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BEFORE THE

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THE PLAYWRIGHTS LICENSING ANTITRUST INITIATIVE ACT: SAFEGUARDING THE FUTURE OF AMERICAN LIVE THEATER

WEDNESDAY, APRIL 28, 2004

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:13 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Leahy and Kennedy.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Chairman HATCH. Good afternoon and welcome to today's hearing on the Playwrights Licensing Antitrust Initiative Act, or PLAY Act. We have a tremendous panel of witnesses and very interesting topics. I am truly excited to hear the testimony here today.

Today, from our left to right, we have the famous Arthur Miller and Stephen Sondheim. All of these people are famous. We have Roger Berlind on that side, Wendy Wasserstein, Gerald Schoenfeld and, of course, as I mentioned, Arthur Miller. This is an absolutely incredible panel of Broadway's finest, all side-by-side by Sondheim. Hey, that almost sounds like a song.

[Laughter.]

Chairman HATCH. As an initial matter, I understand that the word has gotten out that Senator Kennedy and I are rehearsing a song from the musical "Gypsy." We will be performing it at a benefit gala this Friday at Ethel Kennedy's home.

One of my more enterprising staffers suggested that we could raise some money by selling a video of our performance. He went on to suggest that we could make more if we charged extra for a version of the video without any audio. I would like to take this opportunity to publicly wish him well in his job search.

[Laughter.]

Chairman HATCH. But, seriously, I hope that both our duet and future Committee action on this bill will be more harmonious than some of the recent debates we have had in the Judiciary Committee.

The purpose of today's hearing is to discuss a bill that Senator Kennedy and I have introduced to help ensure the continued vitality of live theater in America. I know that I am not going to be able

to match the eloquence and incredible experience of our witnesses, so I will keep my remarks brief.

I have come to believe deeply that the future quality of live theater depends on maintaining the artistic independence and individual expression of dramatists, while giving them a greater voice in the terms on which their works are produced.

Due to the interaction of Federal labor, antitrust and copyright law, the dramatists and their voluntary peer organization, the Dramatists Guild of America, have been hampered, in their view, in acting collectively in their dealings with highly organized and unionized groups, such as actors, directors and choreographers, on the one hand, and the increasingly consolidated producers and investors on the other. As a result, playwrights, who are frequently at a substantial bargaining disadvantage, are forced to accept contracts on a take-it-or-leave-it basis. At least that is the allegation.

I believe that if we truly want the next generation of American dramatists to flourish, we will need to give them a more organized voice on Broadway. The PLAY Act is a narrow measure that will allow playwrights, composers and lyricists, through either the Dramatists Guild or any other voluntary peer organization, to act collectively in dealing with other industry groups that operate both under and behind the bright lights of the American stage. In other words, it would permit these artists to sit down with their creative colleagues for the purpose of negotiating, adopting and implementing updated standard form contract terms.

Importantly, the bill covers only the adoption and implementation, and not the collective enforcement, of an updated standard form contract. Thus, it would merely allow dramatists to replace the terms of the current standard contract, which I am given to understand has remained virtually unchanged for several decades, with amended terms that reflect the changing business and artistic landscape on Broadway.

My hope is that the basic ability to update the standard form contract, as well as provisions ensuring that certain artists' rights are respected in the production of their plays, will encourage young, struggling playwrights to continue working in the field and ensure the continued viability and vitality and vibrancy of American live theater.

As a longtime enthusiast of theater and a lyricist myself, I am proud to sponsor the PLAY Act and would encourage my colleagues to join our efforts. I would also like to commend my friend, Senator Kennedy, for his leadership on this issue, and I thank other colleagues on the Committee in advance for their interest and willingness to be convinced that we should act favorably on this legislation.

[The prepared statement of Chairman Hatch appears as a submission for the record.]

So at this point, I will turn to Senator Kennedy, and when Senator Leahy gets here, we will turn to him.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you very much, Mr. Chairman. First of all, thank you very much for having this hearing. It is enormously important. I am going to comment on that.

You mentioned in your opening remarks that you were a longtime lyricist, and many of us have had the good chance to listen to your music and have suggested that you continue that career and give up your current one. But we have been unable to persuade you to do so.

Chairman HATCH. I will if you will put some of that Kennedy money behind it. I think I would have a chance.

Senator KENNEDY. You have been trying to get a hold of that for a long time.

[Laughter.]

Senator KENNEDY. Let me say it is a privilege to join with Senator Hatch in sponsoring the Playwrights Licensing Antitrust Initiative Act, and I look forward to today's testimony from our distinguished witnesses about the impact of the bill on the American theater community.

Our witnesses symbolize the highest level of achievement in the arts, and we have proposed this legislation because of our concern about the continuing erosion of support for the uniquely important work that they do.

From the day he took office, President Kennedy made the arts one of his priorities for the Nation. He wanted the arts to be a part of our lives. Robert Frost was a major part of his inauguration. And, later, in dedicating a library to Frost at Amherst College, he said, "The nation which disdains the mission of art invites the fate of Robert Frost's hired man, the fate of having nothing to look backward to with pride and nothing to look forward to with hope."

Clearly, we fall short on that mission in many aspects of the arts today. The bill we propose deals with one aspect of the issue, the need for greater support for the artists who create the plays and musicals that are an extraordinary part of the Nation's modern cultural life. This bill will provide needed protections for those who create the plays and the musicals that are such an important part of our Nation's modern cultural life.

American theater has an unequaled and proud heritage. We have been blessed with some of the finest writers of the age. At the Kennedy Center, a celebration of the works of Tennessee Williams is underway. Enthusiastic audiences are preparing for new productions of "A Streetcar Named Desire," "Cat on a Hot Tin Roof" and "The Glass Menagerie." Audiences return to these modern classics time and time again because they so magnificently capture the hopes and dreams that so many of us share in our own lives, and speak to the tragedies we suffer as well.

These plays and so many other wonderful American works of art have enriched our lives immeasurably, and we need to encourage similar eloquent voices to be heard in the future as well. It may sound implausible to some, but the antitrust laws in our modern economy stand in the way of that goal today. The bill that Senator Hatch and I support will modify those laws and enable playwrights to negotiate minimum compensation packages as fair reimburse-

ment for their work. The issue is fairness and this change is overdue.

Currently, playwrights are prohibited from participating in any joint negotiation for compensation or control of their work. And because they are not members of a union, they must negotiate individually with producers of their work. Even for well-known playwrights, such negotiations are difficult. For emerging authors, they can be impossible.

The legislation provides a way for playwrights and producers to agree on a package that provides fair return on the commercial use of their work, and I am hopeful the bill will be enacted to permit such negotiations to begin as soon as possible.

We are privileged today to have a very distinguished panel of witnesses. Arthur Miller is in many ways the patron saint of American theater. "Death of a Salesman" opened on Broadway in 1949, and he has testified only on rare occasions in Congress, once at the infamous House Un-American Activities Committee and again before the Senate to call for literary and journalistic freedoms around the world. The fact that he is here today is a tribute to the importance of this legislation for his colleagues in the theater. He is widely recognized for his principled and courageous beliefs, and it is an honor to have him with us.

We also welcome Steve Sondheim, who is an icon of American theater. He has collaborated with Hal Prince and Lenny Bernstein and our most gifted playwrights to create a body of work that includes "Sweeney Todd," "Sunday in the Park with George" and "West Side Story." Welcome.

We also welcome Wendy Wasserstein, who has won critical and popular acclaim for her works, and also for her leadership in introducing theater to public school children in New York City. She is a visionary writer and a compelling artist, and we are honored to have her with us.

It is also a privilege to have with us Gerald Schoenfeld, who is Chairman of the League of American Theaters and Producers. We look forward to his testimony and his point of view on the bill. Thanks also to Roger Berlind for being with us. Mr. Berlind is a successful businessman and a producer, and we are grateful to him for coming today.

I especially commend Senator Hatch for convening the hearing. There are so many issues before Congress that it is not always easy to provide appropriate attention to these important issues involving creative artists. We know that there are major financial considerations involved in producing plays on Broadway and in communities across the Nation. But we cannot accept the continuing systematic erosion of the rights of the geniuses who create the gold for the theater. This is our bottom line, and it should be the Nation's bottom line on this key issue as well.

Appropriate action by Congress can encourage new vitality in theaters in communities across America. Young artists must know that we respect their potential and we welcome their creativity. Especially in difficult times like this, it is essential to reemphasize that one of the founding principles of our Nation is that there are better ways to change the world than at the point of a gun.

I thank all of you for coming and look very much forward to your testimony.

[The prepared statement of Senator Kennedy appears as a submission for the record.]

Chairman HATCH. Well, thank you, Senator Kennedy.

When Senator Leahy arrives, I will interrupt whoever is speaking to allow him to make his statement or whenever he wants to.

Senator Kennedy has introduced the panel, but I am going to do it again because it is that important. Turning to today's panel, most of our witnesses need no introduction, so I will keep this short.

Our first witness is Arthur Miller, the widely acclaimed playwright best known for authoring "Death of a Salesman," for which he won a Pulitzer Prize, and "The Crucible," which received a Tony Award. It is difficult to think of a more distinguished American playwright living today. If I am not mistaken, this may be the first time he has testified before Congress since the McCarthy hearings.

Mr. Miller, we want to thank you for being here. We know it has been an effort to be here and we appreciate it. I feel certain that you will find this venue a lot more hospitable than perhaps the last time around.

Next, we will hear from Gerald Schoenfeld—he will be witness number two—who is the Chairman of both the League of American Theaters and Producers, and the Shubert Organization. Mr. Schoenfeld has had a distinguished career both in the law and in the theater industry, and I certainly look forward to hearing his views as well.

After Mr. Schoenfeld, we will hear from Wendy Wasserstein, another acclaimed playwright.

Wendy, am I pronouncing that right—Wasserstein?

Ms. WASSERSTEIN. Yes.

Chairman HATCH. Wendy is the author of "The Heidi Chronicles" and the first woman to win both a Tony Award and the Pulitzer Prize in the same year for drama.

Next, we have Roger Berlind. I have been absolutely amazed at how many productions you have been responsible for. I think everybody is in your debt.

He is a theatrical producer who has achieved both commercial success and tremendously broad respect for his work on Broadway. His Broadway productions have won a total of 62 Tony awards for hits such as "Amadeus," "Kiss Me Kate" and "City of Angels," just to mention three, and there are so many others that I wish I could take time to mention.

He is the principal of Berlind Productions and an outside director of Lehman Brothers, which indicates to me at least that he probably knows a thing or two about business. And I can understand where you have enough money to be able to risk on some of these ventures.

Last but certainly not least, we will hear from the widely-celebrated composer and lyricist Stephen Sondheim, who is know for, as Senator Kennedy has said, works such as "West Side Story," "Sweeney Todd" and "The Assassins," just to mention a few. He has received numerous Tony Awards, as well as the Pulitzer Prize for Drama for "Sunday in the Park with George."

You could go on and on on every one of these biographies, but we are just tremendously pleased that you would take time to be here in the interest of, I think, especially young creative geniuses. Most of you are going to be successful no matter what happens, but you are here testifying for young creative geniuses, and the businessmen are testifying on how to make this even better.

