

Memorandum in Support of Continued Federal Funding for the Arts

ENTERTAINMENT, ARTS AND SPORTS LAW SECTION

EASL #1

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THE ENTERTAINMENT, ARTS AND SPORTS LAW SECTION OPPOSES THE FISCAL YEAR 2018 FEDERAL BUDGET PROPOSED BY THE PRESIDENT OF THE UNITED STATES ON MARCH 16, 2017, TO THE EXTENT THAT IT WOULD ELIMINATE FUNDING FOR THE NATIONAL ENDOWMENT FOR THE ARTS, THE NATIONAL ENDOWMENT FOR THE HUMANITIES AND THE CORPORATION FOR PUBLIC BROADCASTING.

The arts and sciences, essential to the prosperity of the state and to the ornament and happiness of human life, have a primary claim to the encouragement of every lover of his country and mankind.

~ George Washington

INTRODUCTION

The Entertainment, Arts and Sports Law Section (“Section”) of the New York State Bar Association (“NYSBA”) opposes the proposed Fiscal Year 2018 federal budget (i.e., “America First - A Budget Blueprint to Make America Great Again”), submitted to Congress by the President on March 16, 2017, to the extent that it proposes eliminating all federal funds for the National Endowment for the Arts (“NEA”) and the National Endowment for the Humanities (“NEH”) (collectively the National Foundation on the Arts and the Humanities, “National Foundation”), and the Corporation for Public Broadcasting (“CPB”). The Section comprises more than 1,500 practicing lawyers who voluntarily joined the NYSBA and this Section. Our members represent individuals and businesses engaged in some segment of the entertainment, arts and sports industries within the Empire State. The Section provides a forum for education, interaction and development of best practices for lawyers who work in the television, motion picture, music, theater, visual arts, sports, publishing and related industries. It is the Section’s mission to actively represent its members’ best interests as well as “do the public good” by educating the public on critical issues of the day and providing our specialized knowledge and expertise to promote an intelligent and informed debate among our fellow citizens.

The Section strongly believes that the publicly-funded initiatives and organizations that comprise significant components of these industries play an important role in (a) creating arts related projects – “content” – which can be seen, heard, and read the world over, (b) creating tax-paying jobs within the State of New York for residents, both lawyers and non-lawyers and (c) advancing the great diversity of American culture domestically and abroad. The Fiscal Year 2018 federal budget threatens to eliminate or significantly curtail advancement and dissemination of arts and sciences nationwide with substantial negative effect on the economy and culture of New York State. If adopted, this proposed budget eliminates an essential source of funding to nonprofit organizations in industries that already disproportionately rely on pro bono and reduced-rate legal services, further straining our profession’s ability to meet the urgent demands of under-funded clients.

Although the budgets of the National Foundation and CPB are negligible as a percentage of the overall federal budget, these federal funds play a vital role in leveraging state, local and private sources of funding. Therefore, the Section respectfully urges congress to categorically reject the proposed elimination of federal funds for the National Foundation and the CPB and keep the funding at the same level as the current fiscal year.

THE NEA and THE NEH

The National Foundation on the Arts and the Humanities Act of 1965 (“the Act”) established the National Foundation to promote a broadly conceived policy of public support for the arts and humanities throughout the United States.¹ The NEA provides financial grants to individuals, nonprofit groups, and the states to support engagement in the creative and performing arts, while the NEH provides grants to support academic and scholarly humanistic teaching, learning, and research.

At the height of the Cold War, during February and March of 1965, and in contemplation of the benefits of allocating federal funds for such a foundation, Senate and House committees held hearings on the merits of the arts and humanities for the nation. Bills proposing the formation of the National Foundation were introduced in the House of Representatives and the Senate on March 10, 1965, and by September of 1965, a bill passed both chambers of Congress, which President Lyndon B. Johnson then signed into law.

