

Committee on Education and the Workforce Subcommittee on Oversight and Investigations

Pete Hoekstra, Chairman



CHAIRMAN'S REPORT

A Creative and Generous America: The Healthy State of the Arts in America and the Continued Failure of the National Endowment of the Arts

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I. INTRODUCTION

The Chairman of the Subcommittee on Oversight and Investigations, in accordance with Rule X of the U.S. House of Representatives,¹ undertook an intensive review of the National Endowment for the Arts (NEA), its first such review in almost 20 years. The only other known Congressional oversight report dealing with the NEA was prepared by the House Appropriations Committee's Survey and Investigations staff in 1979, at the direction of Chairman Sidney Yates (D-IL).²

The Yates Report found the NEA to be deficient in its management policies and practices and concluded that the NEA had failed to meet its legislative mandate. Because this staff report was ultimately rejected by Chairman Yates, no follow-up report was ever prepared on the Staff's findings or on the NEA's response to those findings.³

II. EXECUTIVE SUMMARY

The Chairman, in accordance with the mission of the Subcommittee, has sought to answer three key questions as a part of this review.⁴ First, is funding for the NEA an appropriate federal role? Second, is the NEA

¹ Carle, Robin H., Clerk of the House of Representatives, Rules of the House of Representatives, Effective for One Hundred Fifth Congress, January 7, 1997.

² House Appropriations Committee, Surveys and Investigations Staff, Report on the National Endowment for the Arts, March 22, 1979. For a discussion of this report, see Shirley, Don, Report Blasts the Endowment: House Investigators Attack 'Closed Circle,' Washington Post, May 4, 1979, F1.

³ Since this date there have been two reports prepared by separate Task Forces or Commissions on the Arts and two reports by the General Accounting Office (GAO). The first two reports mainly reiterate the importance of the arts and the need for continued federal, state and local funding. The GAO reports dealt with grants management issues and with trends in state and local arts funding. *See* Presidential Taskforce on the Arts and Humanities, Report to the President, October 1981; The Independent Commission, A Report to Congress on the National Endowment for the Arts, September 1990; GAO, Grant Administration: Implementation of the National Endowment for the Arts Reauthorization Act, September 1991 (GAO/GGD-91-102FS); and GAO, Arts Funding: Profile of the NEA, States and Cities, December 1991 (GAO/GGD-92-35FS).

⁴ Oversight Plan of the House Committee on Education and Workforce, as adopted in full Committee on February 13, 1997.

operating in an effective and efficient manner? And third, is the NEA operating in accordance with Congressional intent?

The Chairman finds that federal funding for the arts is not justified constitutionally, economically or based on need, and therefore is not an appropriate federal role. In fact, by nearly every objective measure (arts attendance, total arts revenue, ticket receipts, artist employment, artist earnings, number of arts venues, etc.), the arts are flourishing. The growth in the arts is a result of a booming economy that has led to increased incomes, which in turn, has increased the demand for leisure activities like the arts.

The Chairman finds that this growth in the arts has been accompanied by, and is largely a result of, significant increases in private, state and local giving to the arts. This giving far surpasses NEA funding. In fact, States outspend the NEA by 2.5 to 1, local governments outspend the NEA by 6.5 to 1, and private individuals by 100 to 1. Additionally, the Chairman finds that other federal programs combine to outspend the NEA on the arts by 20 to 1. In short, the Chairman finds the NEA to be a small factor in overall support for the arts, and finds little or no credible evidence that the NEA is the impetus to the current growth in the arts. In fact, the Chairman finds that giving to the arts is at an all time high, despite recent cuts in NEA funding.

Because the NEA is not subject to the strict accounting rules recently applied to other, larger, federal Departments and agencies, the Chairman was unable to review the accounting and management practices of the NEA. However, the Chairman did find that the NEA has unusually high administrative costs (17 percent) despite the fact that a large percentage of its funds are distributed by formula. Furthermore, when coupled with the administrative costs of state and regional arts agencies, the Chairman finds that over 25 cents of every dollar appropriated to the NEA in fiscal year 1996 went to federal and state bureaucracies.

In reviewing the factors behind these high administrative costs, the Chairman found that the Endowment maintains a top heavy administrative structure with over 68 percent of employees earning more than \$50,000 per year. Additionally, the Chairman found that the Endowment has spent \$21,000 per employee on computer replacement costs over the last four years and plans to spend more, allowed staff to assist other federal programs in tasks unrelated to the arts -- most notably the President's Direct Lending

program, and allowed a senior member of its staff to be detailed to the White House Office of Personnel, at the expense of the NEA. Finally, the Chairman found that the NEA had significant travel expenses without maintaining adequate records to review the purposes behind these expenses. In short, the Chairman finds that the NEA is not operating in an effective and efficient manner.

The Chairman also finds that the NEA has failed in its primary mission of increasing access to the arts. In fact, the Chairman found that more than one-third of NEA funds went to six cities and that one-third of Congressional districts failed to get any direct NEA funding. Interestingly, Congressional districts represented by Democrats received \$3 from the NEA for every \$1 received by Republican districts. The Chairman also finds that more than 20 percent of NEA funds went to the state of New York and that one-fifth of NEA funds went to well established arts venues with large endowments and high total revenues.

Finally, the Chairman finds that the NEA continues to fund art and art centers that display and present art that runs counter to common standards of decency. Recent examples of this funding includes grants to *Women Make Movies, Inc.*, which subsidized the production and distribution of many sexually graphic videos, *Canyon Cinema*, which subsidized the distribution of sexually graphic videos, and *Fiction Collectives 2*, which subsidized the production and distribution of sexually graphic literature. This has continued despite repeated Congressional attempts to limit funding of such activities.

Because the NEA fails to meet any of the three criteria established in the Subcommittee's Oversight Plan, the Chairman recommends that the National Endowment for the Arts be eliminated.

III. REVIEW AND FINDINGS

A. *IS THE NEA FULFILLING AN APPROPRIATE FEDERAL ROLE?*

1. The Founding Fathers Rejected Federal Funding of the Arts

While the Constitution is silent on the enumeration of powers related to the funding of the arts, the question was raised during the Constitutional Convention. In fact, on August 18, 1787, Charles Pinckney of South Carolina rose to urge that the federal government be authorized to “establish seminaries for the promotion of literature and the arts and sciences.” This proposal was resoundingly defeated, and the delegates to the Convention moved instead to support the federal protection of patents – which in essence is the right of artists to market their wares freely and fairly.⁵

The significance of this fact should not be understated. The Founding Fathers understood the rich tradition of government support for the arts in Europe, and most were themselves well versed in classical literature and the arts. Despite this heritage, this learned group chose limited government and freedom over the idea of government support and imprimatur of the arts.

On this level alone, it is difficult to justify funding for the NEA. That being said, this same analysis would call into question many other federal programs currently supporting the arts and culture.

2. Economic Theory Does Not Justify Federal Support for the Arts

The economic arguments in favor of government support for the arts tend to rely on three interrelated assumptions. First, that the arts are a “public good” that will be under-produced absent government intervention; Second, that the arts provide positive externalities that are not captured in the market;

⁵ Jarvik, Laurence, “Ten Good Reasons to Eliminate Funding for the National Endowment for the Arts,” The Heritage Foundation Backgrounder, p. 11, April 29, 1997.

and third, that the arts suffer from an inherent “cost disease” that will cause the arts to be priced well above levels affordable by most citizens.

a) Art Is Not A Public Good

The economic criteria for a public good are quite clear. In layman’s terms, a good is considered public if it is impossible, or prohibitively costly, to confine the benefits of the good to selected persons (nonexclusion). A second test of a public good is whether or not the consumption of the good reduces the quantity of the good available for consumption by others (nonrival consumption).⁶

National Defense is often considered the prime example of a public good. Obviously, it is impossible for any single person within a nation to opt out of the benefits received from the defense of that nation. Likewise, the benefits of the defense system to any one individual will not negatively effect the benefits of others.

The significance of these criteria are best seen in the problem of the “free rider.” For most public goods, it is necessary for every member of the community to help subsidize the cost of providing the good, otherwise, individuals within the community may try to game the system, and opt out of paying their share – knowing full well that the rest of the community cannot exclude them from their continued benefit. In short, the number of free riders would eventually increase, and the cost to the community to provide the good would become prohibitively high. In such instances, the public good is either eliminated or is not established in the first place.

Most forms of art are not subject to free riders and are not, in fact, public goods.⁷ An orchestra, for example, typically performs in a concert hall, and can limit attendance to those willing to pay. All concert halls have limited capacity, thus, one individual’s attendance at a concert performed in a concert hall, automatically limits the availability of seating for others. The same holds true for museums, theaters, and opera houses. With the rare exception of concerts or performances in public parks, the arts can be limited

⁶ Browning, Edgar K. and Jacqueline M., Public Finance and the Price System, Third Edition, pp. 36-40, Macmillan Publishing Co.: New York, New York, 1987.

⁷ Hendon, Shanahan, and MacDonald, eds., Economic Policy for the Arts, pp. 21-34, Abt. Associates, 1980.

to those that benefit from their attendance, and thus, should not be considered “public.”

b) Positive Externalities Related to the Arts Are Limited

The second argument in favor of federal support for the arts concerns the issue of positive externalities. Education is the quintessential example of the positive externality argument. While education is not a classic “public good” because its consumption can be limited to those willing to pay, it is true that society as a whole benefits from having an educated citizenry. Surely some basic level of proficiency in math, science, reading and history provide positive benefits to the society as a whole. Thus, according to this argument, society as a whole should subsidize education.