So we are grateful to have all of you here and we will begin with Mr. Arthur Miller first.

We will turn the time to you, Mr. Miller.

STATEMENT OF ARTHUR MILLER, PLAYWRIGHT, ROXBURY, CONNECTICUT

Mr. MILLER. I am very grateful for the chance to talk to you people. I think it is a wonderful thing that you are trying to do. I thought, instead of reading my statement which is available to you, that I would tell you a personal experience which indicates the baseline of the Dramatists Guild's attempt to regularize the life of the playwright.

Way back in 1940-something, I wrote a novel called Focus, and a then-famous Broadway producer named John Golden—there is still a Golden Theater on Broadway, which was his theater—called me and asked if I would come and see him to make a play out of this novel. I went down to Broadway, and above the theater he had this gigantic office with a barber chair and a piano and numerous photographs of himself with President Roosevelt and Mrs. Roosevelt. He was a very famous fellow.

We talked a little bit about my novel. I couldn't imagine how to make a play out of it, but I thought I would talk to him anyway. Then he left me for a moment. He was in his 80's and had been producing plays for I don't know how long, more than half a century.

While he was gone, I noticed there was a bookcase full of books in leather bindings with gold leaf, and I got up and I took down one of the books and opened it up and it was called *John Golden's Plays*. There were about, I don't know, maybe 50 such books, and I leafed through a couple of them.

And then he came back and I said, you know, Mr. Golden, I never knew you were a playwright, because on the title page it said John Golden and Joe Smith, or John Golden and Ralph Meyers, or something. He said, oh, I am not a playwright, but those are my plays. I said, well, are you then listed as an author? Yes?

I said, well, how does that work? He said, well, I buy them. I said, I see, and I said, then they belong to you? He said yes. He couldn't even understand why I was questioning him. And I said, then do you make changes in these plays? Oh, yes, whenever I feel I should, I change things.

And my hair stood up, and I thought here is some poor playwright who spent a year or two or three, or whatever, writing a play and he sells it to this man, who owns the material and could change it any way he likes.

And I said, what do you pay for a play? He says, well, that depends, of course; if it is a new writer, $500,000, something like that. And I said, you get all the rights, then? He says, oh, yes. In-

cluding the film? Yes. He says, I have to pay more if it is a well-known writer.

It was years later that I joined the Dramatists Guild with that in mind. That is the end game, that is the baseline, because an individual writer has no power on the economic stage, excepting by withdrawing his work. And a lot of writers who are young people can't afford to withdraw their work. They may have put in a long spell of work and are helpless, basically, before the economic situation.

So I won't belabor the point, but any help that we can get to equalize this situation would be much appreciated. I think it would help revive the idea of playwriting. Formerly, the playwright was the king of the hill. He is now bringing up the rear because he has no clout, no economic clout, especially if he is starting out.

I commend you for paying attention to this problem. I think in the long run our theater will benefit from it because it will create a kind of confidence on the part of writers that they can get a fair shake because, as you know, you can write a television show in a day or a week and make more than the playwright generally makes in a season. The same thing for films.

We are up against terrible odds, and I would hate to see this art, which is one of the oldest arts known to man, disappear, as it is, I think, doing in New York. If I am not mistaken, there is one play on now on Broadway. That is not enough.

So thank you again for allowing me to speak, and I will just add for this occasion the end of this statement. The legislation that the Chairman and Senator Kennedy have introduced is not intended to change the laws of economics. It simply says that playwrights should have a seat at the table. Failure to pass the legislation will continue the unfair bargaining situation that the playwrights find themselves in, and not only will the playwright and the theater suffer, but society as a whole.

Thank you very much.

[The prepared statement of Mr. Miller appears as a submission for the record.]

Chairman HATCH. Well, thank you, Mr. Miller. We appreciate having your testimony.

I am going to turn to Senator Leahy now for his opening remarks, and then we will go to you, Mr. Schoenfeld.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Well, thank you, Mr. Chairman. I want to thank you and Senator Kennedy. You have brought the Broadway stage into the Judiciary Committee hearing room.

I would tell all of you this is not really the crucible that some might think it would be. We actually are interested in what you have to say.

I couldn't help but think, Mr. Miller, that you could give a lesson to a lot of the professional testifiers who come here. I was at an Appropriations Committee meeting this morning and we had several people with long statements which we had all read, and they proceeded then to read them as fast as they could to make the light. And I think what you are doing is a lot better. You actually

made us listen, which is not always easy to do, but then Mr. Sondheim and Ms. Wasserstein certainly know how to do that, too, and Mr. Schoenfeld and Mr. Berlind, I am sure, will.

We tackle a lot of intellectual property questions in this Committee. We usually do it in a bipartisan way. I know tomorrow's markup agenda, Mr. Chairman, has about a half dozen IP bills on it. They deal with copyright and patent problems, and come up with a new technology and distribution method.

But the playwright's question is a longstanding one. It is not one of these things that suddenly occurred because of the digital way of distributing matters. Mr. Sondheim, I know the matters you worry about when people can download music easily, and so on.

I love live theater. One of my regrets was not seeing Brian Dennehy play in "Death of a Salesman." I have known him for a number of years and I would have loved to have seen that opening scene when somebody his size comes in and slams down the suitcases.

Mr. Sondheim, I don't mean to be putting all of this on Mr. Miller. I have been entertained so much by yours. And I will stop at this point because I am going to leave people out.

I just love going to the theater. I remember one time within 2 days I had gone to a production of "Beauty and the Beast" and the next night to Patrick Stewart doing "A Christmas Carol" on a virtually bare stage, and both were fascinating.

I am a proponent, as my fellow Senators know, of the new technologies which are making audio-visual works available at a higher quality and much lower price to a far greater number of people than ever before. I am interested in preserving and promoting the unique and wonderful experience of live productions of opera and of community theater. My wife is on the board of the Washington Opera. I see some operas I don't like and I see a lot of operas I do like, but I love the fact that it is live. I think the best of the Internet age can coexist very well with what we have been doing on stage since the time of the Greeks.

I am always very cautious about antitrust laws. They were designed to ensure that competitive marketplaces could operate without undue pressure. In large part, they have been effective, but I do recognize that markets can fail and adjustments sometimes must be made that recognize the imbalance. Maybe this is such a case. I don't know. I want to hear more about the situation to make that determination. I have also asked the Department of Justice to share with us the views of its Antitrust Division on this proposal.

We are a fortunate Nation to have so many wonderful, wonderful writers and wonderful artists. But I also want to make sure of the incentive for them to continue; that somebody who is in high school now and has a talent will continue with that talent as they go on so that all of you will have the benefit of them, whether you are running the theater or producing a play or writing it.

So, Mr. Chairman, that doesn't answer all the questions and I have no idea what I am going to do on this legislation, but I do think what you and Senator Kennedy are doing is extremely important and I am glad to be here.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Chairman HATCH. Well, thank you so much, Senator.

We will turn to Mr. Schoenfeld at this point.

STATEMENT OF GERALD SCHOENFELD, CHAIRMAN, LEAGUE OF AMERICAN THEATERS AND PRODUCERS, AND CHAIRMAN, THE SHUBERT ORGANIZATION, NEW YORK, NEW YORK

Mr. SCHOENFELD. I, too, want to thank you for the opportunity of being able to testify here today, and I hope that I will be able to put the matter before you in the perspective of the Broadway theater as it is today and in the recent years.

The Shubert Organization is the owner and operator of 20 first-class, legitimate theaters and one off-Broadway theater in the United States, located in the cities of New York, Washington, D.C., Philadelphia and Boston. It is also a co-producer of plays and musicals. Among its most recent productions are "Cats," "Amour," "The Heidi Chronicles," "Sunday in the Park with George," "Passion," "The Ride Down Mount Morgan," "Indiscretions," "Dirty Blonde," "An Inspector Calls," "Amadeus," "The Grapes of Wrath," "The Life and Adventures of Nicholas Nickleby," "Jerome Robbins' Broadway," "The Most Happy Fella," "Children of a Lesser God," "Bob Fosse's Dancin'," "Whoopi Goldberg," "Pygmalion," "Chess," "Dreamgirls," "Ain't Misbehavin'," "The Gin Game," "A Streetcar Named Desire," "Lettice & Lovage," "Skylight," "Closer," "Les Liaisons Dangereuses," "Amy's View," "Little Shop of Horrors," "The Blue Room," and "Dance of Death." Indeed, four of the playwrights here have had their plays produced by the Shubert Organization.

I have occupied my present position for 32 years and have engaged in the negotiation of all of the various contracts involved in theatrical production, as well as in the collective bargaining agreements with the industry's unions and guilds. I am personally familiar with the Dramatists Guild and many of its members, and I have personal knowledge of the matters hereinafter referred to.

Obviously, the Dramatists Guild must believe it is subject to the antitrust laws of this country. Otherwise, it would not be seeking an exemption from its provisions. It is also obvious that an exemption from the antitrust laws is rarely granted. I submit that the Guild is not an organization that is deserving of exemption.

Contractual relations between legitimate theater producers and Guild members, who are the writers of dramatic plays and musicals, are incorporated in a suggested contract known as the Approved Production Contract, the APC. Such has been the case since 1985. Prior to 1985, an antecedent agreement incorporating many of the same provisions was promulgated by the Guild as a mandatory rather than suggested contract, and was known as the Minimum Basic Production Contract.

Now, the APC sets forth minimum terms and conditions regarding the production of plays and musicals written by Guild members. These terms, among other things, relate to fees, advances against royalties; territorial restrictions; and participation in subsidiary rights, such as stock and amateur performances, motion picture, television and radio performances, and foreign performances both in the English and foreign languages.

But the APC is a license agreement which grants the producer the right to produce the play as written by the dramatist, without

any right to make any changes of any kind in the text, lyrics, or music. It also grants the dramatist the right to approve the director, the cast, the designers and all other creative elements of the play, such as the scenic, costume and lighting designers. The territory granted by the license is restricted to the United States, Canada and the British Isles.

The APC also limits the period of time that the licensed rights may be exploited by the producer, as well as the duration of the producer's rights to participate in subsidiary rights. The exploitation of all subsidiary rights is reserved by the dramatist, as are all other rights not specifically granted to the producer pursuant to the APC.

In the event that a play or musical is initially presented in a non-profit or off-Broadway venue in the United States or in a foreign country, the license agreement governing such presentations usually contains a provision that in the event the play or musical is thereafter presented as a first-class production—that means on Broadway and other places in the United States—it shall be subject to all of the terms, covenants and conditions contained in the APC. Membership in the Guild is a coveted status, since members will derive the benefits of the APC.

Now, dramatists are represented by agents who conduct the negotiations on their behalf. Certain negotiated provisions are added to the APC, such as billing, per diems, travel arrangements, accommodations, types of transportation, the number of house seats, approval of the venues, managers, press agents, attorneys, accountants, and certain additional financial provisions.

