget, the cost of producing art for public consumption exceeds income for all but the most popular ventures.

This is the report from the major nonprofit arts fields: according to Opera America, 45 percent of all opera companies in the United States ran operating deficits during the 1994-95 season. According to the Association of Art Museum Directors, 22 percent of America's largest art museums ran operating deficits in FY 95. According to the Theater Communications Group, 46 percent of non-profit professional theaters reported operating fund deficits in the 1995-96 season. In the past decade, symphony orchestras in Denver, New Orleans, Oklahoma City, Sacramento, Oakland, Birmingham and Orlando have experienced bankruptcy.

ALLEGATION -- Total receipts for performance arts events are up, approaching the total receipts for spectator sports.

NEA RESPONSE -- The statistics referred to are a broad measure of receipts from performing arts events as measured by the Bureau of Economic Analysis and includes much more than box office receipts from nonprofit performing arts institutions. They include rock concerts, commercial theater (Broadway) and dinner theaters, as well as concession receipts. The economic reality is that box office receipts for orchestras, opera companies, resident theaters and dance companies only cover, at best, 40-60 percent of the cost of production.

With respect to spectator sports, it is worth noting the extent to which local taxpayers are called upon to underwrite wealthy professional sports teams. According to Financial World, the mean value of a Major League Baseball franchise and a National Football League franchise in 1995 was $111 million and $160 million respectively, yet local taxpayers have been forced to cover an average of 65 percent of the cost of new stadium construction since 1990 - a cost which exceeded $220 million per stadium. Local taxpayer support of non-profit performing arts organizations pales by comparison.

NATIONAL ENDOWMENT FOR THE ARTS

DID YOU KNOW . . . ?

- **The NEA costs each American less than 38¢ each year. That investment makes possible:**

Symphonies & Chamber Music	Artists in the Schools
Children's Festivals	Museum & Gallery Exhibitions
Operas	Dance on Tour
Book Festivals & Poetry Readings	Literacy Programs
Concerts in the Park	Mobile Art Galleries
Jazz Festivals	Children's Museums
Puppetry Theaters	Fourth of July Festivals
Local Shakespeare Festivals	At-Risk Youth Projects
Community Planning	Historic Renovation
Folk Festivals	Downtown Revitalization

These projects are part of the cultural legacy Americans leave to future generations.

- **The NEA makes the arts accessible to all Americans.**

The NEA ensures that art is not just available to the wealthy in urban centers. Since the NEA was created 30 years ago, the number of arts organizations has dramatically increased:

- Nonprofit theaters have grown from 56 to over 400.
- Orchestras have quadrupled in number to over 200.
- Opera companies have grown from 27 to about 100.
- Dance companies have grown from 37 to over 250.
- Public arts agencies in small towns and cities have grown to over 3,000.

Each year, more people attend performing arts events than all professional sports events combined.

The NEA has awarded over 110,000 grants to thousands of American artists and arts organizations in all 50 states. (Less than 40 of these grants have been considered controversial.)

Already, federal funding cuts, coupled with rising costs of producing quality art, have forced some ticket prices to skyrocket, museum hours to be shortened, and outreach programs to be cut back or eliminated.

- more -

• The NEA is America's leader in promoting arts education.

The NEA has put tens of thousands of artists in the nation's schools through artist residencies, school performances, and master classes.

The arts help students develop confidence and creativity, inspire self-expression, motivation and discipline, and improve problem-solving, reasoning, speaking and writing skills -- all needed to compete in the future high-tech workforce.

• Each NEA dollar attracts many more dollars from other funding sources.

Each Endowment grant is a fundraising catalyst leveraging additional contributions from local and state agencies, corporations, foundations, businesses and individuals. Most NEA grants must be matched at least dollar for dollar, so recipients use their grants to raise money through public-private partnerships.

Arts organizations see their NEA grants as an invaluable imprimatur of excellence to help raise money from other sources.

• The NEA stimulates local and national economies and creates jobs.

Nationally, the nonprofit arts generate an estimated *$37 billion in economic activity and return $3.4 billion in federal income taxes* to the U.S. Treasury each year. More than *1.3 million Americans are employed* in the nonprofit arts industry.

The arts spur business development, generate urban renewal, and contribute to the economic vitality of America's cities and towns.

Cultural tourism is big business for cities and towns alike, encouraging local communities to preserve and celebrate their unique heritage.

• The NEA makes American communities better places to live and work.

The NEA funds museums, folk festivals, theaters, arts centers, and dance studios which draw families and businesses to participate in the cultural life of their communities. The arts bring diverse people together and build bridges of understanding.

For more information, contact the NEA Communications Office at 202-682-5570.

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TEN FACTS ABOUT THE NATIONAL ENDOWMENT FOR THE ARTS

1. The NEA is a great investment. The National Endowment for the Arts costs each American less than ***38 cents per year***. With this modest investment, the agency helps enhance the quality of life for Americans through a breathtaking array of cultural activity: from the best in theaters and touring dance companies to folk festivals and music concerts, from museums and orchestras to arts programs in our nation's schools that reach millions of students each year.

2. The arts help build community. The arts make communities better places in which to live and work. The NEA helps support community festivals, rural chamber music, arts centers, galleries and the arts in libraries, town halls, children's organizations, and other social and civic institutions where families can experience the arts. Arts Endowment-sponsored programs build bridges of understanding among diverse groups of Americans.

3. The NEA helps leverage private support. Recipients of NEA grants are required to match federal monies dollar for dollar, and in some cases, three to one. This seal of approval serves as a fundraising catalyst, allowing arts groups to raise funds many more times the required match. One Endowment dollar attracts many more dollars for the arts from state, regional and local arts agencies, foundations, corporations, businesses and individuals. These public-private partnerships stimulate a tremendous return on a small investment.

4. The arts stimulate local economies. The arts attract tourist dollars, stimulate business development, spur urban renewal, attract new businesses, and improve the overall quality of life for our cities and towns. On a national level, the nonprofit arts generate an estimated $37 billion in economic activity and return $3.4 billion in federal income taxes to the U.S. Treasury each year.

5. The arts mean jobs. More than 1.7 million Americans are employed in the not-for-profit arts industry, more than in any of the following professions: legal services, police and firefighting, mining, and advertising. Since 1970, the number of artists employed in the U.S. has more than doubled.

6. Without public support, the not-for-profit arts would become the sole province of the well-to-do. The NEA helps make the arts affordable to the average American, who otherwise would be faced with the prospect of skyrocketing, unaffordable tickets. Throughout history, the not-for-profit arts have relied on public patronage, whether it was the government or the church. Today, the rising costs of producing quality art has made the necessity of public patronage all the more dramatic. Accessibility to the arts has been widened by the Endowment's patronage to arts groups in every corner of the nation.

7. The NEA brings the arts to young people. Each year, the Arts Endowment opens the door to the arts to millions of school children, including "at-risk" youth. Recent academic research studies show arts education improves cognitive ability -- students exposed to the arts perform better in tests including the SAT. The arts help instill self-esteem and discipline, and provide creative outlets for self-expression. The arts also help prepare America's future high-tech workforce by helping students develop problem-solving and reasoning skills, hone communication ability, and expand creativity -- all important career skills of the 21st century.

8. The NEA helps bring the arts to more Americans. The number of arts organizations has risen dramatically since the founding of the NEA in 1965: The number of symphony orchestras has quadrupled. Dance companies have increased from 37 to over 250 today. There are nearly eight times as many theaters. In 1965, there were but five state arts agencies. Today, every state has one. The increase in the audience for the performing arts has been just as significant. In fact, the annual attendance for the performing arts now exceeds that for all professional sports combined. The Endowment has helped deliver the arts to every congressional district in the nation.

9. The NEA nurtures promising artists. Over the years, scores of artists who went on to receive Pulitzer Prizes, National Book Awards, MacArthur "genius" awards, Academy Awards, Emmys, Tonys and other prestigious national honors were supported at a crucial point in their artistic lives by the Endowment. While the Endowment awards only about five percent of its annual budget to individual artists, past fellowship recipients have made a dramatic impact on the nation's cultural life. Many have credited the Endowment with sustaining them and validating their careers when they needed it most. For example, the dramatist Alfred Uhry has said that his play, ***Driving Miss Daisy*** "never would have gotten out of the garage if not for the support of the National Endowment for the Arts."

10. The American people want the arts. A recent Lou Harris poll indicated that 57 percent of the American people believe that "the federal government should provide financial assistance to arts organizations, such as art museums, dance, opera, theater groups, and symphony orchestras." In addition, 61 percent said they **"would be willing to pay $5 more in taxes per year to support federal government efforts in the arts."**

# # #

May 1997

SIX MYTHS ABOUT THE NATIONAL ENDOWMENT FOR THE ARTS

Over the past several years, there have been a half-dozen arguments widely used against the idea of federal funding for the arts. Based on faulty or incomplete reasoning, these myths about the Arts Endowment can be rebutted by a clear presentation of the facts.

<u>MYTH #1</u>: Support for the arts is not a legitimate function of the Federal government.

<u>FACT</u>: All great nations support the arts. Recognizing that the not-for-profit arts are vital to a society's well-being and that they could not survive without public patronage, national governments throughout history have helped nurture and sustain cultural activity. Future generations will judge this era of our country's life by the level of our national commitment to supporting the finest expressions of the human condition. The United States today spends 38 cents per capita to support the National Endowment for the Arts. In Canada and France, per capita support for the arts is $32. In Germany, where the city of Berlin provides $130 million alone for its two major opera companies, the figure is $27 per person. In creating the NEA in 1965, the Congress wisely noted that "An advanced civilization must not limit its efforts to science and technology alone but must give full value and support to the other great branches of scholarly and cultural activity in order to achieve a better understanding of the past, a better analysis of the present, and a better view of the future."

<u>MYTH #2</u>: At a time of fiscal restraint, the arts are a luxury we simply cannot afford.

<u>FACT</u>: At a cost of 38 cents per person, the Endowment is an investment that reaps great dividends. Every dollar awarded by the NEA attracts $12 from state and local arts agencies, corporations, foundations, businesses and other private entities. The not-for-profit arts create $37 billion in economic activity and support 1.3 million jobs. They also return **$3.4 billion to the Federal treasury** through income taxes, ***20 times the** budget of the NEA*. Locally, the arts stimulate economic activity, create jobs, spur urban renewal, and attract tourism and new businesses.

<u>MYTH #3</u>: The Arts Endowment is "elitist," a subsidy for the upper-class.

<u>FACT</u>: The National Endowment for the Arts supports cultural activity that reaches Americans of every race, class, ethnicity and geographic region. The agency opens the door to millions of school children, including "at-risk" youth. It supports community festivals, rural chamber music, art exhibitions in libraries and town halls, lawn concerts, drama in the park, and many other events where families can experience the arts. Without the NEA, however, the arts could very well become inaccessible to the average American, affordable only to the well-to-do.

<u>MYTH #4</u>: *The loss of public funding for the arts will readily be replaced by the private sector.*

<u>FACT</u>: The presumption that private giving will supplant any loss of federal funds is without foundation. In fact, corporate support for the arts has been declining over the past decade. Although many of the highest quality arts organizations are filling their houses for virtually every performance, they are operating at deficits of over $1 million. Despite the fact that ticket sales and other earned income are higher than ever before, escalating costs have made it increasingly difficult for not-for-profit arts groups to make ends meet. Symphony orchestras, for example, must raise an average of $26 per seat per performance over and above ticket prices just to break even. Arts organizations work tirelessly at fundraising, exploring every possibility to cultivate new sources of revenue. Grants from the Arts Endowment not only provide vital funds in and of themselves, but the leveraging effect of these grants, which require at least a dollar-for-dollar match, stimulates private giving many times over the required match. Taking away the federal "seed" money will not encourage arts funding to grow, but just the opposite. Leaders from the philanthropic sector have flatly stated that they would not be able to take up the slack.

<u>MYTH #5</u>: *The states are better suited to support the arts.*

<u>FACT</u>: Grants from the NEA are a matter of national prestige, a stamp of excellence that relies on the most extensive, democratic and highly regarded system of peer review in the nation. The agency's funding decision provide valued direction to private and corporate funders. NEA grants, more so than state grants, are also powerful fundraising instruments, attracting $12 from local and private entities. The Endowment is uniquely positioned to support projects that serve the whole nation and help Americans share their diverse cultures with one another. NEA funding encourages performing arts groups to travel outside their states, often to rural areas which are traditionally underserved by the arts. The Endowment's Dance On Tour program, for example, enables first-rate dance companies to reach new and appreciative audiences. The agency also helps regionally based culture -- the music of Appalachia or artworks of Native American tribes, for example -- reach wider audiences outside their indigenous areas.

<u>MYTH #6</u>: *The best of the arts will survive in the open market.*

<u>FACT</u>: Throughout history, the not-for-profit arts have never been able to sustain themselves in the commercial market. Consider the great masters who died penniless, the impressionist painters who were reviled in their day, or the myriad other great artists who were "ahead of their time." Time is the truest measure of great art, but without public subsidy, only commercially viable art will be created. Popular culture does not necessarily reflect the most enduring expressions of a civilized society.