Legislative history for the Act is robust. Congress heard over fifty witnesses during seven days of hearings discussing the proposed National Foundation. Three themes recur throughout deliberations of the Act: (1) the self-evident need to support the arts and humanities financially; (2) that such support is in the national interest; and, (3) that the federal government should accept the role and responsibility of providing this support.

One of the speakers, then President of Brown University, Barnaby C. Keeney, a historian, a World War II veteran and the Chairman of the Commission on the Humanities at the

¹20 U.S.C. § 951 (1965).

American Academy of Arts and Sciences, the oldest learned society in the United States, stated:

“Only through the best ideas and the best teaching can we cope with the problems that surround us and the opportunities that lie beyond these problems. Our fulfillment as a Nation depends on the development of our minds; and our relations to one another depend upon our understanding of one another and of our society. The humanities and arts, therefore, are at the center of our lives and are of prime importance to the Nation and to ourselves. *Very simply stated, it is in the national interest that the humanities and arts develop exceedingly well.*” (emphasis added).

Members of Congress emphasized that the arts and humanities benefit the nation by facilitating understanding of other peoples and cultures and by cultivating a positive image of the United States throughout the world. Senator Edward Kennedy said that the arts and humanities “provide a vehicle for understanding and respect between men of all races and cultures.”²

Congress did not intend the National Foundation to serve as the only or primary supporter of arts and humanities in the United States; instead, the Act was to serve as a catalyst that “stimulate[s] private philanthropy for cultural endeavors and State activities to benefit the arts.” Congress noted that private financial support in the arts and humanities was “lagging,” as the number of endowment and foundation gifts to arts and cultural institutions had been dropping. In order to encourage increased donations, Congress authorized the proposed agencies to match funds donated from private sources. Congress hoped that supporting the arts and humanities at the local level would permit a greater number of citizens to enjoy and appreciate the arts beyond those that resided in and around the nation’s cultural centers.

While congressional appropriations are the primary source of funding for both agencies, the NEA and NEH also accept tax-deductible donations including gifts of stock and other property. However, pursuant to ethics restrictions, these agencies may only accept donations from organizations that are eligible for an endowment grant, and thus any one donor could contribute “only if that organization confirms in writing that it has not received a grant in the past three years and does not intend to apply for a grant for the next three years.” For Fiscal Year 2016, Congress appropriated \$148 million (0.003 percent of the federal budget) to the NEA and the same amount to the NEH.

THE CPB

The CPB was established by the Public Broadcasting Act of 1967, also signed into law by President Lyndon B. Johnson, in order to increase funding for public radio and television broadcasts. President Johnson noted at the signing of the Public Broadcasting Act that the country “wants more than just material wealth” and citizens “want most of all to

² S.REP.NO.89-300 (1965).

enrich man’s spirit.” The CPB formed Public Broadcasting Service (PBS) in 1969 and National Public Radio (NPR) in 1970. The CPB aims to provide programs and services that “inform, educate, enlighten, and enrich the public and help inform civil discourse essential to American society.”³

For many of our citizens, the first steps on the road to knowledge were provided by CPB f aired television shows, such as *Thomas the Tank Engine*, *Sesame Street*, *Barney and Friends*, *Mr. Rogers’ Neighborhood*, *The Electric Company* and *Reading Rainbow*. Eliminating those kinds of programs will likely reduce literacy, civic awareness, access to justice and could adversely affect the national security.

In fiscal year 2016, the annual budget for the CPB was \$445 million, sourced nearly entirely from Congressional appropriations plus interest. Excluding administrative and other expenses, CPB’s budget is allocated directly to grants for local public television stations, including support for PBS and NPR.

Upon release of the Fiscal Year 2018 budget proposal, the President and CEO of CPB released a statement strongly opposing the cuts, stating that the CPB offers an “essential national service” in delivering fact-based, objective journalism nationwide, with tangible benefits including “increasing school readiness for kids 2-8, support for teachers and homeschoolers, lifelong learning, public safety communications and civil discourse.”