Since the promulgation of the APC in 1985, and in order to accommodate changing economic conditions involved in the production of plays and musicals, a form of compensation for royalty participants, such as the authors, the directors, the designers and the producers, was created and is now known as the Royalty Pool.

Now, the Royalty Pool, as distinguished from just getting a share of the gross weekly box office receipts, provides for a percentage of the weekly net profits to be allocated to the royalty participants in the following manner.

The total of all of the royalty percentages is a denominator of a fraction whose numerator is the percentage paid to each royalty participant. So, for example, if the royalty participants are to receive 35 percent of the weekly operating profits and the total royalties amount to 15 percent and the dramatist's royalty amounts to 6 percent, the dramatist would receive 6/15ths of 35 percent of the weekly net profits. The dramatists and all royalty participants are also entitled to receive an agreed upon amount of money weekly for each royalty percent, regardless of whether there is any weekly profit.

Now, the Guild has unilaterally decreed that in no event shall a dramatist receive less than a certain specified percentage of the total weekly net profits, regardless of what the dramatist might otherwise receive as a Royalty Pool participant. Of course, this has an impact on the ability of the producer to negotiate with other pool participants, since they too expect to receive pari-passu treatment with the dramatist.

Unfortunately, these provisions of the APC are not left to negotiations between the agent and the producer. The ultimate party that is granted the right to approve the terms and conditions of the agreement negotiated between the producer and the dramatist is reserved exclusively to the Guild.

The approval process is subject to what is known as the certification process, pursuant to which the Guild must certify that the APC, as negotiated at arm's length, conforms to the minimum terms and conditions of the APC. If the Guild does not certify, the APC provides the agreement between the dramatist and the producer nevertheless may proceed, provided the dramatist, simultaneously with the submission of the APC to the Guild for certification, submits a letter of resignation to the Guild.

This has resulted in a unilateral renegotiation of the APC, compelling compliance with its provisions upon pain of dismissal. I know of no agreement amongst producers regarding the terms and conditions to be included in an APC.

In public offerings relating to the production of plays and musicals, the significant provisions of a dramatist's agreement are set forth in the offering documents. They demonstrate no uniform provisions manifesting the existence of a conspiracy on the part of producers. Indeed, all dramatists are not equally talented. Yet, they must receive at least the same terms and conditions of the APC.

The Guild and its members and their agents, by requiring compliance with the APC and its certification process, have had an impact upon the producer's ability to enter into negotiation on equal terms with the Guild members. The Guild is not a labor union and thereby exempt by statute from the antitrust laws. If they are granted exemption, then all inventors, researchers, painters, novelists and creators of literary property other than employees for hire would also be entitled to exemption.

Suffice it to say the conduct of the Guild and its members do not deserve an exemption, but they should continue to be subject to the strictures of the antitrust laws. They are the owners of their work and the copyright holder. To ask for immunity is to seek a shield from both prior and prospective antitrust law violations. If there are any restraints upon the production of plays and musicals, they are imposed by the Guild and its members and not by the producers or the venue operators.

In addition, please accept an attached letter from the League of American Theaters and Producers.

Thank you for your attention and your patience.

[The prepared statement of Mr. Schoenfeld appears as a submission for the record.]

Chairman HATCH. Without objection, we will put that letter as part of the record, as well. We will also put all full statements in the record to make sure that this record is complete.

We will turn to you, Ms. Wasserstein, at this point.

STATEMENT OF WENDY WASSERSTEIN, PLAYWRIGHT, NEW YORK, NEW YORK

Ms. WASSERSTEIN. Mr. Chairman, members of the Committee, I want to thank you for the invitation to appear before you today.

It seems to me very fitting that we address here in the Senate the power of the spoken word on stage and securing its future. Politics and plays have a great deal in common. Through the integrity and vision of the individual voice, they both create an arena to examine and advance the national character. In the theater, just as here, a well-crafted speech not only inspires change, but reveals our sense of morals, justice and ethics. As Oliver Wendell Holmes said, "Eloquence may set fire to reason."

But the independent voice that makes writing for the theater so compelling has become more and more endangered as the productions of plays are increasingly dominated by corporate interests. Moreover, the various individuals and groups necessary to ensure the success of any production have become increasingly organized. From the stage hands to the actors to the musicians, the directors, the choreographers, the hair stylists, the ticket sellers, to the press agents, all are represented by unions and all are able to bargain collectively.

But, ironically, those of us who are the fundamental creators are not able to collectively protect our words. I remember when my play, "The Heidi Chronicles," was celebrating its second year on Broadway and we had a party in the basement of the Plymouth Theater. All the props people, stage hands, actors and producers came, and I thought to myself we are here because I sat alone in my room and wrote a play. A play always begins with the word, and yet the creators of those words are not able to come to the table. The theater is a collaborative art form, and yet we are not able to collaborate in the future life of our plays.

Today, as my colleagues have pointed out, more and more playwrights find themselves faced with take-it-or-leave-it contracts and pressures on their artistic integrity. Think of what the impact would have been to Arthur Miller's "Death of a Salesman" if the producers had demanded that he change the end of the play to have a happy ending. Imagine, for the sake of selling tickets, if Eugene O'Neill had been persuaded to transform the Tyrone family in "Long Day's Journey Into Night" into a fun-loving Brady Bunch. It may sound absurd to you, but the pressures on young playwrights are enormous and they are increasing.

Your legislation, Mr. Chairman, rebalances the equation. It does not force a producer to produce a play or pay a playwright for something they did not write. What it does is allow playwrights as a group to develop a standard form contract so that our work, our copyrights, are respected throughout the production of our work.

This legislation allows us to update the standard form contract that was negotiated 17 years ago. Until now, under the shadow of antitrust laws, we have been unable to renegotiate. A lot of changes have occurred in the theater over the past 20 years and it is time that the standard form contract be updated to reflect those changes.

Theater is a vital art form not only for its entertainment value, but also for the creation of our National community. Theater is the place where audiences learn to really listen and consider without distraction. Theater also inspires and challenges students unlike any other spoken art form.

A number of years ago, I began a program in New York called Open Doors, in which practicing theater artists like the director Hal Prince take a small group of public high school students who have never been to the theater to eight plays over the course of a year. What we have consistently found is that the students felt that the theater was the medium, unlike film or television, where they did not feel manipulated or spoken down to.

Kimberly Ebanks, a student at DeWitt Clinton High School in the Bronx, summed up our programs in a speech to New York City high school seniors by saying, "Seeing plays has changed me from a student who believed that in order to be successful in life, I just had to succeed at math and science. But life isn't just about math and science. It is about hypocrisy, prejudice, love, joy, compromise, hate and conflict. These are the things that we don't examine enough in life, but we do examine it in the theater."

This legislation will ensure that the kinds of plays Kimberly is describing can still be written by an individual author and not tampered with for the purposes of commercial success. It will also secure the protection of all playwrights' words for future generations.

My colleague, Stephen Sondheim, began the Young Playwrights Festival in New York. Every year, over 1,000 young playwrights under 18 from around the country submit their plays. This legislation will secure that the theater will remain a place where they can bring their unique vitality and insight. With this legislation, the privilege of writing for the theater will continue to be granted to every playwright.

What unites all of us here today, Mr. Chairman, is that we hope this legislation is approved. Without it, I fear that the show will go on, but it will be a different kind of show entirely.

Thank you.

[The prepared statement of Ms. Wasserstein appears as a submission for the record.]

Chairman HATCH. Thank you so much. We appreciate your testimony.

Mr. Berlind, we will turn to you now.

STATEMENT OF ROGER S. BERLIND, PRODUCER, BERLIND PRODUCTIONS, NEW YORK, NEW YORK, ON BEHALF OF THE LEAGUE OF AMERICAN THEATERS AND PRODUCERS, INC.

Mr. BERLIND. Thank you, Mr. Chairman, Senator Kennedy and Senator Leahy. I am Roger Berlind. I am an independent Broadway producer. My theatrical producing career began in 1976. Since then, I have produced or co-produced over 40 plays and musicals on Broadway and many off-Broadway and regional productions, as well. The Broadway productions have won a total of 62 Tony Awards, including 12 for best production.

Some of these are "Amadeus"; "Nine"; "Long Day's Journey into Night"; "City of Angels"; "Guys and Dolls"; "Hamlet"; "Passion," by my friend, Steve Sondheim; "A Funny Thing Happened on the Way to the Forum," also by Steve; a revival of "A View from the Bridge," Arthur Miller's wonderful play; "Copenhagen"; "Kiss Me Kate"; and "Proof." This season, I co-produced the Pulitzer Prize-winning "Anna in the Tropics" and the revival of "Wonderful Town." Several

of my productions were actually in partnership with Jerry Schoenfeld and the Shubert Organization.

Before I began producing, I was in the investment banking business. My early partners included Arthur Carter, Sandy Weill, Marshall Cogan, Arthur Levitt and Frank Zarb.

Through a series of acquisitions, we became a relatively large company. I am still an outside director of one of our acquisitions, Lehman Brothers Holdings.

I became a producer not because it was a wonderful occupation for making money, but because I loved the theater, and it is my experience that almost every independent producer I know is besotted with a love of theater.

As I understand the proposed legislation, the playwrights seek to be free from the restraints of the antitrust laws to which the rest of us must adhere. I don't believe that would be a good idea, not for competition, not good for the theater, and ultimately not good for playwrights, particularly young playwrights without a proven track record.

The essence of theatrical production is risk. There is probably no more speculative venture, and having been involved for much of my life on Wall Street, I know about investment risk. The risk/reward ratio in theatrical production is not enticing. We have a fiduciary obligation to our investors to construct a budget that offers investors a hope of recouping that investment and making a profit. The process begins with the initial agreement to license the rights to produce.

I am told that the proposed legislation is designed to permit playwrights and producers to get together in a Committee of sorts to negotiate a standard form of license agreement for licensing plays and musicals. While I know that may sound reasonable, in practice it just won't work. The proposal assumes that there are two positions that are quite opposed—a producer position and a playwright position—and that they will be engraved in stone. That is just not the case.

There are way too many variables, and at least from the perspective of the producers we don't all agree on structure, price or terms. Every show is different and we want the flexibility to negotiate those things in each and every different context we face.

It is just a fact that one might not structure the same arrangement for a brand new, never before produced play by an unknown author as for one of the distinguished playwrights sitting here. That is not unfair. It is what allows the unknown author to become known. If the proposal were enacted, instead of a free market we would have a closed market with the Dramatists Guild somehow becoming a gatekeeper for adherence to pre-agreed terms.

That is what we cannot accept and that is why there are more productions of plays by non-members of that organization than by members. As you probably know, foreign authors are not members of the Guild, with some exceptions, and revivals generally are by authors who are not members of the Guild. Many of them are deceased.

The bottom line is that authors are not our employees. They own their works and we merely license the right to produce. If authors act in concert to dictate terms, they would be committing some-

thing akin to antitrust violations. A blanket exemption would be unwarranted.

Producers are independent contractors. Authors are independent contractors. Producers do not have and shouldn't have an organization that promulgates minimum acceptable terms, leaving authors in a take-it-or-leave-it position with no other options. Neither should authors have such a crude advantage.