Supporters of the arts believe that appreciation for the arts leads to similar positive externalities. They argue that the citizenry benefits from the cultural heritage of each citizen, and thus the citizenry should subsidize the arts. Unfortunately, for most forms of art, there is little evidence to support this claim.⁸ Just as it is difficult to see how the average citizen benefits from a Manhattan couple’s attendance at the opening night of the musical *Chicago*, it is equally difficult to see how that Manhattan couple benefits from the attendance of a community play by a couple in Omaha. It is safe to assume that most, if not all, of the benefits accrue to the individuals that attend artistic events, and to the artists and other employees that are paid to produce the art.

Any modest externalities related to the arts are most likely related to some basic level of arts appreciation and participatory involvement, and thus would probably be more educational in nature.⁹ Unfortunately, the vast majority of federal funding for the arts, including funding provided through the NEA, is not directed towards arts education.¹⁰

⁸ Sawers, David, Should Taxpayers Support the Arts? pp. 23-31, Institute of Economic Affairs, 1993.

⁹ *Id.*

¹⁰ The Subcommittee distinguishes between “arts education,” as provided in schools, and the less effective “arts exposure” which is the predominant form of “educational” support funded through the NEA. See Letter from The Consortium of National Arts Education Associations to Chairman Hoekstra, May 27, 1997.

c) **The Arts Do Not Suffer From a “Cost Disease”**

The final economic argument in favor of federal support for the arts concerns the claim that the arts are inherently “labor intensive” and thus are subject to what has become known as a “cost disease.” This term, popularized by economists William Baumol and William Bowen (and eloquently repeated by Senator Moynihan in the recent Senate debate on the NEA¹¹), refers to the notion that the arts are a labor intensive activity, and that any increases in productivity borne by the economy, will not be shared in the arts.¹² Thus the concomitant rise in incomes related to increased productivity will require increased wages to be paid for artists, but there will be no offsetting increases in output.

In simple terms, Baumol and Bowen argued that a string quartet will always consist of four musicians, and those musicians will always take 40 minutes to play a 40 minute Mozart composition. Thus, as the economy grows, and the cost of employing musicians increase, the increase in price will necessarily be borne by the consumer. Because individuals will be less likely to attend performances at higher prices, the arts will suffer.

Professors Baumol and Bowen’s analysis has been completely discounted.¹³ Most economist agree that increases in productivity have accrued to the arts. The string quartet mentioned earlier has benefited from improvements in recording and broadcast technologies that make their works more available. They benefit from improvements in transportation which allow them to team with other necessary musicians and to travel to more venues to perform their work. They benefit from improvements in concert halls which make their music more beautiful, and less costly to perform. These are but a few of the ways increases in productivity have accrued to quartets – similar, and more dramatic, improvements in productivity could be listed for each and every segment of the arts.

¹¹ See Statement of Senator Daniel Patrick Moynihan, 143 Congressional Record S9318, September 15, 1997.

¹² Baumol, William J. and William G. Bowen, Performing Arts: The Economic Dilemma, Twentieth Century Fund, 1966. See also, Baumol, H. and W.J. Bowen, eds., Inflation and the Performing Arts. New York University Press: New York, 1984a.

¹³ Cowen, Tyler and Robin Grier, Do Artists Suffer From a Cost-Disease? *Rationality and Society*, 8(1), pp. 5-24, Sage Publications, 1996.

Not only have the arts benefited from increased productivity, but the additional wealth created with improvements in productivity have increased the demand for leisure and have helped create a renewed interest in the arts.

3. Federal Funding for the Arts is Not an “Investment.”

During the Subcommittee’s hearing on the NEA, proponents repeatedly noted that the arts in America generate approximately \$36 billion in economic activity, which they estimate generates 3.4 billion in additional tax revenue.¹⁴ Similar statements appear in various NEA publications and statements. This statistic is derived by multiplying the total economic activity of the arts by the projected federal tax rate. Interestingly, this analysis gives the NEA credit for each and every dollar generated by the arts, and completely ignores more significant “investors” in the arts like state and local governments and private arts patrons. The unrealistic, but related assumption underlying this analysis is that without the NEA, the arts would cease to exist. This is clearly not the case.

The NEA’s faulty analysis also assumes that other government “investments,” using funding levels identical to those provided to the NEA, would not produce similar or improved results. Nor does the NEA analysis account for the fact that untaxed income may be equally productive if left with the taxpayer.¹⁵ Finally, the “investment argument” fails to account for any welfare loss related to the extraordinarily high administrative costs related to government funding for the arts (the 26 percent administrative costs associated with funds given to the NEA will be discussed later).

While academic studies on the economic returns of the arts do exist, most are based on similar faulty assumptions. In fact, Professor Tyler Cowen, in testimony before the Subcommittees on Oversight and Investigations and Early Childhood, Youth and Families noted that:

¹⁴ See e.g., Testimony of Reps. Slaughter and Nadler, and Ms. Judith Ann Butler, Joint Hearing before the Subcommittees on Oversight and Investigations and Early Childhood, Youth and Families, May 13, 1997. See also, NEA, Six Myths About the National Endowment for the Arts, NEA Web Site at <http://art.andow.gov>.

¹⁵ Banfield, Edward C., The Democratic Muse: Visual Arts and the Public Interest, p. 199, Basic Books, Inc.: New York, 19XX.

“There are a variety of studies which claim that arts funding through the NEA creates economic benefits for local communities. These studies do not stand up to close professional scrutiny at the hands of top-level economists.”¹⁶

As a final test of the investment argument, the Chairman analyzed the relationship between changes in NEA funding and changes in total revenue for arts organization.¹⁷ Interestingly, the Subcommittee found an insignificant, but inverse relationship between NEA funding and total revenue – meaning that as NEA funding fell for most NEA grantees, their total revenues actually increased.

4. “Need” Does Not Justify Federal Support for the Arts

The ultimate proof that each of the above “market failures” have not negatively effected the production or consumption of the arts in this country is best seen in the rapid and continued growth of the arts industry in America.

a) The Number of Arts Venues Has Risen Dramatically

The health of the arts is a fact that has not been lost on the NEA. Chairman Alexander, in her FY1998 Appropriations Request to Congress, highlighted the following facts:

- The number of nonprofit professional theaters has grown from about 50 less than three decades ago to a network of more than 600 today;
- Today there are more than 1,600 orchestras in America and 236 have budgets over \$260,000, double the number with comparable budgets 30 years ago; these orchestras employ more than 20,000 musicians and administrative staff, and scores more individuals are working as stagehands – last year these

¹⁶ Testimony of Prof. Tyler Cowen, Joint Hearing Before the Subcommittees on Oversight and Investigations and Early Childhood, Youth and Families, May 13, 1997.

¹⁷ Analysis based on the National Endowment for the Arts, Grant to Income Data, March 10, 1997.

orchestras generated revenues in excess of \$750 million, and they filled 24 million seats;

- The number of professional dance companies has increased from 37 in 1965 to more than 400 today – nearly \$300 million is spent in employment of dancers, administrative staff and costs related to production; and
- There are more than 120 professional opera companies, compared to only 27 in 1965; opera companies pay more than \$293 million annually to their more than 20,000 artistic and administrative personnel.
- The net result of all the above growth and the growth as well in literature, museums, folk arts, the media, jazz and chamber music – the result is a decentralization of high quality non-profit arts from major metropolitan areas on the east and west coasts and middle of the country to towns and cities of all sizes, in all areas of the country.¹⁸

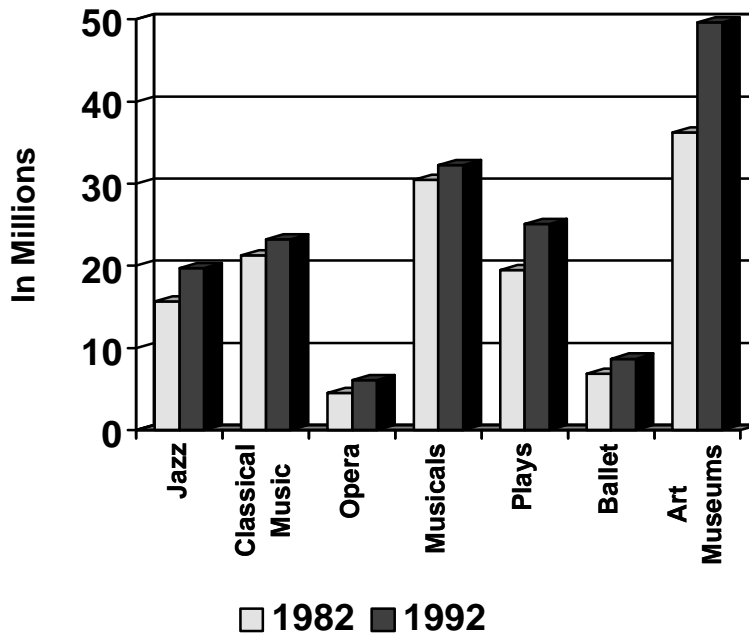
b) Arts Attendance and Arts Attendance Rates are Increasing.

