Reauthorization: S. 2724 (1990): Speech 02

John E. Frohnmayer

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Excerpt from the Testimony of
John E. Frohnmayer, Chairman
National Endowment for the Arts
to the
House Subcommittee on Postsecondary Education
House Education and Labor Committee
March 21, 1990

[NOTE: This excerpt outlines the technical amendments in sequence to the reauthorization bill]

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 enabing 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.