I must confess there is a disconnect in my mind between the motives for the legislation and the desire to improve the lot of young playwrights. If fair return implies a higher level of compensation, I don't see how that would encourage the production of more plays by young playwrights.

For an example, this year I produced a play called "Anna in the Tropics," by a young playwright named Nilo Cruz. I picked it up from a production in Princeton and brought it to Broadway. There would not have been a possible chance of it happening if the Dramatists Guild APC had been applicable. We worked out something that was fair in my mind and in the author's mind and the author's representative's mind, and we got a production up on Broadway and it won the Pulitzer Prize before we even brought it in.

But it gave this young author an opportunity to be heard. It made his reputation. There are going to be many productions of "Anna in the Tropics" around the country this year and next already scheduled. He came from nowhere and he was produced in what the Dramatists Guild might consider a sub-minimal contract, but it was terrific for the playwright because he got a career and he is well worthy of it. That ability to negotiate independently, I think, is critical for young playwrights.

I thank you very much for your attention.

[The prepared statement of Mr. Berlind appears as a submission for the record.]

Chairman HATCH. Thank you, Mr. Berlind.

Mr. Miller, i know that you have had the flu. So if you need to leave at any time, we are just grateful to have you here and have your written statement, as well as especially your oral statement.

Mr. MILLER. Thank you very much.

Chairman HATCH. So we are going to let you go. Is that okay? Thank you for being with us.

Senator KENNEDY. Thank you very, very much.

Chairman HATCH. We appreciate it.

We appreciate all of you being here. This is important and I appreciate both sides of this issue. It is interesting to me, and I am sure Senator Kennedy and Senator Leahy, as well. We just appreciate having you all here.

Mr. Sondheim, you will wrap up. We will turn to you.

STATEMENT OF STEPHEN SONDHEIM, COMPOSER AND LYRICIST, NEW YORK, NEW YORK

Mr. SONDHEIM. Thank you. Mr. Chairman, I was president of the Dramatists Guild from 1973 to 1981 and am now a member of its council, as is Wendy. I would also like to note that joining us here today, although not at the witness table, are John Weidman, the current president, and Marsha Norman, our vice president.

The purpose of our being here is to ensure that we leave a legacy of a vibrant theater world to the next generation of playwrights. The Dramatists Guild is the only professional association for playwrights, composers and lyricists. We work to advance the rights of our more than 6,000 members. Membership, incidentally, is open to all dramatic writers, regardless of their production history.

The Guild is not a union, and because of our unique status in the theater, we do not come under the protections of the National Labor Relations Act. We do not necessarily meet the definition of employee that would allow us to bargain collectively, and that is what we are here to talk about, since it is at the heart of our collective concern about the future of the theater.

As you know, Mr. Chairman, I have been working for some time with you and other members of Congress to promote this legislation. I have walked the halls of Congress and met with members and their staffs to highlight the problems in today's theater. Your leadership on this legislation, along with that of Senator Kennedy, its coauthor, is deeply appreciated, and we are encouraged by the companion legislation which was introduced in the House last Congress by Representatives Hyde and Frank, legislation which will be reintroduced shortly. The breadth of support for this legislation shows that it is not a partisan issue confined by ideological boundaries.

Arthur Miller spoke eloquently about the importance of theater to the Nation and I won't embellish on what he said. But I would like to underscore his comment that we are not here today speaking for our own interests. We are speaking for others whose names may not be as well-known as ours. This may sound altruistic, but I assure you it is not. Without them, the theater has no future.

Like Wendy and Arthur, I have been fortunate enough to have my work win critical acclaim, but if we and others like us can use our success to ensure the opportunity for others, then we truly will have spent our time here well.

In walking the halls of Congress during these past months—and it is an awesome walk—I have learned that changes in our laws do not come easily, nor should they. Especially in the antitrust arena, change is very difficult to achieve. Exemptions should not come easily. Yet, case precedent has granted the same exemptions we seek to both choreographers and scenic designers, who are permitted to own their own work and bargain collectively.

I believe that playwrights, lyricists and composers should be allowed the same opportunity, and that this proposed legislation is necessary. Lest this seem to be an adversarial issue with theater producers, I would like to quote to you a letter written to the Chairman and Ranking Member in support of this legislation by Harold Prince, my collaborator for many years since "West Side Story," our first venture together, and a man who is generally acknowledged to be the contemporary American theater's leading producer and director. As much as anyone in today's theater, he understands both sides of the issue, since he too is both employer and employee.

I quote, "As things stand today, some of the great plays and musicals that have not yet been written may never be. Increasingly, up-and-coming playwrights face pressures that are driving

them to other media. Our core problem is to encourage a return to the negotiation process. Hiding behind arguments about antitrust prevents us from a practical confrontation. Producers and playwrights are natural allies, or should be. Before it is too late, we must save a vital resource of our Nation's artistic life. I hope that your hearings will provide the momentum to get us back to the table. It sounds melodramatic—of course, I am in the theater—but time is running out. It really is," end quote.

Since there are serious questions about coverage of the Dramatists Guild under the NLRA, our ability to work cooperatively and take collective actions on behalf of our members might be subject to attack on antitrust grounds. A standard form contract updating the one that was agreed to as part of a consent decree more than two decades ago might be unenforceable as violating the antitrust laws.

This is not just an economic issue, however. It is one of intellectual property rights. I, like my colleagues here, have often had to fight for these rights. For example, one show I wrote called "Merrily We Roll Along" is a piece that goes backwards in time. It starts with the end of the story and scene by scene proceeds back to the beginning.

One producer tried to reverse the order of the play because he believed it would be easier for the audience to understand. Needless to say, it did not improve matters, but even if it had, it was not the show we had written or intended to be presented. Because I was a recognized name in the theater and had a certain amount of what is known as clout, I was able to protect the piece and stop the production, thus preserving the integrity of my intellectual property. Not every playwright is so lucky.

It is partly due to this collective ability of the Dramatists Guild that those rights can be enforced. But under the outdated contract we now have with theater producers, our ability to negotiate realistically based on current market factors and realities is limited.

As a creative artist in your own right, Mr. Chairman, you understand how important an artist's intellectual property is. A limited exemption to the antitrust laws, as your legislation provides, does not choose sides. Rather, it will help create a competitive marketplace where all interests can be appropriately balanced. We all look forward to working with you and the members of the Committee on this important legislation, important not only to us writers, but to the future of the American theater as well.

Thanks for listening.

[The prepared statement of Mr. Sondheim appears as a submission for the record.]

Chairman HATCH. Well, thank you. We appreciate all five of you being here today and it has been a really interesting hearing to me.

Mr. Sondheim, let me just ask you this. When you were a young writer—and it was years ago—how do you compare being a young writer just trying to get a break compared to what young writers trying to get a break have to go through today? Is it the same?

Mr. SONDHEIM. Well, first of all, there were many more productions in the old days or when I was young. There were many more independent producers. Costs were much less, so there could be more independent producers, as opposed to corporate producers, be-

cause it costs so much money to put on plays and musicals today. Therefore, as a young writer I got a much better chance to have my work heard and produced than young writers do today.

Also, when I started in the theater there was no such thing as off-Broadway. So there was no other place to be heard, except on Broadway, and that was both good and bad. That is the essential difference. It is harder particularly for playwrights, also for writers of musicals, but particularly for young playwrights it is very hard to get work out there that can be commercially viable and let them afford to write the next play, because that is what it is about. Playwrights just want to be able to afford to write the next play.

Chairman HATCH. You have collaborated closely with many producers over the course of your career. Do you believe that the proposed legislation would adversely affect the relationship between producers and writers, including young writers, in ways that some anticipate?

Mr. SONDHEIM. No, I don't, because it is a collaborative process. It seems to me, as Hal says, the producers and playwrights are the natural allies. They are the two who start the process. The writer starts the process, as obviously the only begetter. The producer is next in the process. It seems to me that what we want is collaboration rather than a kind of disintegration.

Chairman HATCH. Ms. Wasserstein, let me ask you, just how extreme are the pressures on playwrights to accept a take-it-or-leave-it contract that contains perhaps unfavorable terms? And if you could, could you elaborate on the effect that these contracts have on artistic independence and even the integrity of dramatists?

Ms. WASSERSTEIN. I think there is a lot of pressure on young playwrights, especially as the venue becomes smaller and smaller. If you think of it this way, there is, I believe, one or maybe two new American plays on Broadway this season. So a young playwright is really under a lot of pressure, saying, well, if you want to get your play done, you have got to accept this. Actually, by them being able to call the Guild and talk to somebody, it gives them a bit of backbone to know that they have right.

The other thing is that, artistically, the difference between writing for theater and film or television, which is all wonderful, has to do with intellectual property, so that no word of a play can be changed without our permission. Once you start writing film or television, it is completely different. I think what we are talking about here is when those lines get blurred.

To me, the Dramatists Guild and that fundamental right of ownership of the intellectual property of your work is what makes playwriting into the art form that it is. And the pressure to lose that right, I really think will fundamentally not only affect young playwrights, but it will fundamentally change the art form.

Chairman HATCH. Let me go to you, Mr. Schoenfeld. Do you believe that the proposed legislation would adversely impact the profitability of stage productions? Or, in your opinion, would the increased vitality and creativity that we hope will result from our bill actually help the business end of these productions in the long run? I think I know what you are going to say, but I am not sure.

Mr. SCHOENFELD. I hope I surprise you.

Chairman HATCH. I hope so, too.

Mr. SCHOENFELD. Candidly, I don't know of any playwright that has abandoned the theater under the circumstances that have been described by the Guild. They leave the theater because the advantages financially are much greater in television and in movies.

When you are confronted with a contract that sets forth what the minimum terms are, regardless of who the playwright is, and that is the starting point for your negotiation, you can only go in one direction and that is up. Human nature being what it is, that is the direction that the agents for the authors seek to achieve, although the original tenor, if you will, of the litigation that was brought in 1982 was that the dramatists would accept across the board, whether you were Sondheim or Schaffer or Neil Simon or anyone else, those provisions that were in the new APC.

Now, those provisions in the new APC are exceeded regularly by authors. So we are put in a position now of how close can we come to the minimum provisions that are in the APC. The most frustrating unilateral thing that has happened is the intervention by the Guild unilaterally in the Royalty Pool, a term which we created or a device which we created to meet the impact of inflation and the impact of a royalty on gross receipts regardless of net profits. So out of sheer necessity, we created the Royalty Pool. That was interdicted by the Guild, providing that their members can receive no less than a certain percentage of the overall net profits.

So this idea that we, the producers of shows today, are strangling the creative marketplace is not evidenced by any concrete examples that have been put before you today. And I ask you, are you entitled to the same terms and conditions for writing songs as Steve Sondheim is? Am I required to pay you the same basic starting terms as I am with Steve?

Chairman HATCH. Are you implying that I am not as well-recognized as—

Mr. SCHOENFELD. I am implying that your body of work so far—I hope that it will emerge and flourish, but right now Steve has an economic advantage over you.