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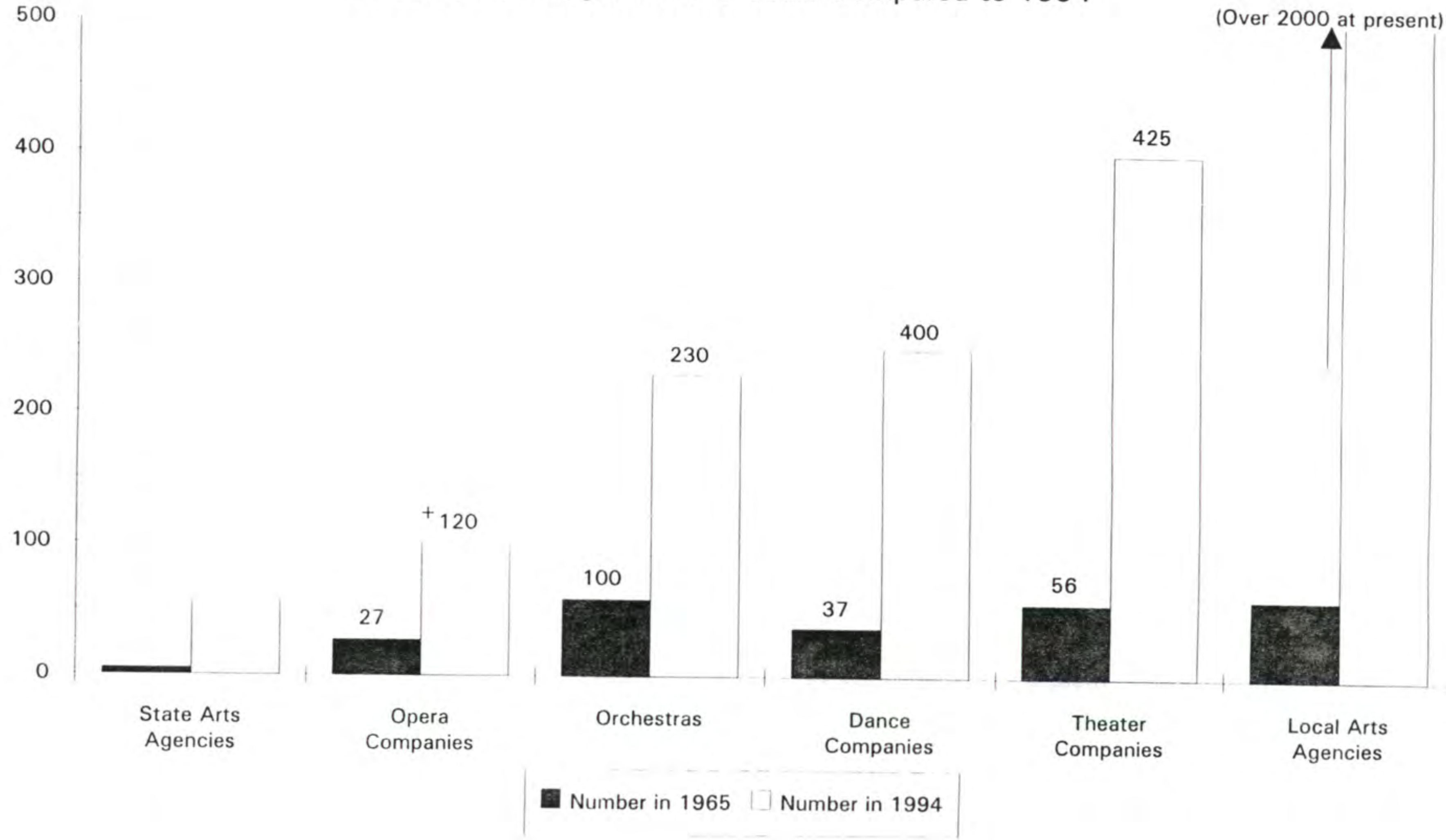
Selected Arts Organizations 1965 Compared to 1994



CURRENT EXAMPLES OF NEA NATIONAL LEADERSHIP

--Partnership with the YMCA of America to help pay for cultural programs in YMCAs throughout the country.

--Support of regional dance touring that enables the best American dance companies like Alvin Ailèy, Merce Cunningham and others to leave their big city stages and tour rural towns and small cities.

--Support of American artists that represent the United States in cultural festivals overseas.

--Support for arts institutions serving underserved areas like the rural communities in eastern Kentucky that benefit from Appalshop, a state-of-the-art media center.

--Sponsorship of Chamber Music Rural Residencies which have brought chamber music and jazz ensembles to live, teach and perform in rural areas including Tifton, Georgia; Jesup, Iowa; and Blytheville, Arkansas.

--National research in arts education including development and publication of Schools, Communities, and the Arts: A Research Compendium, the first compilation of studies relating the effects of arts education on cognitive learning.

--Support of award winning public television shows Great Performances, Dance in America, American Playhouse, and American Masters.

--Support for public radio, particularly in underserved areas including Alaska Public Radio and West Virginia Public Radio.

--Sponsorship of folk arts apprenticeship programs that help keep alive the traditional arts of Americans including saddlemaking, quiltmaking, woodcarving, mountain fiddling, etc.

--Mayor's Institute on City Design in which over 300 of the nation's mayors have had the opportunity to resolve problems specific to their communities.

--Support of specific cultural tourism programs such as ones that will promote the traditional folk arts of the Delaware, Maryland, Virginia area, and another to develop heritage tourism trails in the Blue Ridge region of North Carolina.

Federal Arts, Humanities, and Museum Programs for Children and Youth At-Risk

NATIONAL ENDOWMENT FOR THE ARTS

"Children who pick up a paintbrush or a pen, a clarinet or a fistful of clay are less likely to pick up a needle or a gun. They've got better things to do." – Jane Alexander, Chairman

The National Endowment for the Arts, in partnership with state and local arts agencies, art organizations, foundations, the corporate community, and other government agencies, supports programs to benefit at-risk youth, their families, and their communities through involvement in the arts.

Project Support: In fiscal year 1995, the NEA granted approximately $9.2 million for projects of direct benefit to youth through its Arts in Education, Expansion Arts, Arts for Youth, and State & Regional Programs.

Federal Interagency Partnerships: The NEA has partnerships with other Federal agencies specifically to support programs for youth at risk of drugs and violence. They include:

Pathways to Success, the NEA/Department of Justice partnership, funds after-school and weekend programs for at-risk youth that utilize the arts, job skills, education, and recreation activities.

Arts and Prevention, a cooperative initiative with the Center for Substance Abuse Prevention (CSAP) of the Department of Health and Human Services, promotes the inclusion of arts organizations in community drug prevention programs and services for youth.

WritersCorps, the NEA partnership with the Corporation for National Service, supports 75 writers to work with inner-city youth and their families in the Bronx, San Francisco, and Washington, DC.

Public-Private Partnerships: The NEA supports at-risk youth initiatives of national scope and significance in collaboration with community and corporate organizations. For example,

Vision 2000: Literary Arts for Change, a partnership with YMCA of the USA, expands the National Writer's Voice Project's training and program initiatives and literary centers for at-risk youth.

YouthArts Development Project, a consortium of local arts agencies and community groups from Portland, OR, San Antonio, TX, and Atlanta, GA, will develop and disseminate models for the training of artists who work in social service settings, and for the evaluation and documentation of arts-based at-risk youth programs.

NATIONAL ENDOWMENT FOR THE HUMANITIES

"I am proud of the work the National Endowment for the Humanities is doing on behalf of at-risk young Americans. The social benefit derived from participation in the humanities is far too important to leave anyone out, least of all disadvantaged children who, with appropriate care, may discover how exciting learning truly is." – Sheldon Hackney, Chairman

One of NEH's highest priorities is to bring more Americans of all ages into an appreciation and understanding of the humanities. The NEH has in the past and continues to welcome applications for projects that offer at-risk youth the tools for lifelong learning by exposing them to books, museums and art. For example,

Crusade Against Crime (St. Louis, Mo.): This community organization creates opportunities, through a collaboration between the St. Louis public library and the St. Louis public schools, for children and their parents or guardians to read children's literature together and discuss ethical and moral issues.

The NEA is Less than 5 percent of Total Federal Support for the Arts and Humanities, FY1997

Federal Tax Deduction (at least)	$ 1.0 Billion
Smithsonian	$371.2 Million
Military Bands	$176.2 Million
Fulbright International Exchange	$144.9 Million
Nat. Endowment for the Humanities	$110.0 Million
National Endowment for the Arts	**$ 99.5 Million**
National Gallery of Art	$ 60.2 Million
Holocaust Memorial Council	$ 31.7 Million
John F. Kennedy Center for the Perf. Arts	$ 24.9 Million
Inst. for Museum and Library Services	$ 22.0 Million
Woodrow Wilson Center	$ 5.8 Million
Arts in Education	$ 9.0 Million
Institute of Am. Indian, and Alaska Native Culture and Arts Dev.	$ 5.5 Million
Lib. of Congress, Cultural Div.	$ 4.1 Million
Advisory Council on Hist. Pres.	$ 2.5 Million
USIA Cultural Division	$ 1.1 Million
Indian Arts and Crafts Board	$ 1.0 Million
Children's Educational. Television	$ 1.0 Million
Commission of Fine Arts	$ 0.9 Million
TOTAL FEDERAL SUPPORT	$ 2.07 Billion
NEA as a percent of total support	**4.8 percent**

Source: Susan Boren, CRS, March 24, 1997. This is a conservative estimate of the tax deduction, calculated by the Oversight and Investigations staff of the Committee on Education and the Workforce

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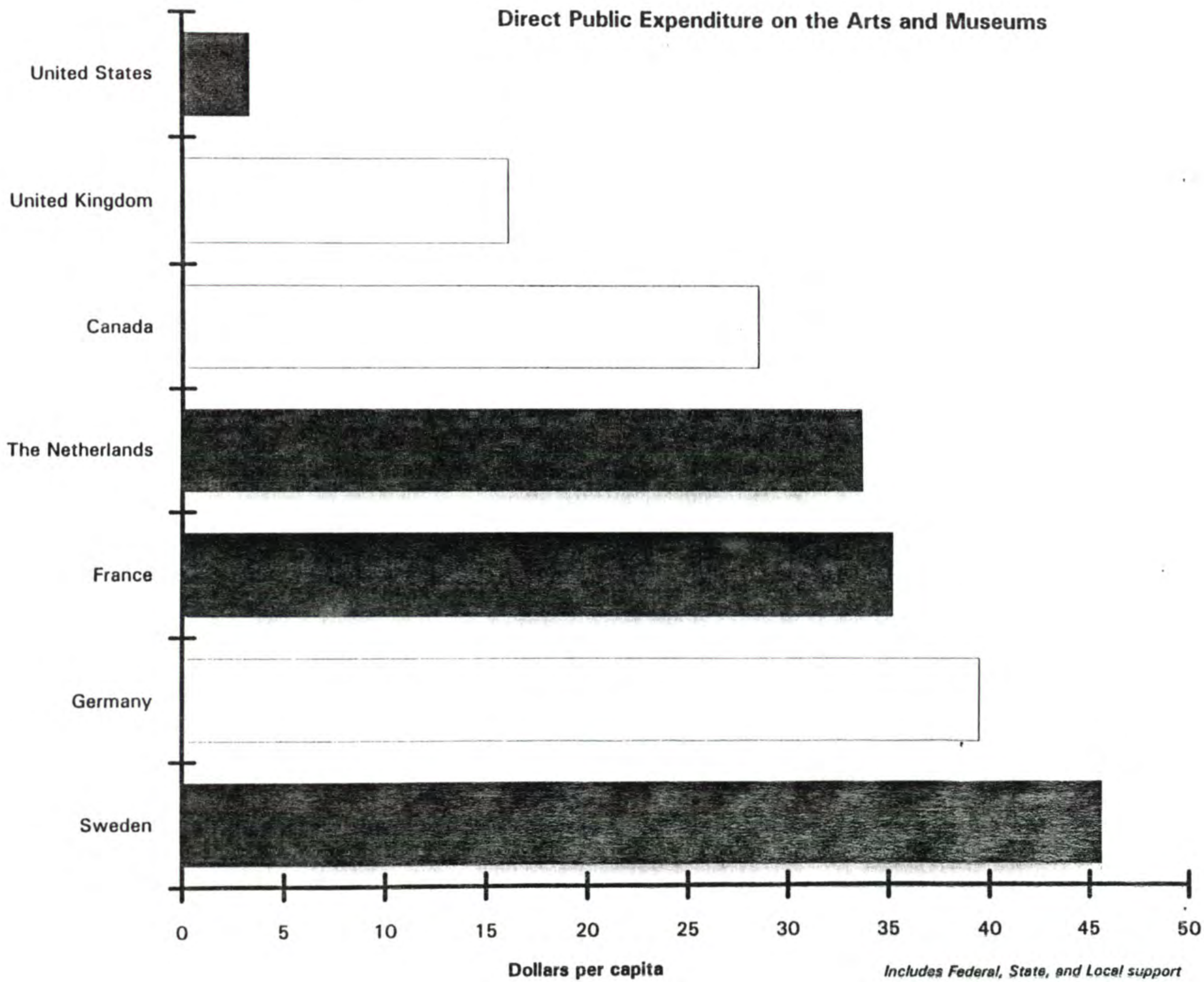
Direct Public Expenditure on the Arts and Museums
United States
United Kingdom
Canada
The Netherlands
France
Germany
Sweden
0
5
10
15
20
25
30
35
40
45
50
Dollars per capita
Includes Federal, State, and Local support

I believe strongly that the sound and the fury of the past few years over that handful of controversial grants must end. When judging the National Arts Endowment, we must look at the complete picture. Let's give the arts a chance to help us heal and understand one another.

Should the Senate confirm me, I cannot promise that under my chairmanship the arts will be free of controversy. The very essence of art, after all, is to hold the mirror up to nature; the arts reflect the diversity and variety of human experience. We are, as Hamlet says, "the abstracts and brief chroniclers of the time," and as such, the artist often taps into the very issues of society that are most sensitive.

I can, however, assure Congress that I will follow the statutory guidelines on funding to the very best of my ability to ensure that grants are given for the highest degree of artistic merit and excellence. I will be accountable, and I look forward to working with members of Congress.

Excerpt of statement by Jane Alexander in her confirmation hearing to be Chairman of the National Endowment for the Arts. Senate Committee on Labor and Human Resources 9/22/93

STANDARD LETTER TO MEMBER OF CONGRESS

REGARDING STATUTORY RESTRICTIONS ON NEA GRANT-GIVING

The Honorable
U.S. Congress
Washington, D.C.

Dear Representative:

I appreciate having this opportunity to outline the National Endowment for the Arts' application review and grant monitoring processes.

Sections five, six and ten of the National Foundation on the Arts and the Humanities Act of 1965, (NFAHA) as amended, (20 USC 951 et. seq.) require a rigorous multi-step review process of all applications for funding assistance that meet technical eligibility requirements. The statute mandates application review by diverse panels of citizens reflecting a wide geographic, ethnic and minority representation as well as individuals reflecting diverse artistic and cultural points of view. Panels must include representation by lay individuals who help to reflect the views of the general public.

Following panel consideration, all applications are reviewed by the National Council on the Arts, which until recently was a body of 26 private citizens nominated by the President and confirmed by the Senate to six year terms. Applications recommended by the Council for support are subsequently forwarded to the Chairman of the National Endowment for the Arts for a final decision. The Chairman may not approve an application with respect to which the Council has made a negative evaluation.

As you know, the composition of the National Council was substantially altered pursuant to the recently enacted FY 98 Interior Appropriations legislation. The Council was reduced from 26 to 20 members, with 6 of the 20 to be members of Congress, 4 appointed by the majority and 2 by the minority.

Section 5 (d)(1) of NFAHA ensures that artistic excellence and artistic merit are the criteria by which applications are judged. Section 5 (d)(2) states that obscenity is without artistic merit, and expressly prohibits the award of financial assistance to any project or program determined to be obscene. Subsections (j), (k) and (l) of Section 3 of NFAHA define obscenity using the community standards test handed down by the Supreme Court in Miller v. California 413 U.S. 15 (1973).

Section 5 (d)(1) also includes the so-called decency provision added to the statute in 1990, which says that applications must be judged "taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public." This clause is the subject of an ongoing lawsuit known as the Finley case. The provision was struck down as impossibly vague by a district court, a decision later affirmed by the 9th Circuit Court of Appeals. Interestingly, the Supreme Court recently agreed to hear the case during its 1998 session.

Most of these statutory restrictions were added to the NFAHA in 1990, prior to the administration of the recently retired Chairman Jane Alexander, and were enacted largely in response to criticism of the Endowment for its indirect role in supporting the work of photographers Robert Mapplethorpe and Andres Serrano.