Chairman Alexander's assessment of the arts is buttressed by the NEA's own research showing that arts attendance is up in every major arts category – from museums and operas to plays and ballets.¹⁹

Arts Attendance by Category

¹⁸ National Endowment for the Arts, Appropriations Request for Fiscal Year 1998, p. 7.

¹⁹ National Endowment for the Arts, Research Division, Note 50, Table 1, Oct. 25, 1993.



This same NEA report shows that arts attendance rates (which accounts for the growth in population) are also up in almost every category, with the exception of musicals.²⁰

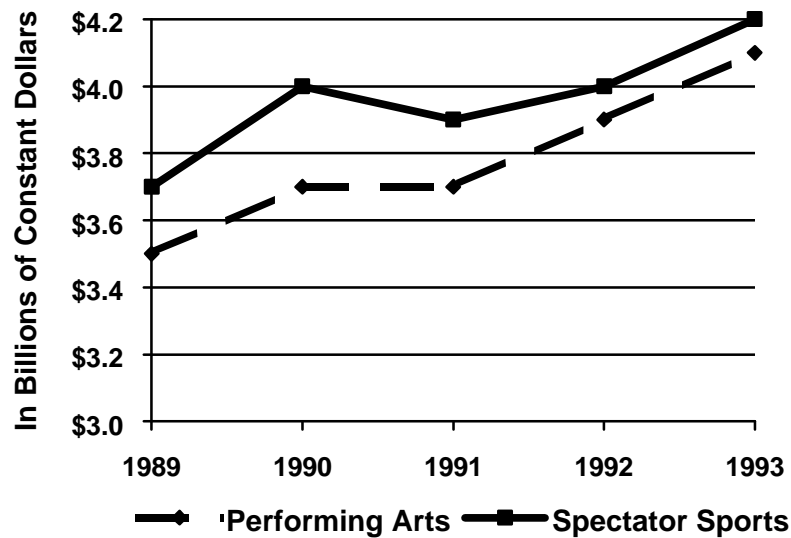
c) Ticket Receipts in the Arts are Up

To put the growth in the arts context, it is interesting to note that total receipts for the “performing arts” now approach, and may actually exceed total receipts for spectator sports.²¹

Total Receipts for Spectator Sports and Performing Arts

²⁰ National Endowment for the Arts, Research Division, Note 50, Table 1, June 1993.

²¹ National Endowment for the Arts, Research Division, Note 56, Table 1, June 1995.



The growth in the arts is also evidenced in a recent survey showing that large percentages of the American people claim to be regularly involved in some form of expression or output in the arts.²² This data confirms research by the NEA which also shows a large percentage of Americans taking part in some form of artistic expression.²³

d) Artist Employment, Earnings and Income Are Up

This renewed interest in the arts has proved profitable for those employed as artists and for those employed in support of the arts. In fact, the most recent report released by the NEA concerning artist earnings showed that artists fared incredibly well over the last two decades.²⁴ According to this report, artist employment more than doubled from 737,000 in 1970 to more than 1.7 million in 1990. After a slight decline in the early 1990s, employment growth has continued its dramatic rise.²⁵ This increase has been shared in every employment category of the arts, with the exception of “arts educators.”

²² The American Council for the Arts, The National Assembly of Local Arts Agencies, Americans and the Arts VII, June 1996 (conducted by Louis Harris).

²³ National Endowment for the Arts, Arts Participation in America: 1982-1992, Research Division Report 27, October 1993.

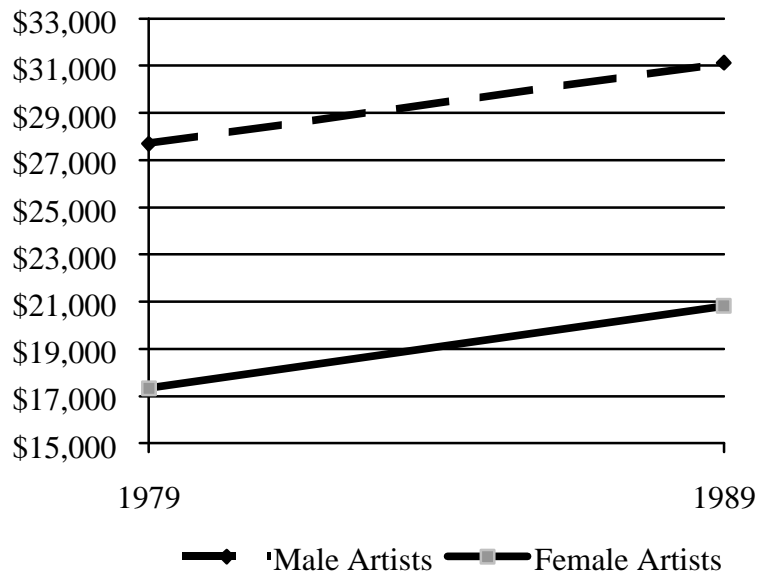
²⁴ National Endowment for the Arts, Research Division, Report 29, A-32, August 1994.

²⁵ Bureau of Labor Statistics, Employment and Earnings, p. 171, January 1997.

In order to account for population growth, artist employment can be viewed as a percentage of the total labor force and as a percentage of the “professional” labor force. Artist employment has grown from accounting for just .92 percent of the labor force in 1970, to more than 1.36 percent in 1990. Likewise, artists have grown as a percentage of the professional labor force, from 8.37 percent in 1970, to more than 10.04 percent in 1990. In short, the percentage of people that consider themselves artists has continued to grow over the last two decades.²⁶

This growth in employment has been fueled by a dramatic increase in artist earnings. Again, in almost every category, artist’s earnings have been increasing.²⁷

Median Artist Earnings



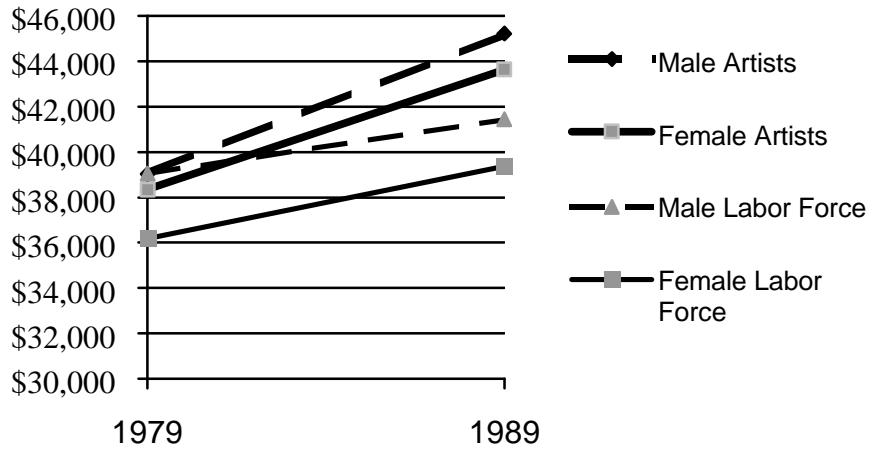
While the above earnings level may seem low, they are above average for the workforce as a whole. Additionally, many artists supplement their income with other employment, or rely heavily on the income of a spouse or other family member, and thus, their household earnings are far greater than is

²⁶ National Endowment for the Arts, Research Division, Report 29, A-32, August 1994.

²⁷ National Endowment for the Arts, Research Division, Note 29, A-45, Table 29, August 1994.

shown above. Even in terms of household earnings, artists have fared incredibly well. In fact, artists have household earnings that exceed those of the rest of the labor force.²⁸ Median household earnings for male artists jumped from approximately \$39,000 in 1979 to more than \$45,000 in 1989, while median household earnings for males in the rest of the labor force went from \$39,000 in 1979 to only a little more than \$41,000 in 1989.

Median Household Income for Artists and the Rest of the Labor Force



Finally, artists not only earn well above the average of the rest of the labor force, but they also experience unemployment rates equal to or below most other workers. This may be due to the fact that artists are also increasingly well educated.²⁹ In fact, the education completion levels for artists has grown at a rate that exceeds the rest of the professional labor force, as well as the labor force as a whole.

The positive trends in the arts industry that have occurred over past several decades can be expected to continue for the foreseeable future. In fact, the U.S. Department of Labor stated that:

²⁸ National Endowment for the Arts, Research Division, Report 29, A-49, Table 33, August 1994.

²⁹ National Endowment for the Arts, Research Division, Report 29, A-32,33, Table 19, August 1994.

*“Employment of fine artists is expected to grow because of the population growth, rising incomes, and growth in the number of people who appreciate fine arts.”*³⁰

While this projection was written in May of 1992, the current state of the economy, with its low inflation, high employment, and strong growth, holds an even greater promise for the future of the arts. Surely, the above analysis makes it clear that the arts are alive and well, and that artists have reaped the fruits of that health and prosperity.