Chairman HATCH. You did good.

Mr. Berlind, my time is up, but let me just ask one question so I cover the whole panel. Your testimony brought up the financial risks involved in the production of a play or a production in the theater. In your opinion, is there any reason to fear that by allowing a collective negotiation of the standard form contract, the balance between dramatists and producers will be upset in favor of the playwrights in a way that would give too much weight to the creative side of the equation and unacceptably increase the already substantial risk taken by producers?

Mr. BERLIND. I think, Mr. Chairman, the playwrights would not be concerned about this and this would not be the matter we are dealing with today unless they felt that the economic consequence of a new agreement would be more favorable. And while that might not be applicable to the more established playwrights, they are quite rightfully, I think, concerned with the young, unproven playwrights and protecting their rights.

I don't know how we would go from where we are today to a better economic opportunity for young playwrights with the revision of those terms. The way young playwrights can prosper is to get pro-

duced, and to get produced, we have to create an economic model that allows for the possibility of a fair return. The fact that it is a new playwright operates against that concept because there is no name value in the playwright.

Our business is to get plays on to discover new works, and I think we agree on that. How to get there is the open question, and if whatever we agree upon can be shot down arbitrarily by the Dramatists Guild, then there is no point in even going into negotiation in the first place.

Chairman HATCH. I see.

Mr. Schoenfeld.

Mr. SCHOENFELD. May I just add one other observation? Most plays and musicals today originate elsewhere than on Broadway. They are originating in non-profit regional theaters throughout the United States. When a play originates there, there are no strictures whatsoever in the negotiation between the author and that regional non-profit theater.

Not only that, though, there are strictures put on there at the place or origin on any producer who subsequently wishes to take that play further. That venue gets a share of the royalties. That theater venue is attached to that play on Broadway, gets billing on Broadway, sometimes gets participation in the author's subsidiary rights, and that share of subsidiary rights is then sought to be imposed on the Broadway producer.

So there are strictures in the pipeline. They are put there in the beginning as a result of the agreement between the author and the originating venue, and we become married to them as a result of a negotiation to which we had no part.

Chairman HATCH. Thank you.

Mr. SONDHEIM. If I may add to that, the strictures are put on by the producers at these venues, and understandably, because they want to share in whatever profits for their own theater so that they can afford also to put on more plays.

I would also like to point out that we all want to put on plays, and the young playwright more than anybody. The young playwright is therefore in the most danger of being taken unfair advantage of. That is one of the reasons we are here, is to protect the young playwright.

Chairman HATCH. Thank you.

Senator Leahy.

Senator LEAHY. Thank you.

Let me follow up a little bit here. You noted earlier that playwrights are put in these kinds of take-it-or-leave-it contracts.

I have read your testimony, Mr. Wasserstein, and Mr. Miller's, and I understand the concern there. I also, though, always worry about creating any kind of an antitrust exemption. I am reluctant to do so. I think Congress made a very bad mistake, incidentally, in creating one for baseball. I think we have had some real problems as a result. I think we ought to get rid of the darned thing.

Do either one of you know of any specific instances where a take-it-or-leave-it contract has forced a talented writer from the theater? I mean, you have talked about the fact that obviously some can make more money going off to write sitcoms or something like that, but a lot of people have a great love of the theater and stay there.

But do you know of any instances where these take-it-or-leave-it contracts forced them away?

Mr. SONDHEIM. Excuse me one moment, Senator.

I wanted to get a good, specific example from Marsha. There was a musical of the movie "Shane" written by one of our Guild members, Sarah Schlesinger, and she was told by the producer that if she offered to sign a contract that had to have Guild approval, they would not produce the play, and the play was not produced. Marsha says there are 17 examples that she can name of such a thing.

Senator LEAHY. I should note for all of you—and Senator Hatch may have already said this before I came in, but after you get the transcript back, if you want to add to something or you have a name or a date wrong, of course, you can do that. We are not playing "gotcha" here.

Mr. SONDHEIM. No, no.

Senator LEAHY. So if you want to add more, you can.

Mr. SONDHEIM. Well, one of the things I would just like to say is that you asked about take-it-or-leave-it. The reason the Guild was formed in the 1920's was because producers presented playwrights with take-it-or-leave-it arrangements.

Senator LEAHY. I am going to actually submit some questions, but one I had was I understand that you have had the sort of same standard form contract since 1982. Is that correct?

Mr. SONDHEIM. Yes.

Senator LEAHY. If you had a renegotiation of the 1982 standard form contract—and obviously a lot of things have changed; Broadway or anywhere looks a lot different today than it did back then—would that, in fact, violate antitrust laws if you wanted to renegotiate that?

Mr. SONDHEIM. I don't believe so, Senator. But, of course, I am not an expert on antitrust. I do know that what we want to do is just be allowed to negotiate or to renegotiate.

Senator LEAHY. Has anybody from the producers threatened an antitrust question if you came back and said, look, we want to renegotiate this 22-year-old contract?

Mr. SONDHEIM. I don't know. They did then, of course. Excuse me. Marsha says they did it this morning.

Senator LEAHY. Mr. Berlind, do you want to add something on that?

Mr. BERLIND. Yes, sir. The concept of take-it-or-leave-it is really implicit in any negotiation. If both sides want to accomplish something, they will come to an accommodation. If one side wants more than the other, so much more that the other party can't conform, then it doesn't happen. You could call that a take-it-or-leave-it, but that is true of every negotiation or any business. It sounds draconian, but it is—

Senator LEAHY. Any reason why they couldn't renegotiate their 1982 contract? If they all came together and said we want to renegotiate the 1982 contract, is that a violation of the antitrust laws?

Mr. BERLIND. The problem with the 1982 contract is that the take-it-or-leave-it was given to the playwrights by dint of the certification requirement. Regardless of what the playwright's wish might be—it might differ from the Dramatists Guild's artificially-

imposed conditions—the Dramatists Guild has the ultimate say in approving that contract.

Senator LEAHY. But would it violate antitrust laws if they wanted to renegotiate the 1982 contract?

Mr. BERLIND. Not wanting to renegotiate that. It doesn't violate anything.

Senator LEAHY. Mr. Berlind, there is only limited time. I am not going to play word games with you. Please don't do that with me.

Mr. BERLIND. Sure.

Senator LEAHY. If they came forward and said we want to renegotiate that, is that violating the antitrust laws, in your opinion?

Mr. BERLIND. No, I don't think a renegotiation would violate antitrust laws.

Senator LEAHY. Mr. Schoenfeld?

Mr. SCHOENFELD. I would like to differ. If producers got together and agreed amongst themselves what terms they would afford playwrights, I believe that would be violating the antitrust laws.

Senator LEAHY. Let me ask you this, Mr. Schoenfeld. Correct me if I am wrong on this, but I understand that scenic designers retain creative control over their intellectual property. Is that correct?

Mr. SCHOENFELD. Yes.

Senator LEAHY. As do playwrights, but they are unionized. Why shouldn't we allow playwrights the same status as these designers; in other words, preserve their copyrights, but also grant them the power of collective bargaining? The designers have that power. Why not the playwrights?

Mr. SCHOENFELD. Because under case law, they are deemed to be employees, and consequently they have had the privilege of forming a union and being exempt from the antitrust laws. The ability to deal with a designer's work, make changes, of course, with the consent of the designer—but the originating structure, if you will, of the designer's work is participated in directly by the producer and the director, and indeed the author. So there is a degree of flexibility that does not exist with the dramatist. I hope that distinction has been made clear by me.

Senator LEAHY. I understand what you are saying. We have to make up our mind whether we agree with it, but I understand what you are saying.

Mr. SCHOENFELD. Let me say this. I can disagree with the interpretation of whether or not those people are indeed—or put it the other way; I can say that those people are not entitled because they are independent contractors, but I have not had the support, if you will, in the premise. But the analogy that you make, as I say, is subject to the distinction that I have tried to provide you with.

Senator LEAHY. People disagree all the time. You are going to be amazed to hear this, but there have actually been times when Senator Hatch and I have disagreed.

Mr. SCHOENFELD. Well, I suggested to Senator Hatch earlier that he probably should have a guild for songwriters such as himself where he would be able to get a minimum contract for his work.

Senator LEAHY. I think, Ms. Wasserstein, you wanted to say something.

Ms. WASSERSTEIN. I just wanted to say that the position of the playwright is unique. I think in terms of antitrust, because of our

uniqueness, this is not precedent-setting. There is a cloud over our negotiation in that we sit alone, we write a play, and then to put on this play we go into a collaboration. We are in a collaboration with the producers, the designers, the directors, everybody. It is not like we write a play and then we just submit it and go home.

You are there; you are there through all the rehearsals. You have to sit through those previews. When those reviews come out, you are there. So it is a very unique situation in terms of intellectual property. We are the creators. It is our copyright, but we are involved in a collaboration with all of these artists. In fact, the play itself, as I said before, would not exist without us.

So I think, therefore, this isn't precedent-making. It is a unique situation and it has to do with creating, writing for the theater, uniquely for the theater, not film, not television. Therefore, it has to do with the future of the art form.

Mr. SONDHEIM. I would also just like to add that Jerry is right when he says that there is input into the scenic designer's work by the director and the playwright. But he is wrong when he says there is not exactly the same kind of input put into the playwright's work, just the way choreographers also own their own work and are both employers and employees. They own their intellectual property, but they aware, if they are any good, that it is a collaborative effort. I know of no good playwright who doesn't collaborate in the same way set designers do.

Mr. SCHOENFELD. Senator Leahy, if I could make one post-comment, I do a play on Broadway; I want to do it someplace else. I can change the scenery, I can change the designs, I can change the director. I can't make any changes in that play. I am married to that. I am not married to anybody else.

Mr. SONDHEIM. You can make changes in the play if you talk to the playwright.

Mr. SCHOENFELD. I understand that kind of a unilateral conversation, yes, I do.

Senator LEAHY. I am intruding on Senator Kennedy's time and he is senior to both of us here, so I don't want to do that anymore. I will submit some questions, though, and I wish you would look at them carefully. I do appreciate all of you being here. I always wrestle with this question of any kind of an antitrust exemption. I am not always sure we are dealing with arm's length transactions, but I will read your answers very carefully.

Thank you, Ted.

Chairman HATCH. Senator Kennedy, we will turn to you.

Senator KENNEDY. Thank you very much. Just to come back to what Mr. Sondheim said, I was just listening to our introduction where we were talking with Roger Berlind about "West Side Story," one of the great successes, and you could mention many of them.

It is difficult, where you have Lenny Bernstein and yourself and Mr. Berlind, that your people aren't working together to try and make it a great play, a great musical. I think many of us have seen all of those pictures at the rehearsals, where virtually all of you are out there all trying to work on a common purpose and a common design.

I imagine you are always looking at the reviews: the play is too long, the language isn't good, all of these kinds of things that come

in. As a politician, you make a bad speech, you have a bad day, and you want to try and get it right. You are trying to all be part of a team on this.