Upon being appointed Chairman by President Clinton in 1993, Jane Alexander initiated a complete review of the agency's grant review and monitoring process with the intent of improving accountability across-the-board. In 1994, she abolished the longstanding agency practice of allowing grantees to subgrant to third party organizations and artists. Former Chairman Alexander felt that it made no sense to fund entities whose artistic excellence could not be guaranteed through the Endowment review process.

It was this type of subgrant that led to the Endowment's association with Andres Serrano. In 1987, NEA had awarded a grant to the Southeastern Center of Contemporary Art (SECCA) in North Carolina to support an exhibition entitled "Awards in the Visual Arts." SECCA directed a nomination and panel review process of its own, selecting Andres Serrano as one of ten artists to participate in the exhibition. The controversial photo "Piss Christ" had already been created, but the NEA funds were used to help set up the exhibition which included this work and other photographs. By subgranting NEA funds SECCA bypassed the Endowment's panel review process. Again, as I indicated above, former Chairman Alexander banned the practice of subgranting in almost all cases, and Congress subsequently codified the ban each year in the annual Interior Appropriations measure.

In 1995, former Chairman Alexander began taking steps to limit the practice of providing arts organizations general seasonal operating support. This long-established practice also had the effect of bypassing NEA review panels. NEA panels would recommend a grant to an established institution to support a <u>future</u> season of events based on that institution's reputation for <u>past</u> excellence. For example in 1993, NEA awarded the prestigious Walker Art Center in Minneapolis a $104,500 grant to support a season of more than 100 performing arts events. Later, the Walker made the decision to allocate $200 of the grant to pay for the controversial performance of artist Ron Athey. NEA learned of the Athey performance after the fact.

Former Chairman Alexander recognized the accountability problems associated with general seasonal operating support grants. Congress agreed and placed a specific prohibition on seasonal support in the FY 96 Interior Appropriations bill, and in each subsequent annual funding bill. All grants to arts organizations now must be for specific projects described up-front in the application process. Furthermore, any proposed changes to a project after a grant has been approved must be tendered in writing in advance, and approval is not guaranteed.

Congress enacted a third restriction in the appropriations bills that prohibits the award of grants to nearly all individual artists.

Finally, subsections 5 (h),(i),(j),(k), and (l) of NFAHA impose strict interim and final reporting requirements on all grantees, and give the Endowment authority to recover grant funds spent inappropriately. Using the authority under these subsections, the agency withholds the final 1/3 cash payment of every grant pending the receipt and approval of the grantee's interim report, and makes questions of future eligibility dependent upon the receipt and approval of final reports.

I hope this information is helpful to you. Please feel free to call upon me if I may appropriately be of any further assistance in this matter.

Sincerely,

Richard P. Woodruff
Director, Congressional Liaison

NATIONAL ENDOWMENT FOR THE ARTS

The Nancy Hanks Center
1100 Pennsylvania Avenue NW
Washington DC 20506-0001
202/682-5400

CHANGES IN NEA MANAGEMENT UNDER

CHAIRMAN JANE ALEXANDER

In 1996

- ~~Recently~~ completed largest reorganization in the agency's 32 year history. Seventeen discipline-based programs were folded into four broad-based divisions encouraging cooperation and cross-fertilization among arts disciplines.

- All subgrants, with the exception of those made to state and regional arts agencies, have been prohibited.

- All grants for seasonal operating support have been eliminated. Grants to organizations must be for specifically described projects.

- All grantees must file interim and final project reports. Final 1/3 of all grant payments are withheld pending NEA's receipt and approval of the grantee's interim report.

- Grantees must seek written permission in advance to change grant activities proposed in the original application and approved by the National Council on the Arts and the Chairman.

Of note, in 1996 Congress mandated the elimination of all grants to individual artists with the exception of literature and some honorific awards. In addition, Congress imposed an unprecedented 39 percent cut in the Endowment's budget ($162.3 million to $99.5 million) forcing the agency to lay-off 40 percent of its employees.

WOMEN MAKE MOVIES (WMM)

–WMM facilitates the production, promotion, distribution and exhibition of independent films by and about women.

–WMM is highly regarded and the Endowment stands by the work they do. WMM is supported by NY State Council on the Arts, and the MacArthur, Ford, Gund, and Rockefeller Foundations.

–NEA awarded WMM 5 grants totalling $112,500 between 94-96.

–2 grants were for seasonal support, 2 for production of the films Watermelon Woman and Murder and MURDER, and 1 for distribution of films on Native American Women and women's health issues.

–Under restrictions enacted by Congress in 1996, NEA is no longer able to make 4 of those 5 grants. Seasonal support is now prohibited, as are grants to individual filmmakers and grants to organizations as fiscal agents for individuals.

–The Subcommittee's allegation that NEA paid for other specific films in the WMM catalog is not true.

–Watermelon Woman, opened in New York to rave reviews - NY Times, NY Post, Newsday, and the New York Press, and was recently shown at the Washington Film Festival.

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Fiction Collective (FC2)

–Founded in 1974, and now on the campus of Illinois State University, FC2 is one of the nation's preeminent publishers of innovative quality fiction.

–Its books are sold in bookstores throughout the world, reviewed in America's major newspapers, and studied in universities.

–Its many champions over the years include Nobel Laureate Toni Morrison, Bernard Malamud, Morris Dickstein, Rachel Blau du Plessis, Norman Mailer, Robert Coover and many others.

–FC2 has discovered several of our finest minority writers including Ricardo Cortez Cruz, Melvin Dixon and others.

–NEA awarded FC2 $25,000 in FY 96 to support production of several specific books described in the NEA grant documents.

–Unfortunately, FC-2 credited NEA for several other books, which were not described in the application materials. Two of these books, Chick-Lit 2, and Blood of Mugwump were obtained by the Subcommittee, and attributed to the NEA, despite the fact that Subcommittee staff knew that NEA had not paid for them.

–When the issue was brought to NEA's attention, NEA wrote to FC-2 directing that references to NEA be removed from publications not supported by NEA grants.

FACT SHEET

NATIONAL ENDOWMENT FOR THE ARTS
Christian Action Network Capitol Hill Exhibit

On May 21, 1997, the Christian Action Network exhibited works it claims were federally funded by the National Endowment for the Arts before and during the Chairmanship of Jane Alexander. The facts follow.

EXHIBIT: Ron Athey performance

FACT:
- The Walker Arts Center in Minneapolis, one of the most prestigious arts organizations in Minnesota, was awarded a **seasonal support** grant of $104,500 by the Arts Endowment in early 1993, prior to the chairmanship of **Jane Alexander. Seasonal support grants were abolished by Congress in 1996.**

EXHIBIT: The Highways brochure of "having sex with Newt Gingrich's mother"

FACT:
- The phrase is from a brochure describing a stand-up comic's routine that was **not funded by the NEA.**
- In fact, "Highways" has criticized Jane Alexander and the Endowment in its publications for "revoking" its funding, and "overturning the recommendations of the peer panels."

EXHIBIT: The Nan Goldin photograph of 'Bobby Masturbating'

FACT:
- In 1996, the Whitney Museum of American Art in New York held an exhibition of works by the photographer Nan Goldin. **NEA did not fund this exhibition.**

EXHIBIT: The pubic hair-shaving of 'Voyeur's Delight'

FACT:
- **The National Endowment for the Arts did not support, directly or indirectly, the Voyeur's Delight exhibit.**

EXHIBIT: Excerpts from the Fiction Collective 2 series

FACT:
- FC2 is part of the Unit for Contemporary Literature at the Illinois State University. Its books are sold throughout the world, reviewed in America's major newspapers, and studied in universities.
- NEA awarded FC2 $25,000 in FY96 to support production of several specifically-named books. Unfortunately, FC2 credited NEA for several other books. Two of these books, **Chick-Lit 2, and Blood of Mugwump were NOT funded by the NEA. NEA has directed FC-2 to remove the NEA logo from all publications NOT supported by NEA grants.**

— more —

EXHIBIT: The works of Joel-Peter Witkin's 'Testicle Stretch with the possibility of a Crushed Face'

FACT:

- Mr. Witkin was last awarded a fellowship from the NEA in 1992, before the chairmanship of Jane Alexander. This photograph and many others attributed to Mr. Witkin were **not produced during his Endowment fellowship period. Grants to photographers were abolished in 1996.**

EXHIBIT: A film titled, 'Sex Is...'

FACT:

- NEA did not approve nor directly fund the film "Sex Is." It was funded by means of a 1990 subgrant to the Rocky Mountain Film Center during the Bush Administration. **Chairman Alexander eliminated subgrants to arts organizations in 1995.**

EXHIBIT: Andres Serrano's 'Piss Christ'

FACT:

- NEA did not approve nor directly fund this photograph. It was funded by means of a 1987 subgrant to SECCA (Southeastern Center of Contemporary Art) in North Carolina, which included the already-created photograph in an exhibition. The subgrant was approved nearly 10 years ago during the Reagan Administration. **Chairman Alexander abolished subgrants to arts organizations in 1995.**

EXHIBIT: Robert Mapplethorpe's 'Self-Portrait'

FACT:

- In FY88, the NEA awarded a grant to the Institute of Contemporary Art at the University of Pennsylvania to support the organization, exhibition, catalogue, and touring of 120 works by the late photographer Robert Mapplethorpe.
- The specific works included in the exhibition **were not selected or previewed by the NEA.**

EXHIBIT: Annie Sprinkle's 'Sluts and Goddess' video workshop

FACT:

- **Annie Sprinkle has never received a grant from the NEA.**
- The Endowment awarded a $13,000 media arts grant to the Kitchen in 1992, for video exhibitions, installations, distribution, symposia and seminars. **No aspect of any film featuring Annie Sprinkle was supported by the grant.**

Reforms instituted by NEA Chairman Alexander and additional reforms enacted by Congress have improved accountability in the NEA grantmaking and monitoring process. All arts institutions must now describe specific projects in their application materials before receiving any grant funds. In addition, interim reports must be filed by grantees describing ongoing projects before the full grant amount is released. Finally, the practice of subgranting to third party organizations and awarding grants to individual artists has been abolished in nearly all cases.

###

NATIONAL ENDOWMENT FOR THE ARTS

The Nancy Hanks Center
1100 Pennsylvania Avenue NW
Washington DC 20506-0001
202/682-5400

Office of the Chairman

SEP - 9 1997

Dear Senator:

In recent days you may have received a communication from the American Family Association (AFA) critical of the National Endowment for the Arts and my Chairmanship of the agency. I feel I must respond to the letter.

During my four years as Chairman of the Endowment, I have worked very hard to improve accountability in the grantmaking and monitoring process. In the first major restructuring of the agency in its history, we standardized all grantmaking procedures. We tightened grantee reporting requirements, and made the payment of final grant amounts subject to the agency's review of interim project reports. We abolished the long-established practice of permitting grantees to subgrant to third parties. You in Congress moved forward with additional grantee restrictions. Most significantly, Congress abolished grants to nearly all individual artists, and eliminated the practice of giving arts organizations grants for seasonal operating support. We, NEA and Congress, have done much to change the agency over the past four years.

Please know that **not one** of the grants mentioned by AFA in its recent mailings to Members of Congress was made subsequent to my reorganization of the agency. Some of these so-called grants were never made at all. I urge you to review some of the projects we are supporting in your state and elsewhere. The real story is very different from the one presented by AFA and our other persistent critics. We continue to support orchestras, opera, folk festivals, artists in the schools, dance on tour, children's museums, theater and other projects in every part of the country. I hope we can count on your support during the weeks and months ahead.

Sincerely,

Jane Alexander

Jane Alexander
Chairman

It's Elementary

Fact Sheet

It's Elementary is a documentary directed by Academy Award-winning filmmaker Debra Chasnoff. The film, which is mostly live footage, records the efforts of teachers, school administrators and students to combat stereotyping and prejudice in their classrooms.

Funding to make the film was provided in part by the Portland Art Association/Northwest Film Center in 1993. That same year, the National Endowment for the Arts awarded $50,000 to the Portland Art Association/Northwest Film Center to support its regional fellowship program throughout thirteen western states. NEA understands that $7,000 of that amount was subgranted to Ms. Chasnoff to support production of a film entitled Look the Other Way, which was later renamed It's Elementary.

NEA Chairman Jane Alexander, in 1994, abolished the practice of permitting grantees to subgrant NEA funds to third parties. The Chairman was concerned about NEA funds being used for projects that had not been vetted through NEA's application review process. In 1996, Congress codified the ban on subgrants as part of the FY 96 NEA appropriations bill

Some organizations have objected to It's Elementary in recent months. For example, a 1997 letter to members of the House of Representatives from the Family Research Council attacked It's Elementary as an "ideologically charged propaganda film." Others have indicated that the film is being used to promote homosexuality in classrooms across the country. While the film has been shown at numerous venues around the country since 1993, we are not aware of any general effort to show it in school classrooms.

October 23, 1997

FINLEY V. NATIONAL ENDOWMENT FOR THE ARTS

- On November 5, 1996, a three-judge panel of the United States Court of Appeals for the Ninth Circuit affirmed a June 1992 district court decision that struck down the "decency and respect" provision of the Endowment's authorizing statute. (This provision requires that "In establishing... regulations and procedures, the Chairperson shall ensure that --(1) artistic excellence and artistic merit are the criteria by which applications are judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public.")

- The 2-1 decision was based on holding that
  - The Endowment's interpretation of the provision as allowing decency and respect to be taken into account by procedural means such as the appointment of diverse panels was inconsistent with congressional intent to require content-based scrutiny of applications
  - "decency and respect" violate constitutional standards for vagueness
  - "decency and respect" are unconstitutional viewpoint discrimination.

- The dissenting judge both disagreed with the majority's interpretation of the statute and asserted that the "decency and respect" provision was neither unconstitutionally vague nor impermissible viewpoint regulation.

- On December 20th, 1996, the Justice Department filed a petition for rehearing of the panel's decision. The Ninth Circuit, with three dissenting votes, denied this petition on May 1st. The dissenting judges concluded that the majority's construction of the statute was implausible, the vagueness doctrine was inapplicable, and the "decency and respect" clause was consistent with the First Amendment.

- On August 29, 1997, the Justice Department, on behalf of the Endowment, filed a petition with the United States Supreme Court requesting review and reversal of the Ninth Circuit ruling striking down the "decency and respect" clause. The petition sets forth that the Endowment's interpretation of the provision is reasonable, and the "decency and respect" provision neither imposes unconstitutional viewpoint discrimination nor violates the constitutional standard of vagueness.

- On November 26, 1997, the Supreme Court agreed to hear the case. A decision is expected by late June 1998.

- The Endowment is committed to the full First Amendment protection of artistic expression. Procedural reforms and restructuring have assured that projects funded by the Arts Endowment meet the highest standards of artistic excellence. The appellate court's 1996 holding has had no impact on the Endowment's day to day operations and the Endowment continues to appoint diverse panels to review applications on the basis of "artistic excellence and merit."