This Section consistently supports civic engagement and education regarding our responsibilities in a representative democracy. These objectives are met by CPB funded programs, such as the acclaimed *Fred Friendly Seminars* on social and public policy (produced in New York City), which included the landmark series on *The Constitution: That Delicate Balance*. Such programming unavailable elsewhere promotes civic engagement, civic responsibility, and civic literacy. In a statement made on March 28, 2017 before the House of Representative Appropriation Committee, Patricia de Stacy Harrison, President and CEO, of the CPB informed the committee that:

“Education is the heart of our mission. Public media reaches 68 percent of all children age two to eight, providing educational content and services that are proven to prepare them for school, especially those low-income and underserved children who do not attend or cannot afford pre-school. An excellent example of how public media brings together high-quality educational content with on-the-ground work in local communities is CPB’s work with the Department of Education’s Ready To Learn program. More than 25 years ago, Congress recognized the reach and potential of public media to help disadvantaged children become better prepared to enter school. In 2015, Congress reaffirmed its support of Ready To Learn, furthering public media stations’ and

³ CPB Goals and Objectives as adopted by the Board of Directors on February 4, 2016, <http://www.cpb.org/aboutcpb/goals/goalsandobjectives>.

producers’ work in coordinating and connecting STEM and literacy learning experiences for children across multiple platforms and outlets.”

THE NEED FOR CONTINUED FEDERAL FUNDING OF THE NEA, THE NEH AND THE CPB

When passing the enabling legislation creating the National Foundation, members of Congress and stakeholders discussed the role of arts and humanities in promoting education and ensuring employment – two areas of particular relevance today. Several witnesses, including the then U.S. Commissioner of Education, mentioned the arts and humanities as necessary components of a well-rounded education program from grade school to university. Similarly, others considered how the arts and humanities provide opportunities for employment and encourage people to realize their potential in their chosen fields by allowing them to acquire and develop key skills, including expression and critical thinking. In short, many children in the United States and throughout the world benefited from programming made possible by the NEA and the NEH. To deny future generations the same opportunity is unconscionable.

While the legislative history reveals that Congress generally agreed on the importance and the need for financial support of the arts and humanities, the hearings also addressed the Federal Government’s role and responsibility in these areas. Congress concluded that the Federal Government’s funding of the arts and humanities would set a national tone of interest and thus generate more visibility for the arts and humanities across the country. Considering the current overall \$3.9 trillion federal budget, the National Foundation and CPB provide the basic fundamentals of an enlightened democracy at a combined *annual* cost of \$2.29 per American. Cutting these agencies, while only a tiny fraction of the federal budget, would have a grossly disproportionate adverse impact on the cultural prosperity of the nation.

Organizations funded by the National Foundation and the CPB consistently create multitudes of jobs, and are consistently in need of lawyers to facilitate transactions, oversee board governance, and advise on myriad issues including business transactions, real estate, employment, and financial matters. In addition, much of the work that lawyers in our Section do involves protecting and exploiting copyrighted works. Copyright intensive industries accounted for nearly 5.6 million jobs in 2014. In the same year, intellectual property related revenue in the U.S. was nearly \$138 billion.

The range of the worthy projects funded by these federal agencies currently threatened with extinction is wide and diverse. While some of these have availed themselves of legal counsel purely in a transactional capacity, others have used funds from the NEA to conduct legal feasibility studies of their archival and multi-media Internet-based technology projects,⁴ and some have gone so far as to offer legal counsel and necessary

⁴ See for example, George Balanchine Foundation, Inc. project entitled “Media Text” created to enhance online history education in 2000-2001. Source: <https://apps.nea.gov/grantsearch/SearchResults.aspx>

research tools to arts-related organizations to be able to preserve their intellectual and tangible property.

Many cultural institutions, some based in New York, which are now part of “Main Street” America, owe their very existence to these federally funded grants, among them, the Martha Graham Dance Company, the American Ballet Theater, the American Choral Foundation, Children’s Television Workshop and its principal television program *Sesame Street*. Each has influence throughout our nation and around the world, and each needs lawyers to guide it through the process of fulfilling its mission.