5. The Arts Will Flourish With or Without The NEA

The Chairman has found little or no credible evidence to suggest that the NEA is the impetus to the recent growth in the arts.³¹ Not only does the NEA represent a small fraction of total giving and revenue to the arts, but there appears to be no correlation between NEA funding and total revenue for most arts organizations.

a) Private Funding of the Arts is Approaching \$11 Billion per Year, 100 times more than the NEA

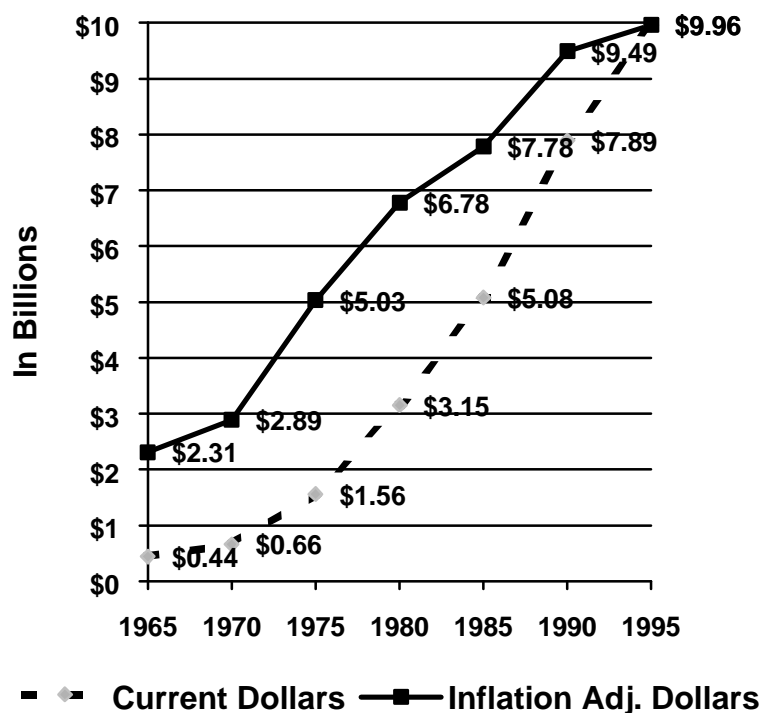
The Chairman finds that private arts funding, which has been steadily increasing since at least 1965, is the dominant and central force behind the success of the arts in this country.

Total Giving to the Arts, Culture and Humanities is Rising³²

³⁰ Occupational Outlook Handbook, U.S. Dept. of Labor, May 1992.

³¹ Rice, William Craig, *I Hear America Singing: The Arts Will Flower Without the NEA*, pp. 37-45, Policy Review, Mar./Apr. 1997.

³² Giving USA, 1996, pg. 130.

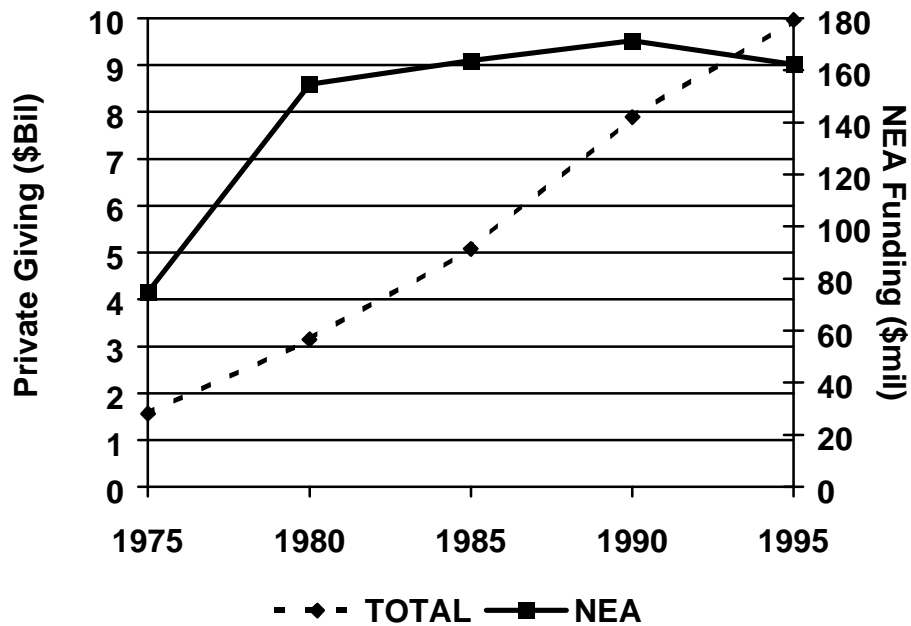


As can be seen above, private giving to the arts and humanities has grown considerably over the last 30 years. In 1996, the most recent year for which data is available, private giving reached an all time high of \$10.96 billion, a 9.7 percent increase over 1995.³³ Importantly, as NEA budgets have leveled off or decreased in recent years, private giving to the arts has continued to rise.

b) Private Giving is Up, Even though NEA Funding is Down

³³ Giving USA, 1997, pg. 136.

Private and NEA Giving to the Arts³⁴



This analysis only further confirms the Chairman’s findings that changes in total revenue for most arts organizations is unrelated to changes in funding from the NEA. As an example, during 1995 and 1996, the Lincoln Center in New York experienced a \$100,000 cut in NEA funds, yet generated almost \$8 million in increased income. On a smaller scale, the Kalamazoo Michigan Symphony experienced a \$6,000 cut in NEA funding, but managed to increase their income by more than \$100,000.

Unlike NEA funds, private giving is directed to the arts organizations of the giver’s choice – not by government bureaucrats. The federal government subsidizes this choice by providing more than \$1 billion in arts subsidies through the federal deduction on charitable giving. This subsidy far outweighs the importance of the NEA, and is by far a better and more efficient way to subsidize the arts.

³⁴ Giving USA, 1996, pg. 130 and Congressional Research Service, Federal Funding for the Arts and Humanities.

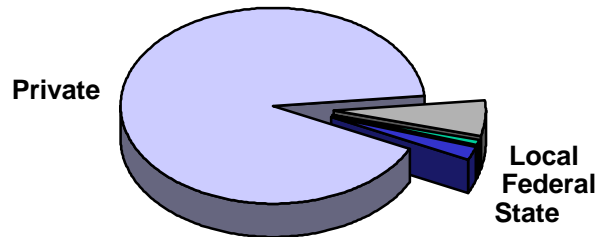
c) Private Volunteering in the Arts is Up and is Now Valued at \$25.6 Billion per Year.

In addition to financial contributions, it is estimated that 11.8 million Americans volunteered an average of 218 hours of time to the arts, for a total of 2.6 billion hours. This constitutes a 36 percent increase over 1993, and is valued at more than \$25.6 billion.³⁵ Because the arts are labor intensive, the value of this contribution should not be understated.

d) State and Local Government Give \$900 million to the Arts, Nine Times More than the NEA.

In addition to the \$10 billion provided to the arts by private individuals, state and local governments contributed almost \$900 million to the arts in 1996, an amount that exceeds NEA funding by a margin of 9 to 1.

Private, State and Local Arts Funding, 1996³⁶



e) State and Local Funding is Up, Even though NEA Funding is Down

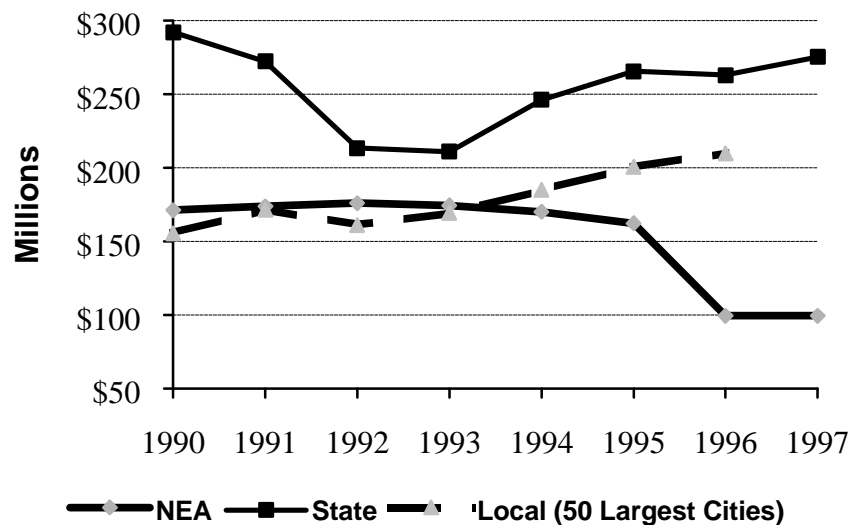
While state and local funding has been more sporadic than total private giving, the current funding trends seem to suggest that even state and local

³⁵ The Independent Sector, Giving and Volunteering in the US, 1996.

³⁶ Calculated by Committee Staff based on data from Giving USA, 1996, pg. 131.

funding has survived the recent cuts in NEA funding. In fact, the chart below shows an inverse relationship between NEA funding and funding by state and local governments. Thus, as NEA funds were cut in the last several years, state and local funding has increased.

Trends in State, Local and NEA Funding, 1990-1997³⁷



f) The NEA Accounts for Less Than 5 Percent of Total Federal Support for the Arts

It is a rarely understood fact that the NEA is not only an insignificant source of arts funding compared to private, state and local giving to the arts, but is also a small fraction of the total arts funding provided by the federal government. In fact, the NEA accounts for less than 5 percent of total federal cultural support.

Total Federal Support for the Arts and Humanities in FY1997³⁸

³⁷ Source: American's for the Arts, Annual Survey, pg. 5, 1996.

³⁸ Susan Boren, CRS, March 24, 1997. The estimated cost of the tax deduction was calculated by the Subcommittee Staff.

