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NATIONAL
ENDOWMENT
FOR
THE ARTS

WASHINGTON
D.C. 20506



A Federal agency advised by the
National Council on the Arts

March 23, 1990

Dear Legislative Assistant:

Enclosed for your use is information which may be helpful to you in preparation for the Senate Subcommittee on Education, Arts and Humanities hearing on the reauthorization of the National Endowment for the Arts.

Please do not hesitate to call if the Congressional Liaison Office may provide you with additional materials.

Sincerely,

Marianne Klink
Acting Director
Congressional Liaison Office

John E. Frohnmayer
Chairman
National Endowment for the Arts

Statement before the House Subcommittee
on Postsecondary Education
House Education and Labor Committee

March 21, 1990

Mr. Chairman and Members of the Committee:

At the hearing on March 5, 1990, I addressed how the National Endowment for the Arts has fulfilled its mandate to promote creativity in our society. I commented that the Endowment's success has been in its process, namely, the panel process which brings over 800 citizens to Washington each year to do the government's business. These citizens, who are expert in a particular area of the arts, recommend the applications which are most competitive -- which represent real quality and merit.

Because so much public discourse, debate, and concern has arisen over "obscene or indecent images," and because the charge has come, from some quarters, that the Arts Endowment is not responsible for the grants we make, I direct my remarks today to two topics:

I. How the Endowment is responsible for the grants it funds.

II. The specific changes we propose.

I. Responsible Procedures

I start with the proposition that Congress does not want to micromanage the Arts Endowment, but does want to assure that

taxpayers' money is responsibly spent. Our mission statement says, in part:

"We must exercise care to preserve and improve the environment in which the arts have flourished. We must not, under any circumstances, impose a single aesthetic standard or attempt to direct artistic content."

While the panel system is sometimes inefficient, slow and cumbersome, it is also akin to the American jury system which, over 800 years of English and American jurisprudence, has proved to be the most effective way of reaching true consensus. But we can improve the process to make it more responsible, more responsive, and more visible to the American people. To that end:

1. We have developed a grid which shows where each panelist comes from geographically. By so doing, we attempt to achieve wide geographic distribution and have at least one panelist from each region of the country who will know the work of many of the applicants from that region.
2. We have developed a grid to assure that as many cultures as possible are represented on each panel.
3. To the extent possible, we attempt to mix the panels with individuals of varying experience (and to the extent possible, viewpoint).

4. On each panel, we attempt to have some representation of educated lay persons, that is, those who have expertise in the particular discipline, but don't necessarily make their living at it. These persons are a small minority on every panel, but they do bring a point of view which is useful.

5. We have opened the deliberations of policy panels in all disciplines to the public.

6. We use site visitors in some categories to assist the panelists with more in-depth reviews of the applicants.

7. I, as Chairman, personally attend each panel (over 120 panels meet each year), or if I am out of town or unavailable, one of the senior members of my staff attends to explain the most current legislation and discuss the responsibilities of panel persons. Not only are these discussions useful to the panelists, but they often provide insights as to how the process can be improved.

8. We are assuring that a careful record is made of all panel deliberations:

i. The meetings are recorded and staff are directed to keep careful notes.

ii. On each recommendation, the panel records its findings as to various criteria outlined in the published guidelines, such as artistic significance, administrative abilities, significance to the field and such other attributes or deficiencies, prior to voting yes or no or assigning a monetary recommendation to the application.

iii. As for applications which might be controversial, but which the panelists find have artistic merit and which they vote to recommend, I request that a careful record be made by which they justify the artistic grounds upon which the recommendation is forwarded.

9. The National Council on the Arts members (the 26 Presidential appointees) are encouraged to observe as many panels meetings as their schedules allow. The Council's comments and suggestions are fed back into the system, so that the panels are continually improving policies and programs.

10. All grant notification letters for FY 1990 state up front the requirement that all grantees adhere to the appropriations language (prohibiting obscenity) passed by Congress with our FY 1990 appropriation.

11. All guidelines published for 1990 (except those already in print prior to the passage of the legislation) contain the language attached to the 1990 appropriations bill.

12. The Inspector General of the Arts Endowment (a position created by Congress which reports directly to the Chairman) reviews grants for compliance with all accounting and financial criteria.

13. In our 1991 budget request, we seek funds to increase the panel sizes in order to get a broader spectrum of experience, cultures and geography. Our panel sizes range from five to 15. Just as I preferred 12 person juries to six person juries when I was a trial lawyer, I prefer larger panels and hope that Congress will see fit to make them possible.

14. Finally, we have implemented procedures for dealing with subgrants so that they go through essentially the same review by the National Council on the Arts as grants recommended by our own panels do.

Will these modifications in the panel process eliminate controversy? Probably not. I do not see as a desirable goal that the art which the Federal government supports be so bland

that no one even notices it. Some art is provocative and rightly so. These modifications are designed to assure that the panel process is as fair, as responsible, and as careful as it possibly can be in identifying the best art which is available for support in this country.