Some of our nation’s most prolific film directors owe their careers to federal funding of the arts: Quentin Tarantino (*Reservoir Dogs*, *Pulp Fiction*, *The Hateful Eight*, among others), Paul Thomas Anderson (*Hard Eight*, nominated for six Academy Awards), Wes Anderson (*Bottle Rocket*, *The Grand Budapest Hotel* [nominated for nine Academy Awards]), Darren Aronofsky (*Pi*, *The Wrestler*, *Black Swan*, et al.).

Blockbuster and small esoteric exhibitions such as *The Open Road: Photography and the American Road Trip*, *Across Generations: Puerto Rican Identity and the Changing Self*, *Transatlantic Encounters: Latin American Artists in Paris between the Wars, 1918-39*, *Color as Field: American Painting, 1950-75*, or the exhibitions dedicated to the work of African American artist Lorna Simpson, and Russian and Hungarian Jewish immigrants Man Ray and Harry Houdini, have benefited immeasurably from the modest support of the NEA funds.

Such prominent organizations as the Volunteer Lawyers for the Arts (the “VLA”) and the International Foundation for Arts Research (the “IFAR”), both based in New York, have been multiple-time recipients of NEA funding to further their missions. While the amounts of their annual grants range from \$15,000 to \$40,000, the reach of their work by far exceeds the funds received. One of the VLA’s funded projects is called *Artists Over Sixty*. It provides “legal services and education programs primarily for senior artists in need ... through free legal clinics and in-house consultations, where artists receive advice on arts- and age-related legal issues from volunteer attorneys. Education programs, including classes, workshops, and lectures, [are] tailored to meet the individual needs of senior artists and the attorneys who serve them.”

IFAR publishes a critically acclaimed journal which “discusses scholarly, legal, and ethical issues concerning the ownership, transfer, and authenticity of art objects.” Published quarterly since 1998, the journal covers a range of art world issues such as attribution/authenticity; ownership; theft; provenance; and other legal, ethical, and scholarly matters concerning art objects. Each issue also contains the *Stolen Art Alert*, which has enabled the recovery of scores of stolen art works. Development of a digital version will enable the journal to reach a larger audience.

CONCLUSION

According to the economic data that tracks arts and cultural jobs per state, the arts and cultural sector contributed \$729.6 billion or 4.2 percent to the U.S. economy in 2014. Once we add the entertainment industries to this equation, New York State's keen interest in supporting the arts and humanities comes into great contrast with the proposal to gut the federal funding for the NEA, the NEH and the CPB. In the last two decades, the contribution of arts and culture to the nation's gross domestic product grew by 35.1 percent. New York State has almost half a million arts-related workers, their compensation totaling over \$45 billion.⁵ This sector is rigorously aided by the members of our legal community. This symbiotic relationship is but one of the reasons this Section strongly supports continued federal funding the NEA, the NEH and the CPB. We've all been touched and enriched by the product of these entities.

Providing seed money for developing sophisticated arts endeavors is important to our culture and our heritage. For America to continue to be, as President Lincoln said, "the last best hope for mankind," we need to keep doing all the things we do well, including creating art and culture that is well received the world over. The modest funding (in the context of the entire budget of the U.S. government) that these three entities receive must not be erased, but should be embraced, allowing American culture to continue to flourish for all of its citizens.

On behalf of the 1,500 members of the Entertainment, Arts and Sports Law Section of the New York State Bar Association, we endorse the continued support of the arts, we oppose the budget recommendations made in "America First - A Budget Blueprint to Make America Great Again," and urge Congress not to cut federal funding for the NEA, the NEH and the CPB.

Chair of the Section: Diane F. Krausz, Esq.

⁵ Arts and Cultural Production Satellite Account (ACPSA), 2014; U.S. Bureau of Economic Analysis, available at https://www.arts.gov/sites/all/modules/custom/nea_infographics/adp-13/