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

Even this list fails to provide an entire accounting of federal support for the arts. The Chairman recently learned of the “Arts in Embassies” program run out of the Department of State, a General Services Administration set-aside for art in federal buildings and numerous other “arts” programs scattered throughout the federal government. In fact, like past transportation bills, the current surface transportation bill being considered by congress will provide significant funds for the creation of four museums, the display of art in public transportation facilities, underpass beautification and numerous other arts related activities.³⁹

Finally, the Federal Government continues to provide \$62 million in federal support for the patent and trademark systems –the only arts function explicitly approved by the founding fathers.⁴⁰

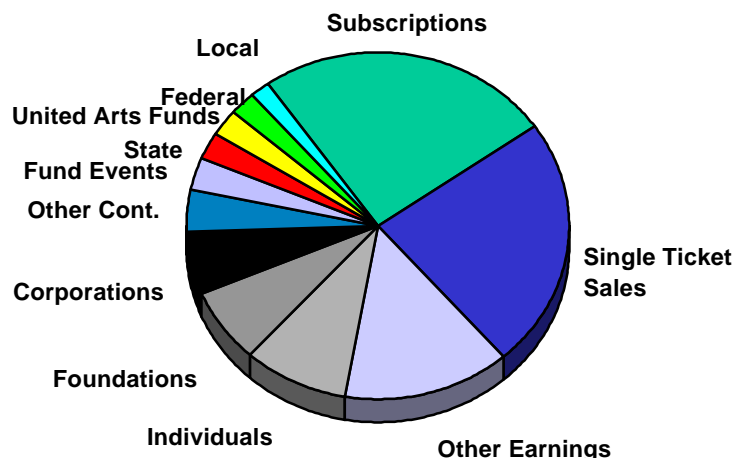
³⁹ The Building Efficient Surface Transportation and Equity Act of 1997 (BESTEA), House Resolution 2400. See also, Weisman, Jonothan, “In Both Chambers, Shuster’s Battle is Turning Into All Out War,” pg. 2138-39, Congressional Quarterly, September 13, 1997.

⁴⁰ Budget of the United States Government, FY1998, Appendix, pg. 282.

g) The Federal Government Accounts for Less Than 2 Percent of Arts Revenue

The relative insignificance of the federal support for the arts is further confirmed by an analysis of the total revenue of individual arts organizations. This analysis shows that the federal government accounts for less than 2 percent of the total revenue of such organizations – while ticket sales, subscriptions, other earnings, and individual and foundation support are their dominant source of revenue.

Sources of Income for Non-Profit Theaters, 1995⁴¹



The above facts make it clear -- ticket receipts, coupled with private, state and local support have led to the success of the arts in this country, not the NEA.

h) The US Spends More on the Arts Than Any Other Country

⁴¹ Giving USA, 1996, pg. 132.

Proponents of the NEA often point out that the United States only spends 38 cents per capita on the arts – far less than the \$32 per capita spent in Canada and France, or the \$27 per capita spent in Germany.⁴² This statement is calculated by ignoring all federal support for the arts except for the funding provided to the NEA. By comparing the \$2.07 billion noted above, the United States actually spends \$7.80 per capita on the arts and if State and local arts funding is included, per capita government support for the arts in the United States jumps to \$11.40.

While this is still well below funding provided by other countries, this comparison ignores one simple fact. The United States is the only country in the world where arts funding is dominated by private giving. In fact, per capita private giving to the arts amounts to more than \$41 per person, well above total arts funding provided by any other country. Thus, overall support for the arts, both public and private, in the United States exceeds \$52 per capita almost twice the amounts provided elsewhere.

Finally, even though the United States comes out on top of accurate international comparisons of total support for the arts, it makes little sense to compare the United States with countries that have command economies that publicly subsidize many industries within their economy.

In conclusion, it is the Chairman's belief that federal funding for the arts, particularly as it relates to the NEA, cannot be justified Constitutionally, economically or based on need. At a time when this Congress is rethinking the size and scope of the federal government, and when tough budgetary decisions are being made on issues ranging from Medicare to Head Start, federal support for the arts is a luxury we can ill afford.

B. IS THE NEA OPERATING IN AN EFFECTIVE AND EFFICIENT MANNER?

The Chairman has been unable to review the financial or management practices of the NEA due to the fact that the Endowment is not subject to the strict accounting and management standards required in the private sector and

⁴² NEA, Six Myths About the National Endowment for the Arts, NEA Web Site at <http://art.ando.gov>.

which have recently been applied to many other federal Departments and agencies after the passage of the Chief Financial Officers Act.⁴³ Interestingly, the NEA is not even required to meet the less stringent standards set forth in the Government Corporations Control Act.⁴⁴ The failure of Congress to place the NEA under such standards has allowed the NEA to escape any significant outside review of its accounting and management practices since its creation in 1965.

While the Chairman considered requesting that the GAO review the financial and management practices of the NEA, using standards set forth in the Chief Financial Officers Act, time restraints and the possibility that the NEA would cease to exist after fiscal year 1998, made such a request inappropriate. With that in mind, the Chairman did review several aspects of the NEA's current activities and administrative structures.

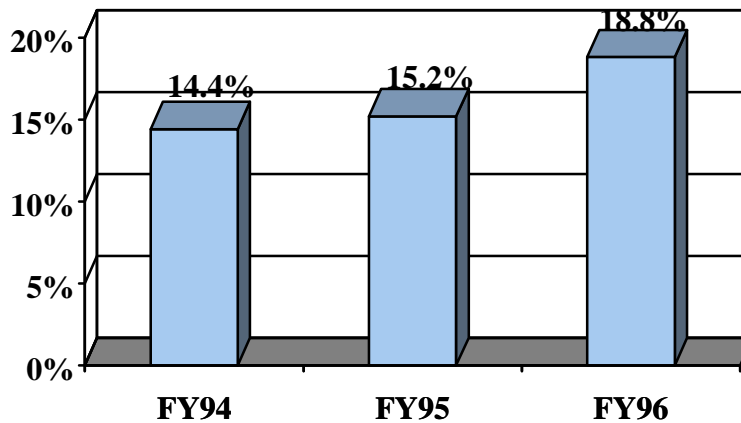
1. The NEA Has Unusually High Administrative Costs

A review of the NEA's administrative budget shows that the NEA has unusually high administrative costs.

NEA Administrative Costs

⁴³ The Chief Financial Officers Act (CFO) of 1990 (Public Law 101-576).

⁴⁴ The Government Corporation and Control Act (31 USC 9105).



Source: NEA, *Appropriations Request Submitted to Congress, FY96-97*.

As can be seen above, administrative costs at the NEA have gone from 14.4 percent in 1994 to 18.8 percent in 1996. While the NEA assured the Chairman that these costs would fall to 17 percent in fiscal year 1997,⁴⁵ this is still well above what would be expected for an organization that distributes approximately 35 percent of its appropriation through a set formula.

The remaining 65 percent of NEA funding is distributed through a panel review process. The NEA has informed the Chairman that the administrative costs associated with the panel review process only costs the NEA \$500,000 per year.⁴⁶ Therefore, the NEA spends almost \$17 million in administrative costs beyond the estimated costs associated with the panel review system.

2. Twenty-five Percent of NEA Funds Are Spent On Bureaucracy

In addition to the administrative costs deducted by the NEA, state and regional arts agencies also must cover their administrative costs associated with the funds they receive from the NEA. According to the NEA, these state

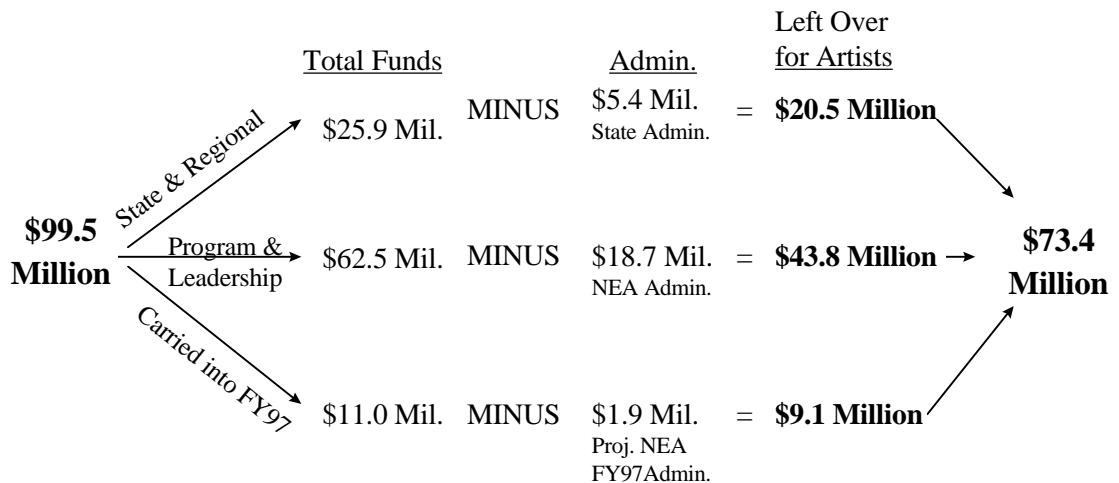
⁴⁵ Response of Chairman Alexander to questions submitted by Chairman Hoekstra, Joint Hearing before the Subcommittees on Oversight and Investigations and Early Childhood, Youth and Families, Question on Administrative Costs, May 13, 1997.