NATIONAL ENDOWMENT FOR THE ARTS

The Nancy Hanks Center
1100 Pennsylvania Avenue NW
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202/682-5400

PRIVILEGED AND ~~CONFIDENTIAL~~

DETERMINED TO BE AN ADMINISTRATIVE MARKING
INITIALS: Rcf DATE: 08/13/14

DATE: December 16, 1997

TO: Kitty Higgins
Scott Shanklin-Peterson

THROUGH: Karen Christensen
General Counsel

FROM: Hope O'Keeffe
Deputy General Counsel

RE: **FINLEY SCENARIOS**

You have asked me to outline some of the possible ways in which the Supreme Court might resolve Finley. The effect of any decision on the Endowment will depend heavily on the rationale of the Court's decision.

KEY BACKGROUND ON NINTH CIRCUIT DECISION

On November 5, 1996, a three-judge panel of the United States Court of Appeals for the Ninth Circuit affirmed a June 1992 district court decision that struck down the "decency and respect" provision of the Endowment's authorizing statute. (This provision requires that "In establishing... regulations and procedures, the Chairperson shall ensure that --(1) artistic excellence and artistic merit are the criteria by which applications are judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public.")

- The case challenged the statute on "facial" grounds, meaning that the language had no possible constitutionally permissible construction, not "as applied." (The four plaintiffs were denied their grants under the prior statute; the decency and respect provision was never applied to them.) A "facial" challenge is generally much more difficult because courts are reluctant to rule that there is no conceivable way that a congressionally enacted statute can be constitutionally applied.

- The majority rejected the Endowment's statutory construction that the language could be implemented by procedural means, without looking at the content of individual applications. The Ninth Circuit held that Congress intended to require that the

Endowment examine the content of each application for decency and respect.

- The majority held that the decency and respect provision was unconstitutionally vague. This ruling alone was enough to strike down the statute.

- In the alternate, the majority held that the decency and respect provision constituted viewpoint discrimination. This ruling alone also would have been enough to strike down the statute.

- The dissent:
  - rejected the statutory construction argument, although it held that the statute did not prohibit the Endowment from funding indecent or disrespectful work of artistic excellence
  - argued that the grant was a "prize" to which the vagueness doctrine did not apply, noting that "artistic excellence" is at least as vague as "decency and respect"
  - argued that content and viewpoint discrimination were permissible in this context

- On a petition for rehearing, the entire Ninth Circuit voted not to review the panel's decision. Three Ninth Circuit judges dissented.

NEA/DEPARTMENT OF JUSTICE ARGUMENTS

Because the Endowment does not have independent litigation authority, the Department of Justice defends any lawsuits against the agency. However, their "client" is not the Endowment, but the United States. Accordingly, while we generally have some input into the process, Justice makes the ultimate decision about what arguments to make.

Throughout the Finley litigation, there have been particular pressure points between Justice and the Endowment. Varying departments within Justice — in particular, the Office of the Solicitor General, the Office of Legal Counsel, the Civil Division Appellate Division, and the Civil Division Federal Programs Branch — as well as White House Counsel have weighed in at various times. We anticipate that the Supreme Court brief, reply brief, and argument preparation will each involve considerable negotiation.

The primary arguments likely to be made:

- Statutory construction: The statute does not require individualized consideration of "decency and respect" in reviewing each application, but requires only that the Chairman take these factors into account in establishing application review procedures. The Endowment has complied with this requirement by procedural means such as the appointment of diverse panels. [Justice does not like this argument. In particular, Deputy Solicitor General Ed Kneedler, who may be the most likely candidate to argue the case, is opposed to it.]

Even if not:

- Vaguеness standards do not apply in the grants context. [This argument is important to us because it protects equally vague standards such as "artistic excellence."]

- "Decency and respect" are not vague. The statute gives the Chairman rulemaking authority; if necessary, the Chairman could establish non-vague definitions, such as adopting the FCC definition of decency.

- "Decency and respect" are not necessarily content based. "Decency and respect" may be construed as applying to the "form and mode" rather than the content of the art, in accordance with a line of cases addressing vulgar language.

And even if not:

- "Decency and respect"are not necessarily viewpoint based. "Decency and respect" criteria can be applied without reference to the viewpoint of the artist. For example, "respect for the diverse beliefs and values of the American public" might be applied by giving special consideration to grants reflective of cultural diversity.

And even if not:

- The government is entitled to discriminate on the basis of viewpoint in establishing federally funded programs. **[This is the argument that the Endowment has not been willing to make thus far. It has resurfaced in each and every draft brief, and the attorney drafting the Supreme Court brief has indicated that he intends to raise it again. It is very likely that the new Solicitor General will insist that this argument be made, over the objection of at least some areas within Justice, the Endowment, and the White House. If so, we will have very little recourse, other than removing our names from the briefs. Even is the argument is not made in the briefs, the question will almost certainly be pressed at argument. Ed Kneedler believes strongly in this argument.]**

KEY CASES

The two key Supreme Court precedents are Rust v. Sullivan, 500 U.S. 173 (1991) (holding that federal family planning grants could prevent grantees from counseling patients about abortion) and Rosenberger v. University of Virginia, 515 U.S. 819 (1995) (holding that the University of Virginia could not withhold student activities funds from a Christian newsletter based on a policy restricting support of religion), both 5-4 decisions. Rust appeared to set a general rule that the government is entitled to impose speech restrictions in federally funded programs. Rosenberger arguably limited Rust to the situation where the government is subsidizing private organizations to speak for the government, and not to the situation where the government is subsidizing private speech. Much of the debate in the Ninth Circuit and in the briefs has concerned the question whether this case is more like Rust or more like Rosenberger.

In Rust, Justice Rehnquist wrote the opinion, and White, Kennedy, Scalia and Souter joined. Blackmun filed a dissent, which Marshall joined. O'Connor and Stevens joined in different parts of Blackmun's dissent and filed their own separate dissents. One of the bases for the dissent, and the sole basis for Justices O'Connor's and Stevens' dissents, was that the statute could be construed to avoid the constitutional problem.

In Rosenberger, Justice Kennedy delivered the Court opinion. Rehnquist, Scalia, O'Connor, Thomas joined. O'Connor and Thomas filed separate concurring opinions. Souter dissented, Stevens, Ginsberg, Breyer joining, largely on Establishment Clause grounds (that funding the group would be an impermissible entanglement of government and religion) not relevant here.

The head count (+ is a vote for the government):

	Rust	Rosenberger
Rehnquist	+	-
Kennedy	+	-
Souter	+	+
O'Connor	-	-
Scalia	+	-
Stevens	-	+
Thomas	n/a	-
Ginsberg	n/a	+
Breyer	n/a	+

For several reasons, these tea leaves may be of little use here:

- in both cases, the "conservative" side won — the government may impose restrictions on speech about abortion, but not on Christian speech. Justices' opinions may have been swayed by their beliefs on the underlying issues — as they may be swayed by their beliefs about federal arts funding. Thus, those who oppose restrictions on Christian publications may support restrictions on "decency and respect" for NEA grants.

- The presence of the statutory construction argument in Rust may suggest that our statutory construction argument may be more persuasive than Justice believes.

- Rosenberger was complicated by the presence of the Establishment Clause issues. A dissent there is probably not a good indicator of a justice's inclination to reject NEA content restrictions.

SCENARIOS

A. Ninth Circuit Reversed

While tea-leaf reading is always dangerous, there is certainly at least a 50/50 chance that the Supreme Court will overturn the Ninth Circuit and hold that the "decency and respect" clause is constitutional.

- The Court could uphold the statute on purely statutory grounds that the statute does not require examination of individual applications for decency and respect.

OR (even if the Court rejects the statutory argument)

- ♦ The Court could reject the vagueness argument by holding either that
  - vagueness doesn't apply in this context (probably preferable given the vulnerability of "artistic excellence"
  - "decency and respect" are not vague
  - the Endowment should be given the opportunity to promulgate non-vague definitions of decency and respect

and (because vagueness and content/viewpoint discrimination are independent bases for striking down the statute)

- ♦ The Court could reject the viewpoint argument by holding either that:
  - "decency and respect" is not **inherently** viewpoint-based (i.e., since this is a facial challenge, there are ways in which the Endowment could establish criteria for examining decency and respect that do not discriminate on the basis of viewpoint.)
  - examining applications for "decency and respect" requires viewpoint discrimination, but such discrimination is permissible in this context.

B. Ninth Circuit Affirmed

- This requires rejection of the statutory interpretation argument **and** acceptance of **either** the vagueness argument **or** the content/viewpoint argument
- The Court could decide that "decency and respect" is unconstitutionally vague **or**
- The Court could hold that "decency and respect" is not viewpoint, but is still impermissible, perhaps as content discrimination. [The content/viewpoint line is very, very

fuzzy. Content discrimination is permissible under some circumstances; viewpoint discrimination almost never is. This holding would require the Court to engage in a whole separate line of analysis to determine whether the Endowment's grant programs create a "public forum" (the equivalent of a public soapbox) where the government cannot restrict speech on the basis of content or viewpoint. There are also "limited purpose public forums," where some restrictions are permissible, and "nonpublic forums," where most non-viewpoint restrictions are permissible.] **or**

- The Court could hold that "decency and respect" are inherently impermissibly viewpoint-based.

C. Something in between...

There certainly is a possibility of something in between. It's highly likely that there will be multiple opinions, that no single rationale will capture a majority of the court.

For example, if two justices accept our statutory construction argument, two think the statute is vague, two think it's unconstitutional viewpoint discrimination, one thinks it's constitutional viewpoint discrimination, and two think it's a valid non-viewpoint restriction, then the Ninth Circuit decision would be reversed, but neither the arts community, the Congress, nor the Endowment would be able to draw much future guidance. (The rule of thumb for such a split decision is to apply the narrowest rationale necessary to reach the plurality decision.)

It is also possible that the Court could uphold the decency language as not inherently viewpoint based, but strike down the "respect" language.

AFTERMATH

- If the Court rejects the facial challenge, there will almost certainly be an "as applied" challenge by rejected applicants claiming that they were rejected because of the application of the "decency and respect" standard.

- If the Court rejects the statutory construction argument, but reverses the Ninth Circuit and holds that Congress may require the Endowment to examine the content or the viewpoint of each application, the Endowment Chairman will be required to institute procedures to implement the statute. Once procedures are established, they may be challenged legally in the courts or politically by Congress.

- If the Court reverses on any ground, we likely will see more content restrictions imposed by Congress.

- If the Court affirms, we may see new content restrictions tailored to the basis of the Court's finding that the language is unconstitutional. (For example, if the Court finds the language vague, we may again see more specific language prohibiting depictions of excretory functions, sadomasochism, homoeroticism, flag desecration, denigration of religious objects or beliefs, etc.)

NEA DISTRIBUTION OF GRANT FUNDS

BACKGROUNDER

The notion that NEA grant funds are being "poorly distributed" became an issue last year after the House Oversight and Investigations Committee published a report suggesting that:

--one third of Congressional districts fail to get any direct funding, and

--one-third of NEA grants go to six cities — New York, L.A., Boston, D.C., San Francisco, and Chicago.

The issue gained currency on the Hill during the appropriations process and fueled the move to block grant additional funds to the state arts agencies.

NEA's public response has been that agency grant dollars are spent in nearly every Congressional district either directly or indirectly through funds block granted to the state arts agencies. By statute, 40 percent (35 percent prior to October 1, 1997) of NEA program funds must be passed through to the state arts agencies.

NEA also maintained that fully one-third of the grant dollars awarded to the six cities in question are for touring projects, television, arts education and other projects of a multi-state nature. Certainly, beneficiaries of NEA grants are not limited to the grantee's home address. For example, NEA's 1997 grant to the Metropolitan Opera Guild of New York is for a teacher training project in the western states. There are scores of similar examples.

Privately, NEA knows that the agency faces a dilemma on the issue of grant distribution. The fact that grantees based in one state (New York) received 23 percent of all grant funds in FY 97, irrespective of where the funds are ultimately spent, is problematic.

Unfortunately, the uncertainty throughout the country about NEA's future, budget cuts, and the increasing competition for scarce grant funds have caused many arts organizations to stop applying for funds. NEA now faces a situation in which no arts organizations in some states submit a single application for funding, and therefore no grants go to the state except that provided to the state arts agency. Continuing cuts in the NEA budget have brought the number of Congressional districts receiving no direct grants to about 50 percent.

This situation ensured that there would be pressure to increase the state arts agency allocation during the FY 97 appropriations process. Amendments to block grant between 100 percent and 75 percent were defeated in both the House and the Senate. Ultimately, the block grant was increased from 35 percent to 40 percent, and a 15 percent cap was placed on the amount organizations in any one state could receive. Multi-state and touring grants were exempted from the cap. This cap was part of a behind the scenes deal intended to reduce the pressure for an increased block grant. Without it, the block grant likely would have reached 50 or 60 percent. Incidentally, National Assembly of State Arts Agencies publicly supported the existing 35 percent cap as an appropriate split between the Federal and state programs.

In response to concerns about distribution and to prepare for the coming FY 99 appropriations cycle, NEA management is in the process of creating in 1998 the model Arts Reach Community Planning Pilot project. In 1998, NEA expects to make grants in the $3,000-$5,000 range to 100 underserved communities for cultural planning to encourage the development of applications for NEA grant support. Depending upon the availability of funds in FY 99, money would be set aside to accommodate worthy applications generated through the Arts Reach process.

DRAFT

BLOCK GRANT TALKING POINTS

Keep in mind that ultimately all NEA funds go to the states. This is a debate about the federal role.

Block-granting federal arts funds would leave the **United States as the only civilized nation without a national presence** in the arts. For more than 30 years, the NEA has worked to **increase access to the arts for Americans everywhere**, supporting the flowering of arts organizations in all corners of the country. It also serves as a national arts leader, convening national meetings, conducting comprehensive research, and representing the U.S. in the arts at an international level.

Arts organizations continually acknowledge they are able to **leverage more private dollars** with the **imprimatur of an NEA** grant than with that from a state arts agency because an NEA grant demonstrates their organization's ability to compete successfully on a **national level.** Block-granting to the states would rob these organizations of this important fundraising tool -- particularly in poor or rural areas where organizations may have to look beyond their local community for private funds.

By block-granting all federal arts funds to the states, NEA's national leadership in supporting project grants to the following **would be lost**:

Regional Theaters	Symphony Orchestras
Opera Companies	National Dance Touring Troupes
Chamber Music Ensembles	Rural Music Festivals
At-Risk Youth Projects	Folklife Festivals
Local Shakespeare Festivals	Jazz Festivals
Folk & Traditional Arts	Historic Renovation
Poetry Readings	Urban Design & Community Planning

Congress currently requires the NEA to **award 35% of its funds to State and Regional Arts Agencies.** These funds support the **State Arts Agencies** in arts education activities, fostering arts in underserved communities, and in grant service and administration. NEA funds support **Regional Arts Agencies** in presenting and touring -- especially to rural and underserved areas -- and grant service and administration.

The National Assembly of State Arts Agencies (NASAA), which represents all arts agencies in 50 states and jurisdictions, **is on record strongly opposing the proposals to block grant funds to the states**. NASAA states: "the state arts agencies endorse the current distribution of agency funds that enables the NEA to demonstrate the appropriate national leadership..."