It is extraordinary to me at the end of the day when you consider that you have two ingredients here. You have one that is going to be the producers and the other the creators, but in the meantime all the other people get paid before you. I mean, the actors get paid, the musicians get paid, the stage hands get paid. The rental costs go up. The makeup people get paid, the dressers get paid, the ushers get paid, security gets paid. Everybody gets paid.

Yet, you are the essential, maybe the other end in terms of the producers, but you are the essential; you are the one that sits in that room and writes that first word. I mean, having listened to all of it, it is difficult not to say at the very end that you are getting the short end. I mean, that is just the way it comes across.

You can take a hard position and say, well, look, we are locked in and nothing can be changed or altered in any of these, and every one of these other people have to work and we have to risk. But everyone takes a chance on this. They are risking, as well.

You could say, well, it is collective bargaining and the definition of "employee," and then you get to define "employee" under the law. What we are trying to do is find a way where we can make sure that people that are going to be creative, the younger people—and I have enormous respect for all of you coming down here today. You didn't have to do it.

I have enormous respect for those who are in the creative aspect because none of them had to do it. And around this town, most people don't have that kind of an attitude. The fact that they are here and willing to do it is enormously impressive and important, and carries a lot of credibility, quite frankly. I am sure that is true of our friends from the producers.

And that is the dilemma, it seems to me. This is not an even balance. You can say, well, we can take this and we can go to some other place; all of these people aren't going to get employed and we can go to any other place. They are the ones that are writing and that are creating, and it seems to me to be a balance and they are pretty much at the short end.

You can look through to the final end about who gets paid. The Royalty Pool is 35 percent of the weekly profits, and then it is 6/15ths of 35 percent. This is a pretty thin reed on this for people that have as much—you know, people who are creative can be big losers, too.

Mr. SONDHEIM. Two years of your life.

Senator KENNEDY. That is a big chunk of time and that is a big loss, too. I think it does present a dilemma. We don't want to get caught up in just these words that can be hidden behind. I know people aren't looking for hiding behind them in order to try and leverage a particular position. Maybe people are; maybe people will be. I mean, they do that all the time around here. But we ought to be able to get this so that we are not going to lose that kind of capability.

Mr. SCHOENFELD. May I just say one thing so I don't appear to be put in the realm of somebody who is grasping here?

Senator KENNEDY. Sure.

Mr. SCHOENFELD. When we enter into the APC, we are required and we agree to a substantial payment as a fee to the author in the tens of thousands of dollars, and a substantial advance against royalties to the author in the substantial tens of thousands of dollars. So up front, that is the largest payment made to anyone in the collaborative scheme.

Furthermore, if we don't exercise the option, we lose those payments. So the other people are getting paid when the show is being presented in the theater, as indeed the author is. Certainly, the disparity between what the author receives and what these other people receive is, I think, due recognition of the author's contribution to the play, to the work, to it being there, which I agree completely is the raison d'etre that we are here today.

Mr. SONDHEIM. Well, we all agree that it needs to be renegotiated, so let's renegotiate.

Senator KENNEDY. I have been fortunate to have a very, very good friend, as a matter of fact, someone that worked not on this Committee, but on the HELP Committee for 10 years, and went into producing and happened to get very lucky. He has just made a very big chunk of change.

I think that we need more people that are going to be involved in all this, in producing and getting more help and assistance in terms of taking some chances with writers. I think I would certainly be open to all of that kind of consideration in terms of support. Other countries do a lot of other things. I don't think the mood is probably there now to try and do what they do in other countries.

I was very, very fortunate to know my son Teddy's roommate, who was the screenwriter for "A Beautiful Mind." He was a classmate of my son Teddy's and now is making more money that you can possibly imagine, a very talented, creative kind of a person. He has talked to me about some of these things. He comes up and visits with us. He is godfather to my grandson and a very capable and wonderful, wonderful writer.

I hear from him exactly what I heard from Mr. Sondheim and Mr. Miller and Wendy Wasserstein. I hear exactly the same kind of thing. He has made it big out there and he is staying out there. I am not going to bother you with personal stories. He was out there and was sort of a wordsmith for some of the productions for his classmates. Many of us have listened not only to the other side of the table here, but also have been listening to some of what is happening out there.

I want to thank to thank the Chairman. This has been very informative and helpful. I think the Chairman would agree that the best thing is to try and get all of you together and to try and come up with something that we can work out and all work on closely together.

Senator Hatch and I know we have been able to work together and been able to get things done. We have worked together and we have compromised and gotten things done. We have worked together with groups that have gotten things done, and that is the best way to try and get things done around here. But other times, if there is unfairness, then we have to try and sort of deal with

those issues as well. We are hopeful that we can try and do this, and do it right and well.

I want to thank the Chair. As the Chairman of the Judiciary Committee, Orrin has a lot of things to do and he has spent a lot of time on this.

Finally, I want to thank Wendy Wasserstein for all her work on the arts.

Ms. WASSERSTEIN. Thank you.

Senator KENNEDY. That is a wonderful program.

Ms. WASSERSTEIN. Yes, it is. It is a great program.

Chairman HATCH. Well, thank you, Ted.

I want to thank all of you for being here. As somebody who has written music for 10 years mainly as an enjoyment, something that is uplifting and helps me to tolerate serving on this Committee with Senator Kennedy and Senator Leahy—

[Laughter.]

Chairman HATCH. It expands your mind and it keeps your creative juices going. It helps you to be more empathetic. There are so many advantages to writing music, but not all of us can be a Stephen Sondheim. Now, I am aiming for that in my spare time, what little I have.

But I do know one thing, that songwriters have a very, very difficult time. I can name some of the greatest writers in this country that barely get by. By the time they recoup from their royalties what has been paid to keep them alive while they have been writing, they really don't have an awful lot to show, some of the best writers in the country. It is a tough way to make a living. I think it is even tougher to make it into live theater; I think much tougher than that.

I mean, for the short time that I have written music, I have been fortunate to write with good people. I am certainly not getting rich from it, but I will never forget when I got my first royalty. It was, I think, $62 or something like that, and I was an ASCAP national meeting, about 1,000 writers. I said I just got my first royalty check for about 60 bucks, and I held it up and the place went wild. I mean, they stood on the chairs and clapped and cheered. And I thought, my goodness, they sure treat us members of Congress nicely.

I sat down next Marilyn Bergmann and she said, Senator, the reason they are so excited about your first royalty check is that there are a lot of wonderful writers out there and hardly any of them will ever get a royalty check.

Mr. SONDHEIM. But ASCAP is the protective organization for all of us.

Chairman HATCH. It is the protective organization, but my point is that I wish we could come up with some way that could help people to be able to break through the difficulties in making it, because I see some people who just give up who are marvelous geniuses in music. I can imagine how much more difficult it must be in the fields that we have been talking about here today.

You business folks deserve a lot of credit for taking the risks and doing the things that you do. On the other hand, I don't see where you are going to be tremendously hurt if you can negotiate a similar agreement.

Now, you need to write to me, Mr. Schoenfeld, and you also, Mr. Berlind. We are open to your ideas, but it seems to me it is not going to hurt you to work out an agreement that would be applicable for the benefit of these young writers, as well as older writers. We can opine up here all day long, but you are the people who are the experts and I feel like we have been greatly blessed today to hear from you real professionals and it means a great deal to me.

We love what you do. We love the creativity. We know what comes from it. We know the uplifting qualities for the most part that theater has throughout America, we know what it has meant to this country, and we want to keep you going. We want to make sure that somehow or other there is going to be an expansion of these creative rights in the future, and you have got to help us to know how to do it. With all of the invasions of privacy today and all of the ways of stealing and taking advantage of artists and creative people, we have got to have some help from you experts.

So, with that, we are grateful that you all took the time to come here. I am grateful that my colleagues have been with me here and we will see what we can do to resolve this matter. Thanks so much.

The Committee stands adjourned.

[Whereupon, at 3:46 p.m., the Committee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

The League of American Theatres and Producers, Inc.
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Testimony of Roger S. Berlind

on behalf of the League of American Theatres and Producers, Inc.

on S. 2349 The Playwrights Licensing Antitrust Initiative Act of 2004

before the Committee on the Judiciary

in the Senate of the United States

April 28, 2004

Mr. Chairman and members of the committee:

My name is Roger Berlind and I am a Broadway producer. My theatrical producing career began in 1976. Since then, I have produced or co-produced over 40 plays and musicals on Broadway and many off-Broadway and regional productions as well. The Broadway productions have won a total of 62 Tony Awards, including 12 for Best Production. Some of these are *Amadeus*, *Nine*, *Long Day's Journey into Night*, *Ain't Misbehavin'*, *Guys and Dolls*, *Hamlet*, *Passion* (by my friend, Stephen Sondheim), *A Funny Thing Happened on the Way to the Forum*, also by Steve, *Copenhagen*, *Kiss Me Kate* and *Proof*. This season, I co-produced the Pulitzer Prize-winning *Anna in the Tropics* and the revival of *Wonderful Town*.

Before I began producing, I was in the investment banking business. My early partners included Arthur Carter, Sandy Weill, Marshall Cogan, Arthur Levitt and Frank Zarb. Through a series of acquisitions, we became a relatively large company. I am still an outside director of one of our acquisitions, Lehman Brothers Holdings.

As I understand the proposed legislation, the playwrights seek to be free from the restraints of the antitrust laws, to which the rest of us must adhere. I don't believe that would be a good idea - not good for competition, not good for the theatre - and ultimately not good for playwrights, particularly young playwrights without a proven track record.

The essence of theatrical production is risk. There is probably no more speculative venture, and having been involved for much of my life in Wall Street, I know about investment risk. The risk/reward ratio in theatrical production is not enticing. Producers have a fiduciary obligation to their investors to construct a budget that offers them a hope of recouping their investments and making a profit. The process begins with the initial agreement to license the rights to produce.

I am told that the proposed legislation is designed to permit playwrights and producers to get together, in a committee of sorts, to negotiate a standard form of license agreement for licensing plays and musicals. While I know that sounds reasonable, in practice it just won't work. The proposal assumes that there are two positions – a producer position and a playwright position – that can be stated for all time. It's just not the case. There are way too many variables, and at

least from the perspective of the producers - we don't all agree on structure, price or terms. Every show is different, and we want the flexibility to negotiate those things in each and every different context we face.

It's just a fact that one might not structure the same arrangement for a brand-new never-before produced play by an unknown author as for one of the distinguished playwrights sitting here. That's not unfair; it's what allows the unknown author to become known. If the proposal were enacted, instead of a free market, we would have a closed market with The Dramatists' Guild somehow becoming a gatekeeper for adherence to "pre-agreed" terms. That is what we cannot accept, and that is why there are so many productions of plays by non-members of that organization than by members.

Thank you for this opportunity to testify. I would be pleased to answer any questions that you may have.