⁴⁶ *Id.* at Question on Annual Cost of Panel Review Process.

arts agencies have administrative costs that amount to approximately 21 percent per year.⁴⁷

When combined with the administrative costs of the NEA, more than 25 cents out of every dollar given to the NEA is spent on administration. As can be seen from the following analysis, of the \$99.5 million appropriated to the NEA in FY1996, only \$64.3 million made it to artists in FY1996, while an additional \$9.1 million was projected to make it to artists in FY1997. In short, only \$73.4 of the original \$99.4 million will ever reach its intended target.⁴⁸

**Only \$73.4 Million of the NEA's \$99.4 Million FY1996
Appropriation Will Ever Reach Artists**



3. NEA Employees Have Average Earnings of Almost \$62,000

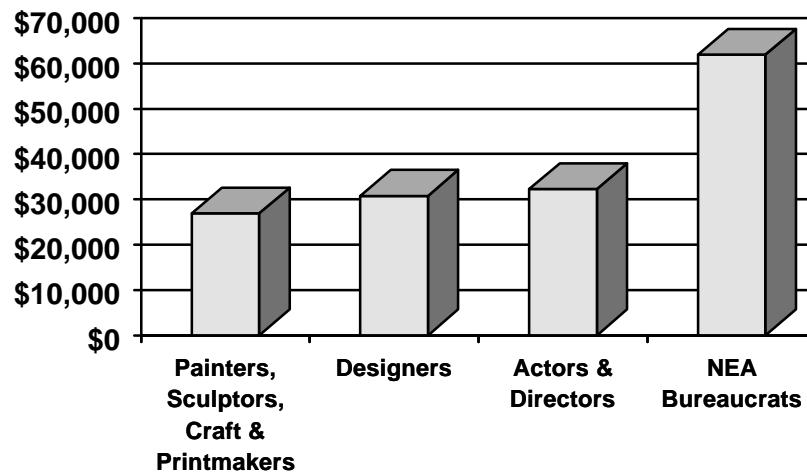
A closer analysis of how the NEA spent this administrative budget raises even further questions about the efficiency and effectiveness of the NEA. While Ms. Alexander has repeatedly testified to the draconian effects of the budget cuts on her staff, the Committee has found that more than 68 percent of the 154 individuals currently employed by the NEA earn more than

⁴⁷ Response of Chairman Alexander to questions submitted by Senator Hutchinson, Hearing before the Senate Committee on Labor and Human Resources, April 29, 1997.

⁴⁸ Analysis based on the National Endowment for the Arts, Appropriations Request for Fiscal Year 1998, p. 6, Table 2.

\$50,000 per year.⁴⁹ In fact, average income at the NEA almost doubles the average earnings of artists in the United States. The significance of this fact is further evidenced in the fact that employee salaries and benefits are by far the largest single expense detailed in the Endowment's administrative budget.

Median Earnings of Artists and NEA Bureaucrats⁵⁰



4. NEA Staff Subsidize Other, Non-arts Related, Federal Programs -- Like the President's Direct Lending Program

While the NEA appears to maintain a "top heavy" workforce, some of the activities carried out by employees of the NEA are also of concern to the Chairman. In fact, during the Subcommittee's hearing on the NEA, it was discovered that the NEA, under an interagency agreement with the Department of Education, provided design assistance for marketing material promoting President Clinton's William D. Ford Federal Direct Student Loan Program.⁵¹

⁴⁹ Response of Chairman Alexander to questions submitted by Chairman Hoekstra, Joint Hearing before the Subcommittees on Oversight and Investigations and Early Childhood, Youth and Families, Question on Employee Salaries, May 13, 1997.

⁵⁰ Artist earnings based on the Bureau of Labor Statistics, Jan. 1997 estimates of Median Weekly Earnings; NEA salary information provided by the NEA.

⁵¹ Oral Response of Chairman Alexander, to Questioning by Chairman Hoekstra, Joint Hearing before the Subcommittees on Oversight and Investigations and Early Childhood, Youth and Families, Question on Employee Salaries, May 13, 1997.

The NEA subsequently informed the Chairman that the Department of Education reimbursed the NEA \$100,000 under this agreement, yet the NEA reports that they have no accounting of the time or expenses they incurred in providing these services.⁵² Even more troubling, the NEA reported that \$13,500 of the \$100,000 provided by the Department covered travel and honoraria expenses related to the agreement. The remainder was let in a subcontract and for incidental expenses.⁵³ It is difficult to imagine how either the Department of Education or the NEA can justify such expenditures.

In a more thorough review of similar “inter-agency agreements,” the Chairman found that the NEA has also provided design assistance for the Soil Conservation Service (site development), a US Courthouse in West Virginia, the entranceway to the Housing and Urban Development’s national headquarters, and for the gateway to the Bureau of Engraving and Printing’s facility, to name just a few. Other agreements had the NEA staff assisting the National Park Service and the Federal Construction Council hold conferences on design.⁵⁴

5. The NEA’s \$21,000 Computers

The Chairman also discovered that the NEA allocated \$810,000 for “computer replacement” costs in FY1995, \$810,000 in FY1996 and \$600,000 in FY1997. This amounts to more than \$2.2 million for new computers over the last three years – the equivalent of \$15,800 per NEA employee. Worse yet, the NEA is requesting an additional \$700,000 for FY1998 – or the equivalent of almost \$3 million over four years, or the equivalent of \$21,000 per employee.⁵⁵

Under questioning, the NEA has stated that the computer upgrade is not yet complete. In fact, despite the high expenditures to date, the NEA does not yet have internet or electronic mail (e-mail) capabilities. Finally, the

⁵² Chairman Alexander, Letter to Chairman Hoekstra, June 18, 1997.

⁵³ *Id.*

⁵⁴ Richard Woodruff (Director, Congressional Relations, NEA), Response to Chairman Hoekstra, June, 23, 1997.

⁵⁵ National Endowment for the Arts, Appropriations Request for Fiscal Year 1998, p. 4.

NEA reported that they expect to request even more funds for computer replacement in the future.⁵⁶

The NEA blames these high computer costs on a troubled contract it let with an 8(a) contractor, and has assured the Subcommittee that it has worked diligently to correct this problem.⁵⁷ It remains unclear how any agency, even assuming significant difficulty with a contractor, can justify the types of costs the NEA has experienced for computer upgrades over the last three years.

6. The NEA Failed to Solicit Funds from the Private Sector

Equally disturbing is the Chairman's discovery that the NEA has disregarded Congressional requests that the agency seriously explore private sector funding. During a recent Appropriations hearing, Rep. Nethercutt asked Ms. Alexander about the NEA's efforts to solicit funds from the private sector. The following exchange ensued:

Ms. Alexander. "...if we wanted to have any kind of supplemental income we would need 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..."⁵⁸

Similarly, in response to questioning from Senator Hutchinson concerning the NEA's solicitation of funds from the private sector, Ms.

⁵⁶ Oral and Written Response of Chairman Alexander, to Questioning by Chairman Hoekstra, Joint Hearing before the Subcommittees on Oversight and Investigations and Early Childhood, Youth and Families, Question on Computer Replacement, May 13, 1997.

⁵⁷ *Id.*

⁵⁸ Response of Chairman Alexander to Question from Rep. Nethercutt, Hearing before the Subcommittee on Interior and Related Agencies, March 13, 1997.

Alexander stated that the NEA “lacks specific statutory language to solicit and invest funds...”

Despite these claims, and upon closer scrutiny, the Chairman has learned that the NEA does have authority to solicit private funds. While Ms. Alexander did not lie to the Committee or to Senator Hutchinson, her statement is incredibly misleading. Ms. Alexander noted that the NEA does not have authority to “solicit and invest” private funds – which is true; the NEA does not have the authority to invest private funds. However, the NEA does have authority to solicit private funds – which was the question asked by both Rep. Nethercutt and Senator Hutchinson.

7. NEA-Paid Staff Worked for the White House

The importance of Ms. Alexander’s obfuscation of the NEA’s ability to solicit private funds is heightened by the fact that the NEA, as a result of Congressional pressure, did establish an Office of Enterprise Development (OED) to explore “new revenue streams.” Unfortunately, Ms. Alexander staffed this office with only two employees, and then allowed the senior employee to be detailed to the White House for six months while still being paid by the NEA.⁵⁹ Considering that this employee is one of the highest paid employees at the NEA, this detail cost the endowment significant resources in lost salary and benefits – not to mention the opportunity cost of not soliciting private funds, as had been requested by the Congress.

A review of the correspondence generated by the OED provides little confidence that the NEA is seriously attempting to solicit private funds. In fact, at the time of the Chairman’s review, only 37 letters had been sent by this office, and few of these letters appear to be solicitations. Finally, a review of private giving to the NEA prior to and following the establishment of the OED office shows little change in private giving. This despite the fact that the NEA spends at least \$200,000 per year to operate this office.

8. Inspector General Report of Continued Mismanagement by NEA Grantees

⁵⁹ Response of Chairman Alexander to questions submitted by Senator Hutchinson, Hearing before the Senate Committee on Labor and Human Resources, April 29, 1997.