Block-granting federal arts funds to the states would:

-- **discontinue the NEA's grants for lifelong learning programs**, such as those that serve our nation's adults, senior citizens, and disabled citizens.

-- **eliminate NEA project funds to arts institutions to work closely with community** schools to provide services to children and families during and after school and on weekends.

-- **eliminate the NEA's crucial leadership role in creating partnerships with schools and universities** across the country that run programs including training for teachers and faculty.

-- **eliminate NEA support for youth-at-risk programs** in arts and literacy programs run outside the school system in locations including community centers, Boys and Girls Clubs, and the YMCA.

NATIONAL ASSEMBLY OF STATE ARTS AGENCIES 1010 VERMONT AVENUE, N.W., SUITE 920, WASHINGTON, D.C. 20005 (202) 347-6352
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July 9, 1997

The Honorable Ralph Regula
Chairman
Interior Appropriations Subcommittee
U. S. House of Representatives
2309 Rayburn House Office Building
Washington, D. C. 20515

Dear Chairman Regula:

As you consider the resources available to the National Endowment for the Arts, I thought it might be helpful for you to have at hand the principles advocated by the National Assembly of State Arts Agencies (NASAA) on behalf of the state and special jurisdiction arts agencies of the United States. These are attached.

Consistent with these principles, at the current funding level of $99.5 million, the state arts agencies endorse the current distribution of agency funds that enables the NEA to demonstrate appropriate national leadership and also enables it to support the leadership roles that state arts agencies play. As the principles note, the state arts agencies do support a higher level of funding for the agency overall because that would enable more Americans in more communities to enjoy the arts in more meaningful ways.

Please feel free to contact me if additional information would be helpful to your office. Your support of public funding for the arts and humanities is very much appreciated.

Sincerely,

Jonathan Katz

Jonathan Katz
Chief Executive Officer

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National Endowment for the Arts

FY 1997 Awards by State

Sorted by % of Total (Highest to Lowest)

State or Jurisdiction	Four Divisions		Partnership		Leadership Initiatives		TOTALS		
	Awards	Dollars	Awards	Dollars	Awards	Dollars	Awards	Dollars	% of Total
New York	272	$16,302,491	1	$680,600	24	$4,397,876	297	$21,380,967	23.23%
California	148	$7,088,520	1	$865,000	11	$343,206	160	$8,296,726	9.01%
District of Columbia	30	$2,130,500	4	$637,400	15	$2,733,436	49	$5,501,336	5.98%
Massachusetts	42	$2,067,000	2	$992,600	3	$525,000	47	$3,584,600	3.89%
Pennsylvania	43	$2,539,680	1	$598,800	1	$300,000	45	$3,438,480	3.74%
Illinois	46	$2,260,467	1	$559,400	1	$100,000	48	$2,919,867	3.17%
Minnesota	25	$1,505,400	2	$1,192,900	1	$98,000	28	$2,796,300	3.04%
Texas	34	$2,130,000	1	$627,900	0	$0	35	$2,757,900	3.00%
Maryland	13	$963,000	2	$1,170,700	3	$435,000	18	$2,568,700	2.79%
Georgia	12	$709,000	2	$1,208,200	1	$200,000	15	$2,117,200	2.30%
Missouri	12	$806,850	2	$1,049,100	2	$225,000	16	$2,080,950	2.26%
Washington	31	$1,322,240	1	$454,400	0	$0	32	$1,776,640	1.93%
North Carolina	12	$701,000	1	$523,400	2	$425,000	15	$1,649,400	1.79%
Ohio	26	$922,700	1	$594,000	1	$10,000	28	$1,526,700	1.66%
Colorado	5	$195,000	2	$1,242,700	1	$10,000	8	$1,447,700	1.57%
Virginia	12	$739,700	1	$479,200	1	$100,000	14	$1,318,900	1.43%
Connecticut	12	$779,000	1	$486,300	0	$0	13	$1,265,300	1.37%
Florida	15	$706,200	1	$520,300	0	$0	16	$1,226,500	1.33%

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National Endowment for the Arts

FY 1997 Awards by State

Sorted by % of Total (Highest to Lowest)

State or Jurisdiction	Four Divisions		Partnership		Leadership Initiatives		TOTALS		
	Awards	Dollars	Awards	Dollars	Awards	Dollars	Awards	Dollars	% of Total
Wisconsin	10	$715,190	1	$443,500	0	$0	11	$1,158,690	1.26%
Arizona	14	$493,000	1	$488,000	1	$124,000	16	$1,105,000	1.20%
New Jersey	9	$475,000	1	$563,200	0	$0	10	$1,038,200	1.13%
Michigan	8	$489,920	1	$521,500	0	$0	9	$1,011,420	1.10%
Kentucky	8	$492,500	1	$461,600	0	$0	9	$954,100	1.04%
Louisiana	6	$422,500	1	$443,500	2	$22,500	9	$888,500	0.97%
Oregon	9	$429,500	1	$406,700	1	$52,000	11	$888,200	0.96%
New Mexico	11	$469,400	1	$383,400	1	$10,000	13	$862,800	0.94%
Hawaii	6	$275,000	2	$586,100	0	$0	8	$861,100	0.94%
South Carolina	4	$165,000	1	$504,900	1	$134,000	6	$803,900	0.87%
Utah	3	$290,000	1	$467,600	0	$0	4	$757,600	0.82%
Alabama	5	$310,000	1	$447,000	0	$0	6	$757,000	0.82%
Tennessee	5	$210,000	1	$468,900	1	$10,000	7	$688,900	0.75%
Maine	6	$264,800	1	$403,700			7	$668,500	0.73%
Alaska	6	$217,000	1	$400,400	1	$50,000	8	$667,400	0.72%
Rhode Island	4	$235,000	1	$410,400	0	$0	5	$645,400	0.70%
Mississippi	0	$0	1	$495,800	2	$120,000	3	$615,800	0.67%
Indiana	5	$150,305	1	$458,600	0	$0	6	$608,905	0.66%

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National Endowment for the Arts

FY 1997 Awards by State

Sorted by % of Total (Highest to Lowest)

State or Jurisdiction	Four Divisions Awards	Four Divisions Dollars	Partnership Awards	Partnership Dollars	Leadership Initiatives Awards	Leadership Initiatives Dollars	TOTALS Awards	TOTALS Dollars	TOTALS % of Total
New Hampshire	7	$192,840	1	$410,000	0	$0	8	$602,840	0.65%
South Dakota	4	$171,000	1	$424,000	0	$0	5	$595,000	0.65%
Montana	5	$186,791	1	$386,900	0	$0	6	$573,691	0.62%
Iowa	5	$119,000	1	$454,400	0	$0	6	$573,400	0.62%
Vermont	6	$133,000	1	$434,800	0	$0	7	$567,800	0.62%
Kansas	3	$113,500	1	$412,100	1	$20,000	5	$545,600	0.59%
Delaware	4	$136,525	1	$406,700	0	$0	5	$543,225	0.59%
Idaho	2	$27,500	1	$394,700	1	$110,000	4	$532,200	0.58%
Wyoming	1	$105,300	1	$422,800	0	$0	2	$528,100	0.57%
Oklahoma	2	$85,000	1	$441,900	0	$0	3	$526,900	0.57%
Nebraska	2	$60,000	1	$441,200	0	$0	3	$501,200	0.54%
North Dakota	2	$95,200	1	$405,000	0	$0	3	$500,200	0.54%
West Virginia	1	$50,000	1	$424,700	0	$0	2	$474,700	0.52%
Nevada	1	$60,000	1	$399,500	0	$0	2	$459,500	0.50%
Puerto Rico	1	$20,000	1	$423,100	0	$0	2	$443,100	0.48%
Arkansas	0	$0	1	$410,200	0	$0	1	$410,200	0.45%
Virgin Islands	1	$15,000	1	$253,800	0	$0	2	$268,800	0.29%
American Samoa	0	$0	1	$267,400	0	$0	1	$267,400	0.29%

National Endowment for the Arts

FY 1997 Awards by State

Sorted by % of Total (Highest to Lowest)

	Four Divisions		Partnership		Leadership Initiatives		TOTALS		
State or Jurisdiction	***Awards***	***Dollars***	***Awards***	***Dollars***	***Awards***	***Dollars***	***Awards***	***Dollars***	***% of Total***
Northern Marianas	0	$0	1	$261,600	0	$0	1	$261,600	0.28%
Guam	0	$0	1	$247,600	0	$0	1	$247,600	0.27%
Totals	956	$51,543,519	66	$29,960,100	79	$10,555,018	1,101	$92,058,637	100.00%

NB: "Four Divisions" includes: Education & Access; Heritage and Preservation; Planning & Stabilization; and Presenting & Commissioning.

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FY97

Analysis completed May 1997 on FY 97 grants made to that date.

HOEKSTRA/HUTCHINSON STATEMENT: 33% of NEA GRANTS GO TO 6 CITIES

FACTS:

New York City............	$15,654,198
District of Columbia.....	$ 2,558,100
Chicago..................	$ 2,512,915
San Francisco............	$ 2,329,820
Los Angeles..............	$ 1,891,611
Boston...................	$ 1,691,600
TOTAL FOR 6 CITIES.....	$26,638,244
TOTAL AMT. GRANTS...	$80,998,030

6 CITIES' PERCENTAGE -- 33%

FUNDS TO 6 CITIES THAT SUPPORT NATIONAL AND REGIONAL PROJECTS
(Conservative Estimates)

New York City...........	$5,755,285
District of Columbia....	$1,187,500
Chicago................	$ 939,900
San Francisco...........	$ 426,000
Los Angeles............	$ 290,000
Boston.................	$1,062,600
TOTAL FOR 6 CITIES....	$9,661,285

36% OF THE MONEY GRANTED IN THE 6 CITIES BENEFITS OTHER STATES & REGIONS & COMMUNITIES

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National Endowment for the Arts
FY 1997 AWARDS SPECIAL ANALYSIS
Awards to New York State

	TOTAL		NY ONLY		% of Category Awarded to NY ONLY	
CATEGORY	**AWARDS**	**DOLLARS**	**AWARDS**	**DOLLARS**	**AWARDS**	**DOLLARS**
Creation & Presentation	535	$24,161,055	157	$8,196,835	29.35%	33.93%
Education & Access	172	$10,802,262	42	$3,788,500	24.42%	35.07%
Heritage and Preservation	122	$6,152,025	36	$1,659,710	29.51%	26.98%
Leadership	79	$10,555,018	24	$4,397,876	30.38%	41.67%
Partnership	66	$29,960,400	1	$680,600	1.52%	2.27%
Planning & Stabilization	127	$10,427,877	37	$2,657,446	29.13%	25.48%
TOTAL	1,101	$92,058,637	297	$21,380,967	26.98%	23.23%

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FY '97
New York
grant
Stats.

National Endowment for the Arts
FY 1997 AWARDS SPECIAL ANALYSIS
Awards to New York State with IMPACT

	"Multi-State" Impact						
	National AUDIENCE	National FIELD	Regional	**Total "Multi-State"**	% "Multi-State"	**In-State**	**Total**
Creation & Presentation	$972,000	$15,000	$294,000	$1,281,000	15.63%	$6,915,835	$8,196,835
Education & Access	$2,003,000	$463,000	$272,000	$2,738,000	72.27%	$1,050,500	$3,788,500
Heritage and Preservation	$435,000	$572,500		$1,007,500	60.70%	$652,210	$1,659,710
Leadership	$2,275,000	$510,000		$2,785,000	63.33%	$1,612,876	$4,397,876
Partnership				$0	0.00%	$680,600	$680,600
Planning & Stabilization	$130,000	$237,950		$367,950	13.85%	$2,289,496	$2,657,446
TOTAL	$5,815,000	$1,798,450	$566,000	$8,179,450	38.26%	$13,201,517	$21,380,967

Probably exempt from 15% cap limitation beginning FY 98

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Office of Policy, Research, and Technology 1/7/98

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National Endowment for the Arts

FY 1996 and FY 1997 Applications

BY STATE: Alpha Sort

APPLICATION STATISTICS

State	FY 1996[1]		FY 1997[1]		Difference 96 to 97	
	Number	% of Total	Number	% of Total	Number	%
Alabama	9	0.37%	4	0.19%	-5	-55.56%
Alaska	10	0.42%	15	0.71%	+5	+50.00%
American Samoa	0	0.00%	0	0.00%	0	0.00%
Arizona	29	1.21%	24	1.14%	-5	-17.24%
Arkansas	8	0.33%	2	0.10%	-6	-75.00%
California	349	14.53%	322	15.32%	-27	-7.74%
Colorado	30	1.25%	24	1.14%	-6	-20.00%
Connecticut	36	1.50%	28	1.33%	-8	-22.22%
Delaware	7	0.29%	6	0.29%	-1	-14.29%
District of Columbia	61	2.54%	59	2.81%	-2	-3.28%
Florida	52	2.16%	39	1.86%	-13	-25.00%
Georgia	39	1.62%	35	1.67%	-4	-10.26%
Guam	0	0.00%	1	0.05%	+1	+100.00%
Hawaii	12	0.50%	14	0.67%	+2	+16.67%
Idaho	3	0.12%	4	0.19%	+1	+33.33%
Illinois	119	4.95%	100	4.76%	-19	-15.97%
Indiana	18	0.75%	24	1.14%	+6	+33.33%
Iowa	11	0.46%	9	0.43%	-2	-18.18%
Kansas	15	0.62%	7	0.33%	-8	-53.33%
Kentucky	19	0.79%	18	0.86%	-1	-5.26%
Louisiana	24	1.00%	26	1.24%	+2	+8.33%

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National Endowment for the Arts

FY 1996 and FY 1997 Applications

BY STATE: Alpha Sort

State	FY 1996[1] Number	FY 1996[1] % of Total	FY 1997[1] Number	FY 1997[1] % of Total	Difference 96 to 97 Number	Difference 96 to 97 %
Maine	17	0.71%	14	0.67%	-3	-17.65%
Maryland	37	1.54%	29	1.38%	-8	-21.62%
Massachusetts	92	3.83%	79	3.76%	-13	-14.13%
Michigan	30	1.25%	26	1.24%	-4	-13.33%
Minnesota	64	2.66%	51	2.43%	-13	-20.31%
Mississippi	3	0.12%	9	0.43%	+6	+200.00%
Missouri	28	1.17%	21	1.00%	-7	-25.00%
Montana	13	0.54%	14	0.67%	+1	+7.69%
Nebraska	9	0.37%	9	0.43%	0	0.00%
Nevada	4	0.17%	4	0.19%	0	0.00%
New Hampshire	13	0.54%	10	0.48%	-3	-23.08%
New Jersey	47	1.96%	48	2.28%	+1	+2.13%
New Mexico	25	1.04%	21	1.00%	-4	-16.00%
New York	607	25.27%	527	25.07%	-80	-13.18%
North Carolina	38	1.58%	34	1.62%	-4	-10.53%
North Dakota	3	0.12%	4	0.19%	+1	+33.33%
Northern Marianas	0	0.00%	0	0.00%	0	0.00%
Ohio	67	2.79%	48	2.28%	-19	-28.36%
Oklahoma	11	0.46%	7	0.33%	-4	-36.36%
Oregon	25	1.04%	19	0.90%	-6	-24.00%
Pennsylvania	111	4.62%	103	4.90%	-8	-7.21%