The League of American Theatres and Producers, Inc.
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April 27, 2004

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: The Playwrights Licensing Antitrust Initiative Act

Dear Senator Hatch:

The League of American Theatres and Producers, Inc. writes in opposition to the legislation we understand has been denominated "The Playwrights Licensing Antitrust Initiative Act", and to explain our reasons for doing so. We understand that this proposed legislation is virtually identical to legislation proposed two years ago, as "The Playwrights Licensing Relief Act of 2002" (S. 2082). As we discuss below, this proposed legislation is directly contrary to national antitrust policy, amounts to a legislative pardon to playwrights for past and current antitrust violations, will not serve the purported goal of increasing the number of "new American theater works", and is not justified by any legitimate national labor policy.

The League

The League is the national trade association for legitimate Broadway theatrical producers, theatre owners, general managers and presenters. The League has over 400 individual members, most of whom are producers of first-class or touring Broadway productions in New York and on the proverbial "Road". For more than 75 years, The League has represented the interests of producers and others in matters such as collective bargaining with unions representing actors or musicians, government relations and promotion of Broadway theatre. The League seeks to preserve for producers across the country the ability to negotiate an individual contract with a playwright for the use of the author's creative work at a fair market value, taking all the factors relevant to that particular work into consideration, thus affording opportunity to emerging playwrights and new works.

The Law

The Sherman Antitrust Act, 15 U.S.C. Secs. 1 *et seq.*, prohibits agreements that unreasonably restrain trade, and under that Act, which has embodied the national policy on competition for more than 100 years, agreements among competitors to fix, or even to negotiate collectively, the terms on which they will do business with others are *per se* illegal. Such agreements prevent an individual buyer and an individual seller from making decisions based on the circumstances of the relationship between them. Therefore, the Supreme Court has consistently held that these

agreements are so damaging in their economic effect that they will always be held to be illegal without need to examine the supposed justifications for them.

The Proposed Legislation

This proposed new law would sanction the existence of a cartel in which playwrights will fix prices and other terms for the license of their creative work product, which they own entirely. Producers, on the other hand, who are also engaged in a creative process, are and will continue to be prevented from even exchanging information with each other about their negotiations with playwrights, because they are at risk of being charged with violating Section 1 of the Sherman Act. A producer's individual judgment that a specific play has a certain value, taking into account its quality, its subject, length, the playwright's reputation and past works, the staging and talent required, other plays that may be available for licensing, and all the risks of producing a Broadway play or musical, is irrelevant under the proposed new law. This type of legislation can only increase the cost of producing plays, and therefore like any other cartel, the playwrights' legislatively sanctioned agreements restraining competition among them will have the effect of reducing the ability of Broadway producers to present works at fair prices.

Playwrights are not laborers

Playwrights are not a "labor" group and should not be granted the right to bargain collectively. Playwrights writing for theatre own the creative work that they produce and hold the copyrights on their plays. They can license the work over and over, in different theaters at different times, in many different cities, and to various non-theatrical media. A producer or other party that holds a license to the playwright's work cannot change one word or stage direction without further consent from the playwright. The creation of a permanent, tangible product that they own distinguishes playwrights from laborers, including athletes in organized sports. Other differences include the fact that playwrights do not take direction from producers in creating their work, may work on more than one play at once if they like, and choose the parties, locations and times on which they will license their work. Generally a producer does not know that a play is being written until it is finished, or at least a substantial amount of work has been done. The playwright is free to offer the play to any number of producers at once in order to obtain the best terms. Playwrights can be licensing multiple plays to multiple parties while working on new plays. Playwrights, unlike other kinds of "talent" such as actors, stagehands, musicians, directors, designers and others, do not typically enter into contracts with producers that bind them to provide services, *i.e.*, to write plays.

There is no precedent for ignoring reality and creating a class of theatrical creative personnel who in fact have no "employers". Indeed, this new legislation, if adopted, would enable playwrights to bargain collectively without providing producers the protections afforded to employers under Section 8(b) of the National Labor Relations Act. The Dramatists Guild, as representative of its members, would not have to comply with the protective provisions of the NLRA for governance, reporting and disclosure, as all other labor organizations must do. In fact, because the Guild is not and cannot be a labor organization, The League and individual producers would not be protected by the non-statutory labor exemption from the antitrust laws that protects agreements between a non-labor party and a labor organization. Thus, The League cannot lawfully negotiate terms with the Guild on behalf of its producer members.

The Dramatists Guild should not be a cartel

We understand that the Dramatists' Guild, which is a trade association for playwrights, is the key proponent of this new legislation. The Subcommittee should be aware that the Guild has a history of committing violations of the Sherman Act, and that in fact currently it engages in practices which, to the best of The League's belief, constitute restraints of trade. As a result of the settlement of an antitrust lawsuit that The League brought against the Guild in 1982, the Guild in 1985 promulgated two forms of contract (called "Approved Production Contracts" or "APCs") that it recommended to its members for the production of plays and musicals. The APCs were "suggested" forms, which playwrights and producers were to be free to depart from and which did not fix specific economic terms. However, the Guild has consistently required that playwrights submit the APC for a production to the Guild for "certification". It enforces that requirement by providing that any Guild member who enters into a contract that the Guild has not certified is considered to have tendered his or her resignation from the Guild. Senior, prominent members of the Guild also are enlisted to persuade younger playwrights that they can not risk not being members. The APC also provides that Off-Broadway or regional productions will be subject to the APC if the production moves to Broadway, and further requires that the terms for licensing touring productions of Broadway shows be negotiated at the time that the APC is signed. Moreover, through the certification process and otherwise, the Guild has established minimum economic terms for playwrights, without regard for individual variations of talent, audience appeal of the play or other factors that, in a competitive market, would result in differences in economic terms from contract to contract. In some cases, the Guild actually directly negotiates contract provisions. On occasion, the Guild has certified production contracts that differ in some respects from the APC, but to the best knowledge of The League, the Guild provides in a side letter that these differences are not precedent for other contracts and certifies non-conforming contracts only if the Guild concludes that the economic package as a whole is as favorable to the playwright as the APC would be.

Through the mechanisms described in the preceding paragraph, the Guild has created and enforced a cartel of its members, and has engaged in collective negotiation and the collective fixing of minimum economic terms for playwrights. The League believes that this conduct violates the antitrust laws. If adopted, the proposed new legislation would in effect condone and even reward existing illegal conduct and protect that conduct from challenge. The Subcommittee should refuse to endorse that result and instead uphold US public policy that favors free, open competition on the merits, as well as the public policy that favors enforcement of law.

Contrary to claims that playwrights lack bargaining power and that this is the cause of the alleged lack of new American plays, the Guild's anticompetitive conduct has impaired the development of American legitimate theatre. The collective imposition of minimum economic terms has itself been a critical cause of the virtual halt to production of plays by new or unproduced American playwrights on Broadway. Most new plays will be produced on Broadway only if they have had a successful run elsewhere, a famous author, "name" stars or a special "hook". The risk of producing a play or musical is already substantial, and the risk increases significantly if the work is written by an unproven playwright. However, the playwrights' cartel, by keeping the price of all productions higher than they would be in a competitive market, prevents a producer from balancing the risk of a particular play by offering less expensive terms. Similarly, because the APC requires that terms and conditions of national tours be negotiated at the outset of the Broadway production, producers are unable to assess the

risk of the tour based on the play's actual performance on Broadway, and that factor makes it less likely that the producer will agree to do national tours.

Bad precedent

The Subcommittee should also consider that the Act would set a problematic precedent for other entertainment industries, such as recorded music and publishing, by establishing this specially protected class of persons who create copyrighted works that they own but who are permitted to collude in negotiating terms for the license of their works. The Act would create fundamental changes in the economic structure of these industries. This is to say nothing of other creative endeavors, from painting to poetry.

For all of the above reasons, The League respectfully submits that the Act is unnecessary and potentially damaging to the economic health of all the parties involved in Broadway theatre, and is contrary to critically important national economic policies. The League requests the Subcommittee to vote against sending this proposed legislation to the Senate for action. The League would be pleased to answer any questions that the members of the Subcommittee may have.

Sincerely,

Barbara Janowitz
Director of Government Relations

HEARING STATEMENT
JUDICIARY COMMITTEE HEARING
"The Playwrights Licensing Antitrust Initiative Act: Safeguarding the Future of American Live Theater"
U.S. SENATOR MIKE DEWINE
APRIL 28, 2004

Thank you, Mr. Chairman, for holding these hearings today. My remarks will be brief.

Competition is the organizing principle of the U.S. economy. The antitrust laws embody this principle. As Supreme Court Justice Thurgood Marshall so eloquently summarized: "Antitrust laws in general, and the Sherman Act in particular, are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms."

Today there will be testimony from those who support a proposed exemption to the antitrust laws (the playwrights) and those who oppose it (the theater owners and producers). I will be honest -- I think the playwrights, like anyone who seeks special treatment under the antitrust laws, bear a heavy burden of proof today. And, frankly, I question whether the playwrights can show such a compelling need.

In the past, in certain narrow instances, I have supported antitrust exemptions for a compelling need. But, this has been the exception, not the rule, as it ought to be.

Competition is the bedrock principle of our economy. Those who seek to have a different rule apply to their economic activity must build a persuasive case. I look forward to a better understanding of the arguments for and against the proposed antitrust exemption.

Testimony Submitted for the Record
The Dramatists Guild of America
S. 2349 – The Playwrights Licensing Antitrust Initiative Act:
Safeguarding the Future of American Live Theater
Senate Committee on the Judiciary
April 28, 2004

The carefully crafted narrow exception to the anti-trust laws contained in S. 2349, The Playwrights Licensing Antitrust Initiative Act of 2004, is surgically designed to correct a singular anomaly in the case law relating to playwrights in the American theater. This testimony is designed to solely address the legal status of the playwrights with regard to labor and antitrust law.

As the result of a string of related decisions stretching back 60 years, playwrights, and their 90 year old organization, the Dramatists Guild, have operated under the constant threat of the application of the Sherman Act. In the *Ring v. Spina* line of cases, 148 F2d 647 (2d Cir., 1945); 84 F.Supp 403 (SDNY 1949); 186 F2d 637 (2d Cir. 1951), there emerged no clear resolution of the basic legal questions. Indeed, at the end of the day, the plaintiff obtained neither damages nor permanent equitable relief. But during the course of that arduous litigation, the decisional seeds for the succeeding five decades of uncertainty were sown. The first Circuit Court decision (148 F2d 647) held that plaintiff had made a *prima facie* showing of illegality under the Sherman Act sufficient to warrant issuance of a preliminary injunction (reversing the District Court). The decision suggested strongly that playwrights were not employees, and the Dramatists Guild, therefore, not a labor union entitled to the (60-year-ago- version of the) labor exemption to the anti-trust law. The Circuit Court did acknowledge that its decision was not a final adjudication [a point it emphasized in its decision denying rehearing:

> " . . . the Court was making merely preliminary rulings . . . . and pointed out that final rulings both of fact and law must await a definitive hearing in the District Court" (148 F2d at p. 654).

The District Court (after a jury trial that found a violation of the anti-trust law but denied damages to the plaintiff) then held that the allegations made on the motion for a preliminary injunction had been proven, and that plaintiff was entitled to injunctive relief. (84 F.Supp. 403).