The Chairman has serious concerns with the NEA's delayed and inadequate response to the Inspector General's (IG) repeated reports of significant problems and deficiencies in the accounting and management procedures of audited NEA grantees. For example, the IG reported last year that of grantees audited in the previous five years

1. 63 percent could not reconcile their project costs and accounting records;
2. 79 percent had inadequate documentation of personnel costs charged to the grant;
3. 53 percent had failed to engage independent auditors as required by OMB guidelines;
4. 21 percent had failed to maintain adequate internal controls; and
5. 16 percent had failed to document common costs which benefit all projects of the grantee.⁶⁰

While the above statistics are biased upward by the fact that audited grantees account for a small portion of total grantees, and are typically audited for cause, the magnitude of the numbers is still alarming. Unfortunately, as was highlighted in testimony before the Senate Labor and Human Resources Committee, the management of the NEA has been slow in issuing a guide to assist grantees in complying with OMB regulations, as has been repeatedly recommended by the Inspector General.⁶¹

In conclusion, the NEA has high administrative costs, is involved in activities beyond its mission, and has failed to insure the integrity of taxpayer money.

C. IS THE NEA FOLLOWING CONGRESSIONAL INTENT?

In conformity with the original authorizing statute for the NEA, the mission statement of the NEA states that the NEA is to:

⁶⁰ Office of the Inspector General, National Endowment for the Arts, Semiannual Report to the Congress, October 1, 1995 - March 31, 1996.

⁶¹ Response of Chairman Alexander to questions submitted by Senator Hutchinson, Hearing before the Senate Committee on Labor and Human Resources, April 29, 1997.

- *Foster the excellence, diversity and vitality of the arts in the United States, and*
- *Broaden public access to the arts.*⁶²

1. The NEA Fails to Increase Access to the Arts

Concerning the issue of public access, the Chairman found that at least one-third of Congressional districts fail to get any direct NEA funding. Interestingly, Congressional districts represented by Democrats received \$3 from the NEA for every \$1 received by Republican districts.

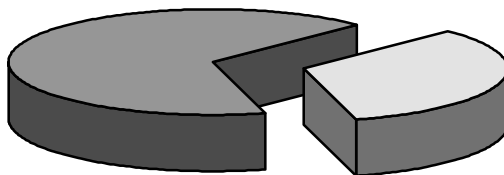
The Chairman also found that more than 20 percent of NEA funds go to the state of New York⁶³ and that one-third of NEA funds are distributed to just six large cities: New York, Boston, Los Angeles, San Francisco, Chicago and Washington, DC. This finding is supported by the recent analysis completed by Dateline NBC which reviewed 10 years of NEA funding and found that during this period, one-third of NEA funding went to just 5 cities.⁶⁴ Each of these cities is recognized as already having arts communities that are flourishing. In short, these cities can hardly be considered “in need” of federal support.

One-Third of Direct NEA Funding Goes to Six Large Cities

⁶² National Endowment for the Arts, 1995 Annual Report, p. 8.

⁶³ *See also*, Miller, Judy, “Federal Arts Agency Slices Its Smaller Pie,” pg. C12, New York Times, April 10, 1997.

⁶⁴ Dateline NBC, July 15, 1997.



- NYC, Boston, LA, San Francisco, Chicago, and DC.
- Rest of America

Furthermore, a large percentage of direct NEA funds go to multimillion dollar opera houses, symphonies, and museums.⁶⁵ For example, the list of grantees receiving more than \$100,000 from the NEA last year includes the Metropolitan Opera, with a total income of \$133 million, the Lyric Opera, with \$37 million in income, the Boston Symphony with \$43 million in total income and the Art Institute of Chicago with \$96 million in total income. Again, while most of these wealthy organizations experienced significant cuts in NEA funding, each reported dramatic increases in total income in 1996. Most of these venues have large endowments, cater predominately to the wealthy and have average ticket prices that exceed the amounts affordable to average Americans.⁶⁶

The NEA's own research shows that while large percentages of Americans participate in the arts, this participation varies significantly by income.⁶⁷ The concentration of NEA funding in high income areas and venues has done little to effect this trend. The Chairman found no evidence in the NEA's own research that NEA funding has had a positive effect on participation in the arts for low-income individuals.⁶⁸ In fact, the NEA's research shows that the best indicators for future participation and appreciation of the arts is an individuals education level and income – neither of which is effected by NEA funding.

⁶⁵ National Endowment for the Arts, Grant to Income Data, March 10, 1997.

⁶⁶ Rice, William Craig, The End of the NEA Won't be the End of the Arts, p. C2, The Washington Post, February 23, 1997.

⁶⁷ National Endowment for the Arts, Arts Participation in America: 1982-1992, Research Division Report 27, October 1993.

⁶⁸ *Id.*

2. The NEA Continues to Fund “Objectionable” Art

The NEA has in the past funded directly or indirectly objectionable art, including projects such as the Mapplethorpe Exhibit (i.e. self-portrait of photographer Robert Mapplethorpe in various states of un-dress showing private body parts and excretory functions) and the Walker Art Center in Minneapolis (i.e. the Center sponsored artist Ron Athey, who sculpted designs with a sharp blade in the back of another man, dabbed napkins in the blood, and circulated them above his audience on a wire as his performance art project).⁶⁹ Projects such as these have prompted concerns about federal taxpayer funding of "obscenity" and "indecentcy."

To reaffirm that such art was never intended to be funded through the NEA, the 1990 NEA authorization bill added a "decency provision" to the statute.⁷⁰ This provision, crafted by the late Representative Paul Henry, a supporter of the NEA, charged the Chairperson with the responsibility of ensuring that "artistic excellence and artistic merit," and "general standards of decency and respect for the diverse beliefs and values of the American public," are the criteria by which grant applications should be judged. In addition, the statute stated that obscene works are prohibited from receiving funds under the Act, and provided for recovery of NEA grantee funds if the work was considered obscene, in the final judgment of a court. According to the Congressional Research Service, no NEA projects have been judged obscene by the courts to date.

In 1992, a California federal judge ruled the "general standards of decency" provision unconstitutional and that it violated grantee's due process and free speech rights.⁷¹ Under the facts of the case, plaintiffs Karen Finley, John Fleck, Holly Hughes, and Tim Miller were refused fellowships under the NEA's solo performance artists' program. They filed suit claiming the standard for approval of a grant violated the Fifth and First Amendments because it was impermissibly vague and imposed content-based restrictions on protected speech. The court agreed. In November 1996, the Ninth Circuit

⁶⁹ For a more comprehensive review of past NEA funding controversies, *see* Zeigler, Joseph W., *Arts in Crisis: The NEA Versus the Rest of America*, pp. 67 - 174, a cappella books: Chicago, 1994; Jarvik. Laurence, *Ten Good Reasons to Eliminate the National Endowment for the Arts*, The Heritage Foundation Backgrounder, April 29, 1997.

⁷⁰ See 20 USC 954(d).

⁷¹ Finley v. National Endowment for the Arts, 795 F. Supp. 1457 (C.D. Cal. 1992).

Court of Appeals affirmed the lower court's decision.⁷² A Petition for Rehearing was denied on May 1, 1997. At this time the Solicitor General has not made a decision on whether he will appeal to the U.S. Supreme Court.

Despite this clear history, the Endowment, despite its numerous "reforms," continues to fund art and art centers that run counter to the express intent of Congress to end taxpayer funding of objectionable art.⁷³ As an example, the Chairman found that the NEA, during the tenure of Ms. Alexander, funded the production and distribution of sexually graphic videos through Women Make Movies, Inc.,⁷⁴ the distribution of similar such videos through Canyon Cinema,⁷⁵ and the screening and distribution of objectionable videos through several other NEA grantees.⁷⁶ Additionally, the Subcommittee found that the NEA funded the publication and distribution of numerous sexually graphic and violence ridden books through the NEA grantee Fiction Collectives 2.⁷⁷

While the extent of the NEA's support for objectionable material may be debatable, and is certainly outweighed by the NEA's support of less- or non-objectionable art and art venues, the Chairman found that Congressional and NEA directed reforms designed to limit the use of taxpayer funds for such art have been ineffective.

Interestingly, Chairman Alexander, in testimony before this Committee, requested that Congress lift its ban on the funding individual artist – the cornerstone of Congressional attempts to stop the NEA from funding indecent material.⁷⁸

⁷² Finley v. National Endowment for the Arts, 1996 WL 636040 (9th Cir.(Cal.)).

⁷³ Jacoby, Jeff, "Despite Promises, The NEA Hasn't Changed," The Boston Globe, August 21, 1997.

⁷⁴ Letter from Chairman Hoekstra, to Ms. Alexander, January 16, 1997.

⁷⁵ Letter from Chairman Hoekstra, to Ms. Alexander, March 17, 1997.

⁷⁶ See e.g., Screenings at NEA funded Hallways Contemporary Arts Center, listing provided in Letter from Edmund Cardoni to Derrick Max, February 25, 1997; Video Catalogue of the NEA funded Film Institute at University of Chicago.

⁷⁷ Letter from Chairman Hoekstra, to Ms. Alexander, March 6, 1997.

⁷⁸ Testimony of Chairman Alexander, Joint Hearing Before the Subcommittees on Oversight and Investigations and Early Childhood, Youth and Families, May 13, 1997.

IV. ISSUES FOR FURTHER REVIEW

A. THE NEA'S \$3 BILLION UNFUNDED INSURANCE PROGRAM

The Chairman has learned that the National Endowment for the Arts administers an insurance program which issues certificates of indemnity to applicants seeking to insure against loss or damage for eligible art, artifacts, or other objects.⁷⁹ The Chairman is concerned that the Endowment maintains insurance totaling almost \$3 billion per year – an amount that is in excess of 30 times the NEA's annual appropriation. Equally as troubling is the fact that this program allows individual exhibits to insure against loss or damage totaling \$300 million – more than three times the NEA's annual appropriation. Thus, a single fire, storm or downed plane could cost the taxpayers far more than they provide for the NEA in any single year.