In addition, we are considering modifications to the panel process which require further study before they are accepted or rejected.

a.) Making the panel procedures and guidelines consistent, as appropriate, among the disciplines (such as Visual Arts, Dance, Music, etc.) to simplify the application procedure and make it more easily understood.

b.) Requiring state and local arts agencies, arts service organizations, and perhaps other grantees of the Endowment to submit the names of qualified panelists to assure that the panelist "gene pool" represents all areas of the country.

c.) Identifying better ways in which the panelists can be made fully aware of the past performance of applicants so that the artistic quality of that performance can be judged. Complaints from persons who have not seen a

particular performance are seldom reliable measures of artistic quality. We must, however, develop a means by which future panels can to the greatest extent possible accurately and thoroughly consider past performance.

d.) Developing a panelist orientation handbook.

e.) Increasing the number of site visitations of potential applicants within the limits of our budget.

f.) Considering multi-year grants to applicants which are funded on an annual basis. These grants would be subject to the Endowment's annual appropriation from Congress, but would give some certainty to the applicant and would greatly reduce the application load with which the panelists have to deal each year. This reduction would, in turn, allow more in-depth analysis of each applicant.

g.) Finally, because the Endowment is sometimes subject to the charge that the panels are "elitist" or that there is "cronyism," I have directed that an in-depth study of this issue be made. A similar charge was made in 1985, and the resulting evidence proved conclusively that those charges were without foundation. Our preliminary findings also show no evidence of elitism or favoritism. Those results will be made available to you as soon as the study is completed.

Most importantly, you have directed that a Commission study the grant-giving process of the Endowment. We welcome the report of that commission and hope that it will shortly commence its work. Any improvements in our process are certainly welcome, and we are prepared to cooperate with the commission in every way possible.

II. Proposed changes in Reauthorization Legislation

Mr. Chairman, I think it might be useful at this point for me to highlight for the Committee those provisions of the reauthorization legislation that was recently transmitted which directly affect the National Endowment for the Arts. As you know, the proposed bill tracks the National Foundation on the Arts and the Humanities Act, as amended, and therefore includes provisions relevant to each of the agencies authorized under that Act -- The National Endowment for the Arts, the National Endowment for the Humanities and the Institute of Museum Services. While we support those provisions pertaining to our sister agencies, I will confine my remarks today to those sections dealing directly with the Arts Endowment.

By way of overview, let me state that it is our view that our enabling legislation, in its present form, works well and is in

no need of substantive revision. We have in the past year been the subject of rigorous scrutiny and consultation concerning our legislation. In our FY 90 appropriations bill Congress prohibited the Arts Endowment from funding any art it deemed to be obscene. This language has caused much concern and confusion among the arts community. The Endowment has, as a result, spent a significant amount of time discussing the matter with the field, as well as studying the directive. After much careful thought and discussion, it is our conclusion that the legislation proposed here which contains no content restrictions, along with measures discussed earlier, will best serve the American public.

We are here today to urge the Committee to act favorably on the single most important provision affecting the Endowment -- and that is a five year extension of our authorization. In addition, there are several technical amendments which we are proposing to fine tune the authorizing legislation. At this point I will outline those provisions relevant to the Arts Endowment in the sequence in which they appear in the bill.

- A. Section 2 of the bill amends the definition of the "arts" to recognize explicitly the inclusion of the traditional arts as practiced throughout the country.

B. Section 3 of the bill amends the definition of the term "project" to underscore that programs which enhance public knowledge and understanding of the arts should be available to all people throughout the nation.

C. Section 5 of the bill makes several changes to section 5(c) of the Act. Paragraph 2 is amended to recognize that excellence is embodied in the artistic standards applicable to the traditional arts.

Paragraph 5 is amended to reference education explicitly among the types of arts projects which may be supported.

Paragraph 8 was added to describe the authority to provide organizational and managerial assistance to arts organizations.

Paragraph 9 was added to recognize the authority of the National Endowment for the Arts to support international arts activities.

D. Section 6 of the bill revises certain reporting requirements for state arts agencies. Currently, state arts agencies are required by the Act to provide information annually on their activities over the past every two years. The bill requires this information to be reported annually only for the most

recent preceding year for which information is available. The bill changes the reporting requirement from the preceding two years to only the preceding year because elsewhere, the state has already agreed to provide annual reports. This method was decided upon after a costly and intense study undertaken with the state arts agencies to create an annual information collection system. The change would also prevent the undesirable affect of receiving duplicative information. The bill also increases the scope of the reporting requirement to include all projects funded by state arts agencies. This change also makes the requirement more compatible with existing state information systems.

- E. Section 7 of the bill amends the NEA Challenge Program authority to include a new emphasis for the use of Challenge grants: Stimulating artistic activity and awareness with respect to the varied cultural traditions throughout the nation.

- F. Section 8 of the bill strikes out the requirement in section 5(m) of the Act that a national information and data collection system be developed by the Arts Endowment and inserts a requirement that such a system be "employed". This change is being made because the system has already been developed pursuant to the requirements of the 1985

reauthorization. The provision that a plan be submitted to Congress within one year of the effective date of the 1985 Act has been accomplished and therefore that provision is also being deleted.