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National Endowment for the Arts

FY 1996 and FY 1997 Applications

BY STATE: Alpha Sort

State	FY 1996[1] Number	FY 1996[1] % of Total	FY 1997[1] Number	FY 1997[1] % of Total	Difference 96 to 97 Number	Difference 96 to 97 %
Puerto Rico	10	0.42%	10	0.48%	0	0.00%
Rhode Island	10	0.42%	11	0.52%	+1	+10.00%
South Carolina	7	0.29%	9	0.43%	+2	+28.57%
South Dakota	4	0.17%	0	0.00%	-4	-100.00%
Tennessee	25	1.04%	12	0.57%	-13	-52.00%
Texas	87	3.62%	81	3.85%	-6	-6.90%
Utah	14	0.58%	8	0.38%	-6	-42.86%
Vermont	10	0.42%	13	0.62%	+3	+30.00%
Virgin Islands	5	0.21%	3	0.14%	-2	-40.00%
Virginia	41	1.71%	28	1.33%	-13	-31.71%
Washington	61	2.54%	55	2.62%	-6	-9.84%
West Virginia	6	0.25%	8	0.38%	+2	+33.33%
Wisconsin	25	1.04%	25	1.19%	0	0.00%
Wyoming	1	0.04%	1	0.05%	0	0.00%
Totals	***2,401***		***2,102***		***-299***	**-12.45%**

[1] ***DOES NOT INCLUDE:***

Applications from Individuals
State Arts Agency Basic State Grant Applications
Regional Arts Organization Basic Grant Applications
Leadership Grant Applications

LEADERSHIP INITIATIVES FISCAL YEAR 1998
Major Field Significance/National Arts Development

"A r t s R E A C H"

Staff Note: The concept described below was introduced to members of the National Council on the Arts (NCA) during the November 1997 dialogues with agency staff which precede the formal, public meeting. Council members affirmed that there was an immediate need to implement project activity to improve the dilemma of historically low number of grant applications from certain states. Upon further discussion with staff during this session, several Council members advised that additional information concerning project details be provided to a representative Council committee prior to the February NCA meeting. Based on continued research and development, as well as scheduled dialogue with the committee, an updated report to the Council will be provided during the February Council. As designed, the ArtsREACH project will be administered through a combination of agency staffing and, given staff limitations, a contractual relationship with an outside resource (through a standard Cooperative Agreement). As a procedural function, the Council will review applications considered through a peer review process and subsequently make recommendation for final approval of these grants by the Chairman.

BACKGROUND:

During the previous two years, the NEA has experienced complete reorganization. There have been major changes in operations, in grant guidelines, as well as drastic reductions in the level of funding available to non-profit arts constituencies. While this transition has been difficult for the national constituency, it is perhaps most difficult for those potential clients who had either limited or no prior contact with the agency. While the agency continually seeks to stimulate interest and expand participation with organizations representative of our diverse cultural landscape, of special interest are those geographic regions which have traditionally been under-represented within the profile of agency grantees. Therefore, as the first phase of a pilot effort, the NEA will target approximately twenty states (see attached marked A) which have had comparatively low numbers of applications to the agency's grants programs.

Targeting specific geographic locations as an eligibility factor is strategy that has been implemented by a few state arts agencies, as well as has been the basis of a multi-year campaign implemented by another federal agency, the National Science Foundation. Similar to these projects, the NEA seeks to improve or nurture relationships with potential clients by seeking their engagement in this initial round of pilot activity toward the possibility of preparing these organizations, as appropriate, to make future application through the regular grant application process.

AGENCY INVESTMENT/ANTICIPATED PARTNERS:

The Agency seeks to commit an allocation of up to $300,000 for Phase I of ArtsREACH which is anticipated to allow funding for approximately 75 - 100 grants to communities in up to 21 states.

Potential resources for project development, public relations and dissemination of public information include (but are not limited to) :Americans for the Arts; National Assembly of State Arts Agencies; designated State Arts Agency staff (Community Development Coordinators); designated Statewide Assembly staff; State Humanities Councils, National Association of Counties; National Conference of State Legislators, State Rural Development Councils/Agencies, U.S. Conference of Mayors; as well as appropriate cultural, educational and philanthropic resources located within these communities.

METHODOLOGY:
Given shifting national economic and societal issues, it is critical that arts organizations engage in coalition building. This advice was repeated throughout the proceedings of the agency sponsored regional discussions "American Canvass" (see attached marked B). In addition, through a process that is well-known within the local arts agency field, "cultural planning" (see attachment marked C) can be an invaluable tool to establish dialogue among cultural resources and between cultural and general civic resources. Through the ArtsREACH project, the NEA seeks to promote coalition building as a fundamental aspect of building a solid future for culture and art within the agenda of a community.

PROJECT DESCRIPTION:
Mini grants ranging from $3,000 - $5,000 will be available on a matching basis to communities for the following purposes:

1) Through a coalition building process, create a community cultural plan, and, provide a report which documents both the process and the findings. It is necessary that the partners include a representative group of the cultural community interests as well as include participation of other governmental or civic representatives

2) In those cases where a plan has been developed, implement one discreet aspect of that plan. Plans should be no more than two (?) years old, and must be submitted as part of the application packet along with a brief description of the process.

In order to promote partnerships, this project will review no more than one application per community.

TIMETABLE:
Given the desire for activity during the current fiscal year, the proposed timetable for the application process is :

March 1	**-**	**Application Announcement**
June 27	**-**	**Application receipt date**
late July	**-**	**Panel Review**
early Aug	**-**	**NCA review and Authorization**

1/13
pwp

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ATTACHMENT A

States in which Five or Fewer FY 1997 Direct Grants were Awarded

Alabama
Arkansas
Delaware
Idaho
Indiana
Iowa
Kansas
Mississippi
Montana
Nebraska
Nevada
North Dakota
Oklahoma
Rhode Island
South Carolina
South Dakota
Utah
West Virginia
Wyoming

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NEA's Administrative Overhead
Backgrounder

The issue of "excessive" administrative overhead has been a growing area of criticism of the agency over the past few years. Largely due to economies of scale, the agency's percentage of fixed costs have increased as the overall budget has decreased.

This criticism is unfair as demonstrated by the facts. NEA spent $24.8 million on administration in FY 95 supporting 264 full-time equivalent personnel (FTE). By FY 97, administrative expenses had been reduced to $16.98 million supporting only 154 FTE. In addition to standard belt tightening, NEA had to implement a major reduction-in-force in December 1995 in which 89 positions were abolished, necessitating a complete restructuring of agency operations.

In FY 98 administrative expenses were held level, forcing the agency to absorb Congressionally-mandated pay raises and rent increases. Even so, the percentage spent on administration increased from 17 percent to 17.3 percent because the overall budget was reduced from $99.5 million to $98 million.

One positive development is that under the President's proposed FY 99 budget of $136 million, administrative costs projected to be $16.5 million would fall to 12.1 percent of the budget.

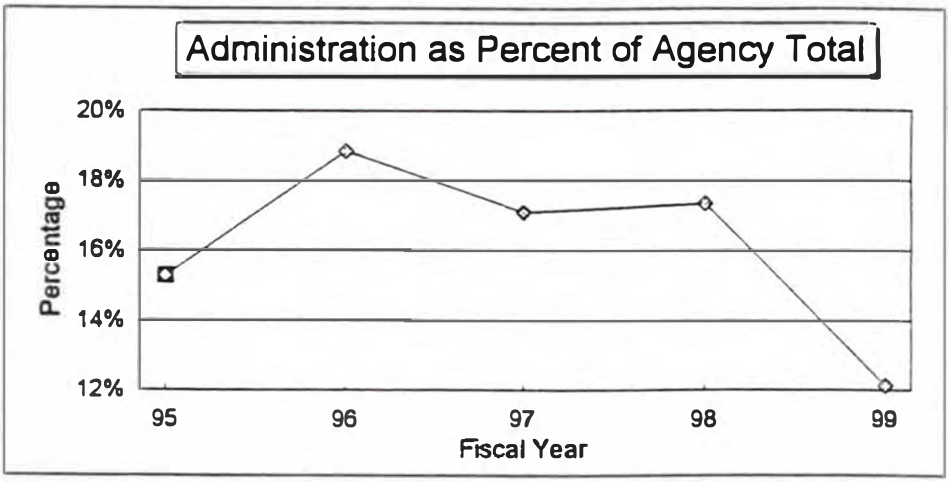
Congressional threats to arbitrarily reduce the NEA administrative accounts are very real. The Chairman of the House Oversight and Investigations Subcommittee, Peter Hoekstra, cited NEA administration costs as a major area of concern in his 1997 investigative report (the report, incidentally, was reviled as a partisan sham by the committee Democrats.

Nevertheless, Senator Jeffords has focused on the issue, and the Jeffords-Kennedy 5-year reauthorization bill reported by the Senate committee in 1997 now includes an amendment authored by Senator Warner (another NEA supporter) that would force NEA administration costs to 12 percent of the budget by FY 99. Cuts of this magnitude would require NEA to lay off another 1/3 of the staff.

Threats of severe administration cuts during the appropriations process in FY 97 prompted the threat of a Presidential veto of an NEA appropriation bill that "makes it administratively impossible for NEA to carry out its function." Even so, a last-minute amendment offered in the House-Senate conference committee by Rep. Nethercutt with the blessing of the House Chairman Livingston would have cut NEA administration by $10 million (59 percent). The amendment was only defeated when Rep. Regula offered a substitute to cut the overall budget from $99.5 million to $98 million.

Beyond the overall issue of survival — this issue represents the most insidious threat to NEA's continued ability to serve the American public as a national leader in supporting the nonprofit arts.

n as percent of agency total FY 95-FY 99
9ADPCT) 1/8/98



Appropriation (thousands)

FY	Agency	Total Admin		Percent Of Total
95	162,311	24,798		15.28%
96	99,470	18,736	a/	18.84%
97	99,494	16,980		17.07%
98	98,000	16,980		17.33%
99	136,000	16,501		12.13%

a/ Includes $2.5 million for one-time downsizing costs.

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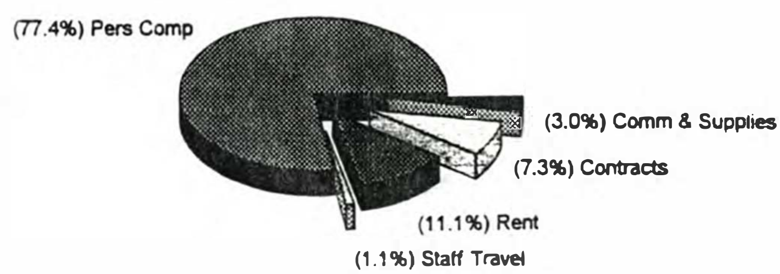
995¢E3

FY 99 Salaries and Expenses



II. ADMINISTRATIVE MANDATES

The Endowment is aware that some members of Congress and staff have raised concerns about the agency's administrative operating budget, and specifically the amounts spent on personnel compensation. The agency's personnel requirements are a direct function of its legal responsibilities imposed by Congress under the agency's organic statute, the National Foundation on the Arts and Humanities Act of 1965, as amended, (NFAHA) and the many other Federal statutes, regulations, and Executive Orders and Circulars which govern the administration of all Federal agencies. As a very small agency, the NEA faces a higher percentage of fixed costs in carrying out the necessary administrative and programmatic functions required of an independent agency of the Federal government. Similar to the manufacturer which must invest the same amounts in plant and equipment whether it manufactures fifty cars or fifty thousand cars, NEA must maintain the same basic administrative functions required of large departmental organizations -- budgeting; financial management; information systems management; civil rights and equal employment opportunity enforcement; personnel management, grants and contracts management; inspector general; service, supply and building support; legal counsel; and all of its programmatic functions -- despite the fact that the budget -- and staff -- have declined by approximately 40 percent since FY 95.

As the only arts organization with a truly national perspective, the Endowment plays an important national leadership role in the nonprofit arts. The agency's mission is twofold: to foster the excellence, diversity and vitality of the arts in the United States, and to broaden public access to the arts. The agency's process for reviewing grant applications, which is specifically required by law, is purposefully redundant and staff intensive. It also works well. Sections 5, 6 and 10 of the NFAHA mandate that all applications for grant assistance be subjected to a rigorous multi-step review. Section 10 specifically requires that the chairman utilize advisory panels to review applications, and that panels be composed of citizens reflecting wide geographic, ethnic and minority representation as well as individuals reflecting diverse artistic and cultural points of view, and that the panels further include lay members who are not engaged in the arts as a profession, but who are knowledgeable about the arts. Section 6 of the NFAHA establishes a separate twenty-member National Council on the Arts, and charges the Council with conducting a second level of review of each application recommended by the panels. Finally the law requires a third level of review by the chairman.

While we believe this redundant process has worked well in producing the most meritorious projects, it is labor intensive. The entire review must be coordinated and overseen by agency personnel from the initial development and distribution of program guidelines and applications through the final process of awarding grants. In between, staff must review approximately 4,000 applications for technical eligibility; assemble and coordinate more than fifty review panels; coordinate and staff three or four annual meetings of the National Council on the Arts, and ensure that the chairman is fully prepared to make the final decision on grant awards. This integrated review process cannot go forward without the skilled management of substantive program personnel who have expertise in the various arts disciplines.

The NFAHA imposes additional requirements in the area of post-award grant management. Subsections 5 (h)(i)(j)(k), and (l) impose strict interim and final reporting requirements on all grantees, and require the agency to recover grant dollars spent inappropriately. These authorities are important in ensuring accountability for taxpayer dollars, and they require professional staff, both program and administrative, to ensure that the law is followed.

As an independent agency of the Federal government, the Endowment must retain in-house personnel capable of ensuring compliance with other Federal laws and regulations including the Government Performance and Results Act (GPRA) , the National Performance Review (NPR), the Freedom of Information Act (FOIA), and the civil rights laws. The agency must retain experienced financial managers who understand accounting and financial requirements mandated by the Federal Managers Financial Integrity Act, Cash Management Improvement Act, the Federal Acquisition Requirements, and numerous other laws and regulations. The agency must have experienced personnel managers to ensure compliance with Civil Service laws that govern everything from pension benefits to family leave. In a few areas, such as payroll, the Endowment relies on cross-servicing through interagency agreements with other Federal agencies -- these agreements must be negotiated and monitored by experienced personnel as well. Again, we recognize that all of these are appropriate obligations of a Federal agency.