Most forms of insurance cover their expected loss out of premiums paid for by others through the “pooling” of their risk over time. Thus, current and past premiums of those in the insurance pool are used to pay the claims made by others in the same pool. The insurance company maintains enough cash in reserve to cover its expected loss for any given year. Unfortunately, the Endowment maintains a reserve of less than \$300,000. In fact, the NEA does not charge a premium for the insurance they provide. So how can the NEA insure exhibits well in excess of their annual appropriation without maintaining funds in reserve? Simple. Claims paid under this program are covered by funds provided directly from the U.S. Treasury.

Private insurance companies rely on a combination of adjustable premiums, deductibles, and copayments to give those that are insured an incentive to lower their risk and take necessary precautions to avoid accidents. Yet the NEA offers this insurance free of charge, does not require any copayments, and has very nominal and fixed deductibles. Because the NEA does not use traditional insurance methods to reduce its risk, one would expect that the Endowment would rely on very aggressive oversight of the projects it insures. Yet the Chairman has learned that this program is

⁷⁹ Eligibility is limited to objects that are: 1) borrowed from abroad for exhibit in the US; 2) borrowed from the US for exhibit abroad; or 3) borrowed from the US for exhibit in the US as a part of an exhibit which includes foreign objects. See 20 U.S.C. 971 et seq.

administered by one person, and oversight is mainly limited to certain reporting requirements.

Finally, given the fact that this program was established because the private insurers only offered such insurance at very high costs, one would assume that the applicants to this program have higher than average risk. Thus the risk to insure these organizations is likely to be higher than in the rest of the art insurance market. The value of such insurance is estimated to be in excess of \$6.8 million per year.⁸⁰

While very few claims have been incurred under this program to date, the program has not benefited from this positive experience by building up funds in reserve.⁸¹ Furthermore, because the value of this insurance is so high, the Endowment has forgone significant payments, which at a minimum, could have been used to fund their other operations. In fact, assuming an average annual value of \$6 million per year for this insurance, the NEA could have total reserves of at least \$120 million if it had charged premiums for this coverage.

The Chairman is concerned that the continuation of this program, without significant modifications, exposes taxpayers to significant risk. Therefore, the Chairman believes a thorough evaluation of this program, including an analysis of its current operations, is essential.

B. EXCEMPTION FROM CHILD LABOR LAWS

The arts community enjoys a significant exemption to the child labor laws provided under Fair Labor Standards Act of 1938 (FLSA).⁸² The FLSA was passed to protect workers from the low wages and long working hours typically required for employment during the depression. The provisions

⁸⁰ Boren, Susen, Arts and Artifacts Indemnity Program: General Background, Congressional Research Service, November 16, 1995. Based on a cursory review of the private insurance market for such coverage, the Subcommittee believes that this estimate is fairly conservative.

⁸¹ The NEA paid \$100,000 to cover the loss of two Israeli paintings which were lost after an exhibit in Coral Gables, Florida, \$4,700 to one other claimant, and one other claim is currently outstanding.

⁸² See 29 U.S.C. 213 (c) (3).

regulating child labor were sought to protect children from the Dickensonian conditions that were believed to exist at that time.

The arts exemption to the FLSA applies to any child of any age working as an actor or performer in motion pictures or theatrical productions, or in radio or television. The significance of this exemption can not be understated. Similar exemptions in other industries have been vigorously opposed by child advocates, yet this exemption has received little attention. In fact, the Chairman found little evidence that the Department of Labor or other entities have sufficiently reviewed this exemption to insure that children are adequately protected. For this reason, the Chairman believes a thorough evaluation of this exemption is necessary.

C. EFFECTS OF TAX PROVISIONS ON INDIVIDUAL ARTISTS AND ARTS ORGANIZATIONS

Numerous changes to the tax code recently enacted by this Congress provide significant relief to many in the arts community. Because artists often work independently or are self employed, and because many work out of their home, artists uniquely benefit from the recently passed changes in the tax code that clarified the home office deduction, expanded the deduction for health insurance for the self-employed, and increased the maximums contributions to Individual Retirement Accounts.

The arts community will also benefit from the reduced capital gains rates, which will increase the market for their goods. Finally, the education tax credit (HOPE Scholarships), the interest deduction for student loans and the numerous other changes in the tax code designed to make college more affordable, will significantly increase the ability for individuals to receive an education in the arts in colleges and universities throughout the country.

Because of the unique nature of employment in the arts, it is imperative that the Congress review the tax code to insure that artists are fairly treated, and that the rules do not hinder their ability to work in the arts.⁸³ For this reason, the Chairman believes that Congress should review the tax code in

⁸³ Rice, William Craig, "Playing Favorites vs. Playing Fair: Notes for a New Federal Arts Policy, Address to the Heritage Foundation, July 9, 1997.

light of the working status of most artists, and seek ways to reduce or eliminate their tax burdens.

V. CONCLUSIONS AND RECOMMENDATIONS

Because the National Endowment for the Arts fails to meet any of the three review criteria established in the Committee's Oversight Plan, it is the recommendation of the Chairman that the Congress support the immediate elimination of the National Endowment for the Arts.

A. *ELIMINATE THE NATIONAL ENDOWMENT FOR THE ARTS*

The Chairman believes that such an action will not negatively effect State, local and private efforts being carried out in support of the arts, nor will it negatively effect the arts community generally. In fact, based on the evidence presented in this paper, the Chairman believes the arts will flourish without the NEA, and that its elimination will likely lead to renewed efforts in the private sector to support the arts.

However, if the Congress is unwilling or unable to eliminate the National Endowment for the Arts, the Chairman recommends that the Congress immediately consider reforming the NEA by limiting its authorization to the administration of a block grant program in support of arts education.

B. *IF ELIMINATION OF THE NEA IS NOT POSSIBLE, THEN REPLACE THE NEA WITH AN ARTS EDUCATION BLOCK GRANT*

During the course of this review, the Chairman found that the only segment of the arts profession that was lagging in both employment and earnings was in the field of "arts education." Therefore, arts education is the only category of funding that would meet a simple test of "need."

Additionally, the NEA's own research shows that a systematic arts education program provides positive public benefits in the form of better educational results in other areas, particularly math. Because educational

benefits also meet the test of a public good, funding for arts education may also meet the economic test discussed earlier.

Finally, the NEA's own research seems to show that the one of the few indicators of an individual's future interest in the arts is their active participation in the arts at an early age. Thus, arts education also meets the NEA's own statutory mission of increasing interest in the arts.

This being said, it is important to reiterate and expand on the fact that the NEA only allocates a small portion of its funds toward "arts education," and most of these projects are more accurately described as "arts exposure."⁸⁴ This is an important distinction that is not well understood, but was well articulated by the NEA and the Department of Education in the standards they developed for arts education.

*All basic subjects, including the arts, require more than mere "exposure" or access. They need focused time for sequential study, practice, and reflection. While valuable, a once-a-month visit from an arts specialist, visits to or from professional artists, or arts courses for the specially motivated do not qualify as basic or adequate arts instruction.*⁸⁵

The arts education community has been increasingly vocal in their efforts to explain how the benefits to education are linked to systematic in-class arts education, and is not a result of infrequent visits by artists in the classroom or visits to local theaters.⁸⁶ In short, and funding provided through an educational block grant should be targeted at elementary and secondary schools to support their intensive, in-class, arts education programs.

⁸⁴ Ibid. at fn. X. See also, Letter from John J. Mahlmann, Executive Director, Music Educators National Conference, to Chairman Hoekstra, May 21, 1997.

⁸⁵ National Standard for Arts Education: What Every Young Person Should Know and Be Able to Do in the Arts, pg. 15. 1994. Produced under a grant from the Dept. of Education, the NEA and the NEH.

⁸⁶ National Public Radio, Morning Edition, September 17, 1997.

C. IF ELIMINATION OF THE NEA OR THE PASSAGE OF AN ARTS EDUCATIONAL BLOCK GRANT IS NOT POSSIBLE, THEN IMMEDIATELY:

- 1. Place the NEA under the Chief Financial Officers Act;**
- 2. Provide a Separate Appropriation's Line Item for NEA's Inspector General;**
- 3. Cap the NEA's Administrative Expenses at 6% or \$8 million, whichever is lower; and**
- 4. Strengthen Congressional Limitations on the Funding of Objectionable Art.**

To insure the integrity of public money, and to insure that funds appropriated to the NEA are used in furtherance of the arts, the Chairman recommends that the NEA immediately be placed under the CFO Act, that its Inspector General receive a separate and increased appropriation, and that administrative expenses be significantly reduced. The combination of these reforms should move the NEA toward greater efficiency and effectiveness with the money it is appropriated.

Finally, because past Congressional attempts at limiting the funding of objectionable art have either been ineffective, or have been rejected by the Courts, the Chairman urges Congress to immediately impose more detailed and rigid limitations on the types of art that can be funded with public money. At a minimum, the Chairman urges the NEA to rate the works it funds, so as to bring sunshine to the types of grantee's receiving taxpayer money.