The last sentence which currently provides that the state of the arts report was to be submitted by October 1, 1988, has been deleted because the report for 1988 was submitted, and a second one will be submitted in accordance with the current law by October 1, 1990. The bill would require submission of the next report in 1992, and quadrennially thereafter.

Generally, changes in the arts fields do not occur so rapidly as to warrant a full-scale report to the Congress and the President every two years. A four year interval would provide more perspective and thus permit a more significant report. Developments that might occur between reports could be brought to the attention of Congress through Arts Endowment planning documents, congressional budget submissions and reports, the Arts Endowment's Annual Reports, or other appropriate formats.

- G. Section 20 of the bill renumbers certain paragraphs as suggested by Congress. Two subsections have also been deleted -- Subsection E required a joint study of arts and humanities education to be conducted by the two Endowments and the Secretary of Education. The study was completed and the

report made to the various committees of Congress by the date indicated, thereby fulfilling the requirements of this subsection.

Subsection F required the two Endowments to submit reports to Congress detailing the procedures used in selecting experts for appointment to panels and the procedures used by the panels making recommendations for funding applications. Both studies were completed and submitted to Congress, thereby fulfilling the requirements of this subsection.

- H. Section 21 of the bill provides for a five year authorization of definite program appropriations for the Arts Endowment. It authorizes \$125,800,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 through 1995.
- I. Section 23 of the bill extends the authorization of appropriations for the Arts Endowment's treasury funds for five years. It authorizes \$13,000,000 for fiscal year 1991 such sums as may be necessary for fiscal years 1992 through 1995.
- J. Section 25 of the bill extends the authorization of the appropriations for the Arts Endowment's Challenge grant program for five years through fiscal year 1995. It

authorizes \$15,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 through 1995.

- K. Section 27 of the bill deletes the requirement that if at the end of the ninth month of any fiscal year Challenge grant funds cannot be used by one of the Endowments, that Endowment shall transfer the unused funds to the other Endowment. This provision has been in the law since 1976 when the Challenge program was first established for the two Endowments but has never been used. At the inception of this new program, there may have been the concern that Challenge grantees might not be able to meet the three-to-one matching requirements which would result in some of the appropriated funds not being used during the fiscal year. However, such concern has not been born out. Therefore, deletion of the transfer provision is consistent with the experience of the two Endowments and independence they have as to all other programs.
- L. Section 28 of the bill extends the authorization of appropriations for administrative funds for the Arts Endowment by authorizing \$20,300,000 for fiscal year 1991 and such sums as may be necessary for each fiscal years 1992 through 1995.
- M. Section 30 of the bill extends the authorization of appropriations for the two Endowments for five years and

authorizes \$175,000,000 for the Arts Endowment for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 through 1995.

- N. Section 38 of the bill amends section 5(b) of the Arts and Artifacts Indemnity Act by increasing the aggregate level of insurance available for international exhibitions at any one time to \$3,000,000,000. The current statutory limit is \$1,200,000,000. This increase is necessary to meet the demand for coverage under the Act and to make the benefits of the Act more widely available. The increase is justified by the continuing escalation in art market values since the current limit was established. The availability of this insurance is key to our staging international exhibitions. Since this program was instituted in 1975, there have been only two certified claims totalling \$104,000.
- O. Section 39 of the bill amends section 5(c) of the Arts and Artifacts Indemnity Act by increasing the amount of insurance available for a single exhibition to \$300,000,000. The current statutory limit is \$125,000,000. This increase is necessary to provide adequate coverage of international loans protected by the Act. The higher limit is a realistic accommodation for the effects of the dramatic increase and the value of art objects since the current limit was

established. The availability of this insurance is key to our staging international exhibitions.

P. Section 40 of the bill amends section 5(d) of the Arts and Artifacts Indemnity Act by amending the deductible amounts under indemnity agreements by adding layers of \$100,000 and \$200,000 based on the total value of the exhibition. The current statutory limits are \$15,000, \$25,000, or \$50,000 depending upon the value of the exhibition. The sliding scale formula used to determine the current limits should be applied to the increase and the per exhibition ceiling. The deductible layers protect the U.S. Treasury from multiple claims for minor losses or damage. The amendment would actually limit the budgetary impacts or claims against the Federal government by increasing the exposure of the exhibition organizer who would be responsible for arranging for additional insurance to cover the deductible amount.

Q. Section 41 of the bill repeals Title IV of the Arts, Humanities and Museums amendments which directs the Comptroller General to conduct studies to determine the feasibility of establishing a revolving fund comprised of payments made to the Federal government for the right to use artistic and other works in the public domain with the funds used to supplement funding of the agencies under this Act.

Work on the project was terminated after the Comptroller General's Office consulted with members of Congress and determined that the studies should not be pursued.

- R. Section 43 of the bill makes these amendments effective on the date of enactment.