Appropriations bills enacted each year since FY 96 have imposed new duties on NEA personnel. Pursuant to the FY 98 legislation, the agency is required to establish new grant tracking systems to ensure priority for certain types of projects, and to report to Congress on multi-state grants. The legislation also gave the agency expanded authority to solicit private funding, an authority that will be difficult to exploit fully unless the agency takes on personnel with specific fund-raising and development skills.

The Endowment is continually exploring new ways to improve productivity, and since absorbing personnel cuts in FY 96, has implemented a teamwork concept in which shared responsibility for completing work is standard operating practice throughout the agency. At current personnel levels the agency is able to serve the public efficiently. However, any further cuts would jeopardize the Endowment's ability to fulfill its obligations under the NFAHA and the various other Federal laws governing the operation of a Federal Agency.

PRIVATE FUNDING Backgrounder

In addition to its annual appropriations, NEA is authorized to accept gifts, which over the past few years have totaled about $1 million annually, about one percent of the agency's overall appropriated budget.

The way conservatives generally cover themselves when opposing the NEA is by distinguishing between support for the arts and support for Federal funding of the arts. They say they believe in the former, not the latter. This crystalized as the House GOP leadership position in an April 1997 press conference in which Gingrich suggested that wealthy celebrities should contribute one percent of their income toward the arts.

Jane Alexander's position throughout her administration was that new sources of funding should be explored, but only as a supplement to Federal appropriations. Her position, and that of the Clinton White House, is that Federal leadership and support of the arts is crucial and must be maintained. Under the auspices of a New Resources Committee and later the NEA Office of Enterprise Development, Chairman Alexander explored a number of alternative funding options including tax changes, lotteries, tax check-off's, ticket taxes, copyright term extension, fundraisers etc. Most of these alternatives were found to be politically infeasible. At the same time, NEA had no explicit authority to solicit funding, and no legal authority at all to engage in the types of capital formation strategies normally pursued by business entities.

In 1995, Chairman Alexander requested explicit legal authority to solicit and invest funds, which was finally granted as part of the FY 98 appropriations legislation. Now the agency faces the question of how it will make the best use of this new authority, and how the new Chairman will address the issue when asked in the FY 99 appropriations hearings.

A number of members of Congress are particularly interested in the issue. House appropriations committee member George Nethercutt (R-WA) questioned Chairman Alexander extensively in hearings in 1996 and 1997 about the possibility of raising private funds from celebrities. In addition, Senator Lott's recent appointment to the National Council on the Arts, Senator Spencer Abraham, is a leader in advocating the substitution of private funds for NEA appropriations — although none of his proposals hold any promise of matching the $98 million annual appropriations.

This will be a particularly difficult issue to handle this year. Since Congress gave the agency authority to solicit and invest, members will want to know what the agency is doing to raise private funds. The answer for now may lie in the fact that the agency lacks the administrative resources to hire a professional development staff, and besides that, it would be exceedingly difficult for any development staff to raise $98 million each year. Finally, the political prospect for enacting any kind of copyright bill or tax changes to benefit the nonprofit arts has not improved. This is an area that needs work.

OFFICE OF ENTERPRISE DEVELOPMENT

NEA established this office as a means of exploring new methods for supporting the non-profit arts in America. It is charged with searching out ways to augment the agency's budget through authorized contributions and to expand the funding pool for the arts.

The National Endowment for the Arts, as a grantmaking agency of the United States government, has never been recognized as a charity. The NEA has construed its mission as grantor rather than collector of funds. The Office of Enterprise Development has looked outside that context and attempted to assess the merits, feasibility and potential of various revenue generating activities. The OED does not define itself as a fundraising office for the NEA but rather as a hub for the agency's efforts to expand the overall funding pool for the arts. Consistent with that purpose, the OED has adhered to a commitment not to engage in activities which would divert funds that would otherwise go directly to artists or arts organizations. While there have been some notable accomplishments in the form of direct contributions to the agency (the H. J. Heinz Company gave $450,000, the largest corporate contribution to the NEA to date; a gift of stock valued at $95,000 from a private citizen marked the largest individual donation in the agency's history), the productivity of the office can not be measured in dollars brought in to the agency itself.

The most consistent success has been in finding partners for agency supported projects. Corporate partners such as the Coca-Cola Company, Chase Manhattan, Nissan Motors, Atlantic Ridgefield, Dunwoodie Communications and others have contributed to the support of specific projects like American Canvas, the WritersCorps Project and the Oklahoma Rebuild Project. Very recently, Microsoft committed $250,000 to the Benton Foundation, the Endowment's partner in the NEA conceived and initiated internet access project "Open Studio."

The nature of the Endowment itself dictates certain parameters for the Office of Enterprise Development. First, the NEA is a federal agency and, in many instances, individuals, corporations and foundations will not, or can not by charter, give money to the government. They consider that their taxes already serve that purpose. Second, the agency is recognized as a grant making body. It would require a massive public relations campaign to shift that perception and spotlight the NEA as a recipient organization. Second, unlike the Smithsonian or the Library of Congress, the NEA does not own or generate product. The only thing approximating product which the NEA has is its reputation and brand recognition. Government ethics preclude the agency from using its name and logo, arguably its only marketable commodity, to enter into cause-related marketing ventures. The OED has found opportunities to enter into entrepreneurial fundraising activities such as affinity cards and product identification schemes but has been unable to pursue them because of these restrictions.

[redacted]

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GIFTS RECEIVED BY THE

NATIONAL ENDOWMENT FOR THE ARTS

FY 95	$ 766,232
FY 96	$ 959,698
FY 97	$1,005,812

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[redacted] [redacted]

GIFTS ACCEPTED ON BEHALF OF [redacted]AL ENDOWMENT FOR THE ARTS
FY'97

At its meeting on February 1, 1994, the National Council on the Arts authorized, "the Chairman of the National Endowment for the Arts to receive and expend gifts of money and other property donated, bequeathed, or devised to the National Endowment for the Arts with or without condition or restriction, without the prior recommendation of the National Council on the Arts."

Further, "the National Council on the Arts request(ed) that the Chairman of the National Endowment for the Arts regularly provide the National Council on the Arts a report of the gifts received."

A total of $630,735 was received in FY'97 for both restricted and unrestricted purposes. The following are gifts received on behalf of the National Endowment for the Arts and in accordance with the agency's enabling statute and other applicable laws and regulations. The donation period is from October 1, 1996 through September 30, 1997 (FY'97).

The following gifts were received in FY'97 for the purpose of the 1996 and 1997 National Medal of Arts ceremonies:

Thomas H. Lee Company	$62,500
Blum-Kovler Foundation	55,000
Estate of Ruth C. Koehl	25,000
William Rollnick Foundation	25,000
Fred & Hinda Shuman Foundation	5,000

On behalf of the President's Committee on the Arts and Humanities (PCAH), the following gifts were received:

S.H. & Helen Scheuer Foundation	$10,000
John Brademas Foundation	5,000
Betty Sheffer	5,000
Spillis Candela & Partners, Inc	1,000
Irene Hirano	219

Heinz USA & HJ Heinz Company Foundation contributed $150,000 in support of grants to organizations in the Education and Access category.

Target, Inc. provided $50,000 that was expended for the purpose of the 1997 Heritage Awards ceremonies.

An additional gift of $150 was received and expended in support of the 1997 Heritage Awards.

[redacted] [redacted]

GIFTS ACCEPTED ON BEHALF OF [redacted]AL ENDOWMENT FOR THE ARTS
FY'97

On behalf of the Writers Corps Project, the following gifts were received and expended.

Nissan Motors Corporation	$105,000
Morris & Gwendolyn Cafritz Foundation	10,000
The San Francisco Foundation	10,000
Max & Victoria Dreyfus Foundation	10,000
Chase Manhattan Foundation	10,000
Judith & Robert Rubin Foundation	10,000
Borders Books & Music	6,584
Vera List	5,000
LEF Foundation	5,000
Bureau of National Affairs	2,500
National Arts Club	750

Additional gifts totalling $420 were received & expended in support of Writers Corps project. These were received through Borders Books and Music.

The following gifts were received and expended in FY'97 for the designated disciplines:

Professional Theatre	$2,500
Education & Access	1,500
Dance	110
Music	50
Visual Arts	50
Rural areas	25
Theater	25
Non-traditional art	10

The following gifts were received for unrestricted purposes:

Phillip F. Schoch Trust	$30,241
Anonymous	5,043
Ron & Cheryl Howard	5,000
Hyman Levine Family Foundation	2,500
Serena French Pelissier	1,662
Sen. Roy M. Goodman/Goodman Family Fdn.	1,000

Eighty-five other gifts totalling $5,634 were received for unrestricted purposes during FY'97.

Additionally, $6,261.02 designated for staff/panelist travel costs was received during FY'97.

Reserves pursuant to the Man and Biosphere program administered by the United Nations Educational, Scientific, and Cultural Organization.

(b) The provisions of this section shall be repealed upon enactment of subsequent legislation specifically authorizing United States participation in the Man and Biosphere program.

16 USC 459j–4 note.

SEC. 328. None of the funds made available in this or any other Act for any fiscal year may be used to designate, or to post any sign designating, any portion of Canaveral National Seashore in Brevard County, Florida, as a clothing-optional area or as an area in which public nudity is permitted, if such designation would be contrary to county ordinance.

Grants.

SEC. 329. Of the funds provided to the National Endowment for the Arts:

(1) The Chairperson shall only award a grant to an individual if such grant is awarded to such individual for a literature fellowship, National Heritage Fellowship, or American Jazz Masters Fellowship.

Regulations.

(2) The Chairperson shall establish procedures to ensure that no funding provided through a grant, except a grant made to a State or local arts agency, or regional group, may be used to make a grant to any other organization or individual to conduct activity independent of the direct grant recipient. Nothing in this subsection shall prohibit payments made in exchange for goods and services.

(3) No grant shall be used for seasonal support to a group, unless the application is specific to the contents of the season, including identified programs and/or projects.

SEC. 330. The National Endowment for the Arts and the National Endowment for the Humanities are authorized to solicit, accept, receive, and invest in the name of the United States, gifts, bequests, or devises of money and other property or services and to use such in furtherance of the functions of the National Endowment for the Arts and the National Endowment for the Humanities. Any proceeds from such gifts, bequests, or devises, after acceptance by the National Endowment for the Arts or the National Endowment for the Humanities, shall be paid by the donor or the representative of the donor to the Chairman. The Chairman shall enter the proceeds in a special interest-bearing account to the credit of the appropriate Endowment for the purposes specified in each case.

SEC. 331. In fiscal years 1998 through 2002, the Secretaries of the Interior and Agriculture may make reciprocal delegations of their respective authorities, duties and responsibilities in support of joint pilot programs to promote customer service and efficiency in the management of public lands and national forests: *Provided*, That nothing herein shall alter, expand or limit the existing applicability of any public law or regulation to lands administered by the Bureau of Land Management or the Forest Service.

SEC. 332. No part of any appropriation contained in this Act shall be expended or obligated to fund new revisions of national forest land management plans until new final or interim final rules for forest land management planning are published in the Federal Register. Those national forests which are currently in a revision process, having formally published a Notice of Intent to revise prior to October 1, 1997, or having been court-ordered to revise, are exempt from this section and may utilize funds

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Excerpt 3/13/97
hearing House Interior
Appropriations
Subcommittee - NEA
Budget - Rep. Regula
presiding.

Re: Private funds

Mr. MORAN. Thank you, Mr. Chairman.

Mr. NETHERCUTT. Thank you, Mr. Chairman. Welcome, Ms. Alexander. It's nice to see you again and you're welcomed to the subcommittee.

ALTERNATE FUNDING SOURCES FOR NEA

It's hard to argue with anybody who advocates the value of the arts. I have no quarrel with valuing the arts. You and I have talked over the past couple years about ways to have some Federal involvement in the arts at a time when we have a tremendous debt and we are battling deficits and trying to cut corners where we can in this country. I would be happy to have you respond today. Maybe there's been some progress. But my sense is, and correct me if I'm wrong, that there has been no real serious effort—at least think it would be useful, if it n perhaps a less positive note— ık might be the downside of con- se I know it's going to come up he record in advance of any fur- might have. mit that for the record, I would

NEH CONSOLIDATION

unctions was discussed during the 104th 3. Section 103 of the reported bill, S. 856, of Inspector General, and "non-duplica- provision of facilities and space, records inting and provision of mail and library lation, the two endowments convened a 995 to discuss how to implement the pro- inary observations were made, the meet- n both endowments faced budget cuts on ductions.

two endowments found that there were s associated with combining offices. The h combining like offices were difficult to and the numbers of personnel involved. cessing systems and changing long-held roved relatively costly in relation to the d by consolidating the small numbers of

nd the National Endowment for the Hu- —artists and arts and cultural organiza- There is some overlap between the umentary filmmaking, support for better differentiated. With the ex- ns of the two agencies are very different. since 1996, both agencies have been op- s. At NEA each arts discipline generally people. It is difficult to see how the two ge of arts and humanities projects now aff were further reduced as part of a plan

o be more political than policy oriented. ditional Federal cultural programs are political attack.

irman.

r. Chairman. Welcome, Ms. Alex- and you're welcomed to the sub-

SOURCES FOR NEA

who advocates the value of the uing the arts. You and I have bout ways to have some Federal when we have a tremendous debt ying to cut corners where we can py to have you respond today. But my sense is, and correct me no real serious effort—at least

that I have knowledge of today—that you or anybody in your agency has thought about or imposed ways that you can engage the private sector. First, from the standpoint of encouraging mega-corporations that are making zillions of dollars a year to support the industry that they want the public to support.

And, second of all, in those instances where there is commercial success from artists who have benefitted from NEA grants. There have been many, and I'm proud of all those people who've done so well, because they enlighten the Nation with their scholarship and their artistic nature. However, it seems to me, in an environment of financial pressure that the country is under that it would be in your best interest to not only require NEA artists who go on to commercial success to give back a percentage, a royalty if you will. Maybe that's not acceptable to you and your agency, but to me it seems to make sense that they would make this contribution to that resource which gave them commercial success.

So I wonder if you could enlighten me and the subcommittee as to, No. 1, what efforts you have undertaken to say to the Disneys of the world, and the Sonys, and all the others, "Why don't you give one penny of every ticket that you sell to the NEA?" And have 2 percent of every commercial dollar that inures to the benefit of an NEA beneficiary, give that back to the Endowment and let it get beyond $136 million. Could I have you respond to that?

OFFICE OF ENTERPRISE DEVELOPMENT

Ms. ALEXANDER. Absolutely, and I'm very pleased that you did ask this question, because in fact we took you very seriously last year. I did begin an Office of Enterprise Development at the agency. It is a very small staff of two, and I detailed one of my assistants to it. And we really encourage the private sector, corporate leaders, and particularly the Hollywood community—I've been doing that for a couple of years now—to recognize that an awful lot of their roots, the talent that is nurtured through the incubator part of the Endowment's funding, ends up in the commercial sector, and that we need their help.

RECAPTURE OF FUNDS

However, I bring to your attention two things. We don't give individual grants anymore. So we wouldn't be able to ask individuals who are performing in a concert or in an institution to pay back in that way. And an institution like, for example, the New York Shakespeare Festival that went on to great commercial success with, "Chorus Line," and now "Bring In Da Noise, Bring In Da Funk" on Broadway—all that money is now plowed right back into the system so that more people have opportunity and access within it. So we wouldn't want to tap those funds either.

Mr. NETHERCUTT. In what system?

Ms. ALEXANDER. Excuse me, I didn't mean system—institution. For example, the New York Shakespeare Festival which made money on "Chorus Line" then used that money to increase and expand the number of productions they did in other areas. It's a very equal opportunity kind of outfit. So that was, we felt, very admirable.

The other thing is, if we wanted to have any kind of supplemental income we would need professional—excuse me, congressional—help in this regard. We can't do it on our own, Congressman.

Mr. YATES. As a matter of fact, the law prohibits it.

Ms. ALEXANDER. Yes. We're not allowed to solicit and invest funds and I've found that a great drawback for us at the agency. I mean, I couldn't go out and actually ask corporations to give money to the government and I also found even if asked, people would say to me they weren't comfortable giving money to the government. They already gave it in taxes. Why should they give any more?

SOLICIT AND INVEST AUTHORITY FOR NEA

Mr. NETHERCUTT. Would you be willing to explore that option, of changing the law so that perhaps a private foundation could be created that would be subject to solicitation? The Smithsonian does that, as I remember. I mean, would you be willing to explore that as an alternative to simply coming to the Congress and saying, "We need $136 million or we need 350," or whatever it is you want to do the job you need to do? And if the Congress could then pave the way to allow you that freedom, would that be acceptable?

Ms. ALEXANDER. Well, that would certainly be acceptable, because I think supplemental income would be warranted in any case. And it might be a very good national initiative to try to challenge, if you will, the private sector to come up with funds to fund individual artists, to fund a lot of the things the Endowment doesn't do.

At the same time, though, I still think that you need a Federal presence, a Federal role, for many other reasons—Federal liaison, international liaison, convener, major database information research, and so on. You would still need that role from the Federal Government.

APPROPRIATE LEVEL OF FEDERAL FUNDING FOR NEA

Mr. NETHERCUTT. I guess the challenge, the question then is what's the level of that Federal role, I mean financially? How much is enough to meet the role requirements that you're suggesting? Is it $18 million, which is essentially your administrative costs, as I look at this? Unless I'm mistaken, it's about $18 million you're asking for?

Ms. ALEXANDER. I believe the $18 million would be if we had the request level of $136 million.

Mr. NETHERCUTT. Exactly. It's just under $17 million now.

Ms. ALEXANDER. Yes.

Mr. NETHERCUTT. And would that be adequate, as a stamp of approval from a Federal agency that supports the arts to allow you to have the administrative support, but to seek the grant support in the private sector? I saw Alec Baldwin on television the other day talking passionately about how "we must fund the NEA." But, I'm wondering how much Alec Baldwin would be willing to contribute to his passion and his profession to allow your agency to proceed if you had some core funding from the Federal Government

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and the taxpayers at large, along with the other conglomerates who make so much money in the arts and live on it.

I'm exploring this with you because, frankly, I want to see you survive some way. But I know there's pressure in the Congress as we face this budget problem. We face those who'd say, "We can't afford you."

Ms. ALEXANDER. I understand what you're saying and I really appreciate your concern. We're concerned as well. And in defense of somebody like Alec, let me say that Alec does give privately to a great many different organizations, in addition to paying hefty taxes to the United States government. [Laughter.]

And there are other young people—there's a wonderful, young Grammy recording artist who believes strongly in the NEA, named Richard Marx, who is giving an awful lot of his own private money to enhance arts education for young people all through the United States.

So it's beginning to happen. They're beginning to understand that they have to give a little bit more. But let me point out, Congressman, that the Endowment is already pretty bare-bones at $99.5 million for what it needs to serve the country. And for us to be diminished, it would have to be only in proportion to how much a private entity such as you're talking about, or a quasi-public or private one, could sustain or even enhance the service to the United States arts community and the people of America. So that would take a while, it seems to me.

We're the largest single funder of the arts in the United States; $99.5 million is very difficult to raise. And it might take many, many years. I'm not saying that I'm against it, but you can't just reduce one without making sure that the other pot is there and is sufficient to provide the needs.

ESTABLISHMENT OF A TRUE ENDOWMENT

Mr. NETHERCUTT. Yes, but if I'm in your chair, I'm planning for the worst. I'm thinking defensively and I'm out there working to have independence, rather than dependence. I mean, the benefits I could see of your being more independent is not having to worry about a grant that you——

Mr. SKAGGS. Would the——

Mr. NETHERCUTT. Let me finish—worrying about a grant that you just issued six months ago that's perceived to be obscene and you're having to fight that battle and then justify your existence. It just seems to me you ought to strive for independence and freedom from——

Ms. ALEXANDER. But I can't do that, Congressman. I can't strive myself because I'm a Federal official.

Mr. NETHERCUTT. I know. I understand that. I'm saying to you, though, maybe we can work through the law to allow you to have a way to satisfy your needs, but also to satisfy the public needs as well and the public involvement and the taxpayers' involvement in your existence. That's what I'm trying to persuade you to think about.

Ms. ALEXANDER. Well, you may remember that last year Congressman Williams suggested that the government make a $9 billion endowment and that wouldn't be too bad. [Laughter.]

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Mr. SKAGGS. Would the gentleman yield?

Mr. MORAN. Or too likely. [Laughter.]

Mr. SKAGGS. This is a terribly important question for this society. I have people in my district that don't think it's a great idea for $2,000 a person to go to defense right now with all of the things that are pressuring on this budget. They realize that's their responsibility, but it makes it a little bit easier to swallow because they've got fifty cents a year going to the arts. We need to be aware of the diversity of this land and we need to keep it together. And we need to give everybody a sense that they have a stake in the whole enterprise.

Mr. NETHERCUTT. I understand that. But what's better—to lose the National Endowment for the Arts or to be creative to the point where we can keep the National Endowment for the Arts and still meet the other responsibilities?

Mr. SKAGGS. What's better is to keep both, because if we lose the National Endowment, there are going to be more people revolting against paying their taxes for other things that far eclipse this.

Mr. REGULA. I want to suspend a minute and just informally with the committee members discuss the remainer of the schedule. Depending on how much time each of you would still like—Mr. Dicks has some time yet—perhaps finish by 11:30, so that the National Endowment for the Humanities could come on and we could finish by 12:30 or so. Or we can come back after lunch. How much time does anyone seek yet?

Mr. YATES. I would want ten minutes, I think.

Mr. REGULA. Okay. Anyone else? Okay. All right. We'll try to finish up with the Arts and then finish the Humanities and run over a little bit at noon if that's okay.

Mr. YATES. I'll be short.

Mr. REGULA. Okay. Mr. Dicks.

IMPORTANCE OF THE ARTS IN WASHINGTON STATE

Mr. DICKS. Well, I want to welcome Jane Alexander to the committee today on the National Endowment for the Arts. I have been a very strong supporter over the years under the great leadership of Congressman Yates and our committee and, frankly, I think the National Endowment for the Arts has been one of the great successes in our country's history. When you look at all the help that has gone out to establish art organizations and institutions all over this country—I mean, in the last—since 1965, when the Endowments were created, I mean, it is utterly amazing.

And I can remember being in Seattle with Livingston Biddle in 1977 when we gave three major challenge grants, and that went to the Northwest Ballet, to the Seattle Symphony, and to the Repertory Theater. And those institutions have grown because of those challenge grants into some of the finest institutions in the country. And they can work all over Washington State and the Northwest, they've come to Washington, DC. It has been really utterly, I think, very spectacular.

ROLE OF THE PRIVATE SECTOR

And we talk about the private sector. And the reality is, if you look at the history of this, the private sector gave very little to the

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REAUTHORIZATION /STATUS

The reauthorization process began in the 105th Congress with a hearing held on April 29, 1997, chaired by Senator James M. Jeffords (R-VT), head of the Senate Labor and Human Resources Committee. Senators Jeffords, Edward M. Kennedy (D-MA), Christopher Dodd (D-CT), Jeff Bingaman (D-NM), Jack Reed (D-RI), John Warner (R-VA), and Mike DeWine (R-OH) all spoke in support of reauthorizing the Endowment.

On July 15, 1997, Senators Jeffords (R-VT), Kennedy (D-MA), and Chafee (R-RI) introduced a five-year bill (S. 1020) authorizing appropriations of up to $175 million in 1998 and "such sums as necessary" thereafter. The bill is similar in form to the Kassebaum-Jeffords bill introduced and reported from committee in the previous Congress with a few significant exceptions. The measure would divide the agency's grant-making funds into four areas: 40% to the states; 40% for national grants that will require 3:1 or 5:1 matches from the grantee, dependent upon the grantee's annual budget; 10% for grants that will require a 1:1 match; and 10% for arts education and grants to underserved and rural areas. In addition the bill mandates that any funds appropriated in excess of $99.5 million be used exclusively for arts education projects.

On July 23, 1997, the full Labor Committee marked up S. 1020, and added 7 amendments to the bill by voice vote:

- By Senator Mike Enzi (R-WY): Of the 40% of grant funds set aside for the states, $200,000 or 1%, whichever is greater, to be set aside for each state in the initial distribution of the Basic State Grant. Current law only requires that each state receive a minimum of $200,000 from that first distribution;

- By Senator John Warner (R-VA): Drops the 1998 authorization level for the NEA from $175 million to $105 million, continues the "such sums as necessary" for the next four years. Since the appropriation for FY 98 now reported by the Senate Appropriations Committee totals $100.060 million, this amendment has little practical effect;

- By Senator John Warner (R-VA): Restricts panelists from any one state on any one panel to 10% of panel;

- By Senator John Warner (R-VA): Caps administrative expenses at 12%, to be phased in one year from enactment of the legislation. This is an extremely problematic amendment that could result in another round of RIFs if enacted into law;

- By Senator Tim Hutchinson (R-AR): Require the NEA Inspector General to send the proposed Financial Management Guide for Non-Profit Organizations to all grantees;

- By Senator James M. Jeffords (R-VT): To clarify the recapture language for grants that result in commercially-successful ventures in order to accommodate the concerns expressed by some of the arts organizations about the original recapture language in the bill.

- By Senator Susan Collins (R-ME): To direct the agency to give priority consideration to proposed arts education project applications in all funding areas. In response to concerns about the practical effect of this amendment on traditional arts organizations, clarifying language will be included in the committee's report, at the request of Senators Kennedy and Murray.

The only amendment defeated was offered by Senator Judd Gregg (R-NH). The amendment would have block granted 60% of the agency's grant budget to the states.

The full Committee then voted to report out the amended bill by a bipartisan vote of 14 to 4 -- Senators Jeffords (R-VT), Gregg (R-NH), Collins (R-ME), Warner (R-VA), McConnell (R-KY), DeWine (R-OH), Reed (D-RI), Wellstone (D-MN), Murray (D-WA), Bingaman (D-NM), Mikulski (D-MD), Kennedy (D-MA), Dodd (D-CT), and Harkin (D-IA) voting for the bill, and Senators Frist (R-TN), Hutchinson (R-AR), Enzi (R-WY), and Coats (R-IN) voted against.

In the House of Representatives, the Chairman of the Early Childhood, Youth and Families Subcommittee, Representative Frank Riggs (R-CA-1), and the Chairman of the Subcommittee on Oversight and Investigations, Representative Peter Hoekstra (R-MI-2), held a joint hearing on the National Endowment for the Arts on May 13, 1997. The Subcommittees received testimony from four panels of witnesses:

- Panel 1: Representative Dick Armey (R-TX-26), the Majority Leader of the House, who spoke in opposition to the continuance of the agency;

- Panel 2: Representatives Cliff Stearns (R-FL-6), John Doolittle (R-CA-4) and Ron Lewis (R-KY-2) spoke in favor of abolishing the agency. Representatives Amo Houghton (R-NY-31), Louise Slaughter (D-NY-28), and Jerrold Nadler (D-NY-8) spoke in support of the agency;

- Panel 3: Jane Alexander, Chairman of the NEA; and

- Panel 4: Mr. Patrick Trueman, Director of Governmental Affairs of the American Family Association, Professor Ben Stein, Actor, Writer and Professor of Economics at Pepperdine University, Dr. Alice Goldfarb Marquis, Author, and Dr. Tyler Cowen, Professor of Economics, George Mason University, all gave varying testimony as to why the agency should be eliminated. Mr. Alec Baldwin, President Creative Coalition, and actor, Ms. Judith Ann Butler, Executive

Director, Americans United to Save the Arts and Humanities, Ms. Karen L.B. Evans, Director of Education Programs, Arena Stage, Washington, D.C., and Ms. Peggy Amsterdam, Director, Delaware Division of the Arts, all spoke in support of the agency.

After the 4 ½ hour hearing, neither chairman committed to moving a reauthorization or a phase-out bill through the Committee this year. The House Leadership continues to oppose NEA reauthorization.

STEVENS TASK FORCE — BACKGROUNDER

In late summer of 1997, after the House had passed the FY 98 appropriation bill zeroing out all NEA funding, the Senate Appropriations Committee Chairman Ted Stevens (R-AK) became concerned about what he saw as a developing impasse between the House and Senate over NEA funding.

In addition, Stevens who is an NEA supporter, seemed to underestimate the level of NEA support in the Senate, and thought it would be difficult to pass a status quo appropriation out of his committee. In order to relieve what he saw as building pressure for NEA changes in his committee, he announced that he was creating a task force to examine the NEA with the intent of recommending changes to the full Senate. That effort succeeded in forestalling any anti-NEA action in his committee.

After the committee reported the bill, however, the task force didn't do anything. When the appropriation bill reached the Senate floor, Stevens authored a sense of the Senate resolution (non-binding) which called for hearings in 1998 to examine the issue of Federal funding for the arts, and for some kind of legislation to be brought to the Senate floor.

At the same time that Stevens was shopping his amendment, the NEA debate was proceeding and NEA's opponents were getting defeated in a series of four votes. Whether the Stevens amendment contributed to the NEA victory is questionable. Nevertheless, it was subsequently adopted by voice vote and incorporated into the enacted bill.

The question now is — was Stevens simply trying to remove an immediate obstacle to getting his appropriation bill enacted, or is he seriously planning to involve himself and his committee in a comprehensive examination of funding for the arts in 1998? The issue is confused by the fact that a Senate bill already exists. S.1020 the Jeffords-Kennedy, 5 year reauthorization has been approved by the Labor Committee. If Stevens decides to move, he will face at least jurisdictional opposition from Jeffords.

SEC. 345. It is the sense of the Senate that, inasmuch as there is disagreement as to what extent, if any, Federal funding for the arts is appropriate, and what modifications to the mechanism for such funding may be necessary; and further, inasmuch as there is a role for the private sector to supplement the Federal, State, and local partnership in support of the arts, hearings should be conducted and legislation addressing these issues should be brought before the full Senate for debate and passage during this Congress.

STEVENS
AMENDMENT

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