The Circuit Court, in 186 F2d 637, by Judge Learned Hand, modified the District Court's decision by discontinuing the injunction because of the absence of a "tangible probability that the wrong will be repeated". The Court noted: ". . . we hasten to add that we leave open all legal questions which such issues involve; we wish to make it entirely clear that we are not to be understood either to throw any doubt upon, or to affirm, what we said when we granted the temporary injunction . . . " (186 F2d at p. 643).

The lack of clear direction provided by The *Ring v. Spina* saga has been exacerbated by subsequent case law involving other artists involved in the American theater. In *Jay Julien v. Society of Stage Directors and Choreographers*, 1995 Trade Cas. ¶60541, 80 Labor Cas. 22,505 (SDNY 1975), a Sherman Act complaint was dismissed against the SSD&C. The Court found that the "directors" involved in that case were employees, " . . . in sharp contrast to the playwrights in the *Ring* case and the lyricists in the *Bernstein* case . . ." (80 LC at p. 22, 507). In *Bernstein v. Universal Pictures* 517 F2d 976 (2d Cir. 1975), the Court noted (in a complex procedural setting) that ". . . there is substantial evidence in the record tending to show that the (movie and television) composers are not in fact employees." (517 F2d at p. 980). Finally, in *Theater Techniques Inc. v. United Scenic Artists Local 829*, 671 F2d 493 (2d Cir. 1981) a jury verdict for defendant union (representing copyright holding scenic designers, costume designers and lighting designers) in an anti-trust action was affirmed in an unpublished opinion.

The legal framework for judging the propriety of dramatists acting through their Guild in a collaborative effort to refine a minimum standards form agreement, is exceedingly complex and arcane. It implicates the century old effort by our legal system to reconcile and accommodate two facially inconsistent national policies: labor and anti-trust. (See, e.g., Section 6 of the Clayton Act, 15 USC 17; *Duplex Printing Press Co. v. Deering,* 254 US 443 (1921); the Norris-LaGuardia Act; the National Labor Relations Act; *United States v. Hutcheson*, 312 US 219 (1941); *Columbia River Packers Assn. v. Hinton*, 315 US 143 (1942); *Hunt v. Crumboch*, 325 US 821 (1943); *Allen-Bradley Co. v. Local 3, IBEW,* 325 US 797 (1945); *Local 189 v. Jewel Tea*, 381 US 676 (1965); *United Mine Workers v. Pennington*, 381 US 657 (1965); *American Federation of Musicians v. Carroll*, 391 US 99 (1968); *H.A. Artists v. Actors Equity Assn.*, 451 US 704 (1981).

This accommodation/reconciliation is a challenge in the abstract; it is a daunting challenge in the unique environment of the Broadway Theater – itself part of a unique industry, the entertainment industry. The effort to categorize dramatists as common law employees or independent contractors in the classic analytic mode is a far different exercise than that involving fishing boat captains. (See, *Columbia River*, supra). The Broadway Theater is not the New York City electric supply industry. (See, *Allen-Bradley*, supra). *Death of Salesman* is not a widget.

The proposed legislation is designed to resolve a sixty year old, but intractable, problem in a single, but nationally important, venue – the American theater. It is not intended to, nor does it, attempt to resolve – or even address – larger issues of antitrust or labor law.

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S. 2349 – Playwrights Licensing Antitrust Initiative Act of 2004
Introduced by Senators Orrin Hatch and Edward Kennedy

The Dramatists Guild of America was established over 75 years ago to advance and protect the interests of playwrights, composers and lyricists writing for the American theater. The Guild has over 6,000 members nationwide, working on Broadway, Off-Broadway and in regional theaters all over the country. Membership ranges from beginning writers nobody knows yet, to the most prominent authors working today.

The Guild maintains model contracts for Broadway, Off-Broadway and regional productions, and encourages its members to use these contracts when negotiating with producers and theaters. These contracts protect the playwright's control over the content of his work, and ensure that the playwright is compensated fairly, thus enabling him to continue to write for the living stage.

Unfortunately, as a result of several lower court decisions rendered over 50 years ago, America's playwrights, and their voluntary peer membership organization, The Dramatists Guild, have to operate in a legal limbo. They are under the shadow of antitrust law, and there are questions about whether or not they are covered by the National Labor Relations Act. Because there are questions regarding dramatists' ability to act collectively, questions which stem in part from their historical ownership of their copyright, dramatists have no seat at the tables where the other theatrical groups bargain collectively with producers.

In short, playwrights have to function in a nether-world. They are caught between the highly organized unions (e.g., actors, directors, choreographers, costume, scenic and lighting designers, musicians and stagehands) on the one hand, and the increasingly incorporated producers and investors on the other.

The inability of playwrights to negotiate collectively with producers has profound consequences for both playwrights and the theater:

- Playwrights frequently find themselves disadvantaged in their dealings with producers. They increasingly find themselves being offered "take it or leave it" contracts and told that they will only be produced if they do not follow Dramatists Guild procedures. This is especially true for young writers, who are desperate to have their work performed. These "take it or leave it" contracts may involve the young writer paying for costs historically paid for by producers.
- Because of the inability to bargain collectively, playwrights are being forced to accept a steadily smaller percentage of revenues generated from their plays than in the past.
- Because of the change in economic incentives, some authors who would otherwise write for the theater are choosing to write instead for television or the movies, where the economic rewards are greater and more certain and where

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writers enjoy significant legal protection. When they are driven to work in other media, the theater suffers, and all Americans—and American culture—are the losers.

- All of the other major elements of the theater have collective bargaining rights. The collective voice of playwrights, as the creators of the plays that are the heart of theater, ought to be part of the bargaining process, and it makes little sense from a public policy point of view to exclude playwrights from this process because of their ambiguous antitrust status.

Senators Orrin Hatch and Edward Kennedy introduced the Playwrights Licensing Antitrust Initiative Act of 2004 (S. 2349) to address the problem facing the playwrights of America. S. 2349 would modify the application of the antitrust laws to authorize collective negotiations among playwrights and producers regarding the development, licensing, and production of plays. The legislation is prospective—it would not apply to existing contracts.

This legislation would help to restore economic equity between the playwrights and those who produce their plays. It is intended to ensure that all playwrights—like others who participate in a theatrical production—are able to receive just compensation for their works and to protect the integrity of their artistic creativity. It simply gives the playwrights rights similar to others who help ensure the success of a performance.

At the hearing in Washington on April 28, 2004, several prominent Dramatists Guild members are expected to testify, including Stephen Sondheim, Tony and Pulitzer Prize-winning composer and/or lyricist of ***West Side Story***, ***Company***, ***Follies*** and ***Sunday in the Park with George***; Wendy Wasserstein Tony and Pulitzer Prize-winning playwright of ***The Heidi Chronicles***, ***An American Daughter*** and ***The Sisters Rosensweig***; and Arthur Miller, Tony and Pulitzer-Prize winning playwright of ***Death of a Salesman***, ***The Crucible***, ***The Price***, ***A View from the Bridge*** and ***After the Fall***.

American dramatists have always spoken with a uniquely American voice...to the nation and to the world. From Arthur Miller to Rodgers and Hammerstein to Alfred Uhry, from ***Death of a Salesman*** to ***Oklahoma!*** to ***Driving Miss Daisy***, the men and women who write for the American stage have created individual, idiosyncratic works of art that are an essential element in the ongoing cultural debate which informs the citizens of a free society.

These dramatic works also reach beyond our borders, as both valuable commodities enriching our position in international trade and as symbols of American values, promoting free thought and expression into the furthermost reaches during even the darkest time.

The Dramatists Guild of America supports and defends American dramatists by protecting the artistic and economic integrity of their work.

News Release

JUDICIARY COMMITTEE

United States Senate • Senator Orrin Hatch, Chairman

April 28, 2004

Contact: Margarita Tapia, 202/224-5225

Statement of Chairman Orrin G. Hatch
Before the United States Senate Committee on the Judiciary
Hearing on

"THE PLAYWRIGHTS LICENSING ANTITRUST INITIATIVE ACT: SAFEGUARDING THE FUTURE OF AMERICAN LIVE THEATER"

Good afternoon and welcome to today's hearing on the "Playwrights Licensing Antitrust Initiative Act" or "PLAI Act." We have a tremendous panel of witnesses and a very interesting topic, so I am truly excited to hear their testimony. Today, from left to right, we have Stephen Sondheim, Roger Berlind, Wendy Wasserstein, Gerald Schoenfeld, and Arthur Miller. This is an absolutely incredible panel of Broadway's finest, all side-by-side by Sondheim. Hey, that sounds almost like a song.

As an initial matter, I understand that word has gotten out that Senator Kennedy and I are rehearsing a song from the musical Gypsy. We will be performing it at a benefit gala this Friday at Ethel Kennedy's home. One of my more enterprising staffers suggested that we could raise some money by selling a video of our performance. He went on to suggest that we could make more if we charged extra for a version of the video without any audio. I would like to take this opportunity to publicly wish him well in his job search. But seriously, I hope that both our duet and any future committee action on this bill will be more "harmonious" than some of the recent debates in the Judiciary Committee.

The purpose of today's hearing is to discuss a bill that Senator Kennedy and I have introduced to help ensure the continued vitality of live theater in America. Now, I know that I am not going to be able to match the eloquence and incredible experience of our witnesses, so I will keep my remarks brief. I have come to believe deeply that the future quality of live theater depends on maintaining the artistic independence – and individual expression – of dramatists, while giving them a greater voice in the terms on which their works are produced.

Due to the interaction of federal labor, antitrust, and copyright law, the dramatists and their voluntary peer organization, the Dramatists Guild of America, have been hampered in acting collectively in their dealings with highly-organized and unionized groups – such as actors, directors, and choreographers on the one hand – and the increasingly consolidated producers and investors on the other. As a result, playwrights – who are frequently at a substantial bargaining disadvantage – are forced to accept contracts on a *take it or leave it* basis.

I believe that if we truly want the next generation of American dramatists to flourish, we will need to give them a more organized voice on Broadway. The PLAI Act is a narrow measure that will allow playwrights, composers and lyricists – through either the Dramatists Guild or any other voluntary peer organization – to act collectively in dealing with other industry groups that operate both under and behind the bright lights of the American stage. In other words, it would permit these artists to sit down with their creative colleagues for the purpose of negotiating, adopting, and implementing updated standard form contract terms. Importantly, the bill covers only the adoption and implementation – and not the collective enforcement – of an updated standard form contract. Thus, it would merely allow dramatists to replace the terms of the current standard contract – which I am given to understand has remained virtually unchanged for several decades – with amended terms that reflect the changing business and artistic landscape on Broadway. My hope is that the basic ability to update the standard form contract as well as provisions ensuring that certain artists' rights are respected in the production of their plays will encourage young, struggling playwrights to continue working in the field and ensure the continuing viability and vibrancy of American live theater.

As a long time enthusiast of theater, and a lyricist myself, I am proud to sponsor the PLAI Act and would encourage my colleagues to join our efforts. I would also like to commend Senator Kennedy for his leadership on this issue, and I thank my other colleagues on the committee in advance for their interest and willingness to be convinced that we should act favorably on this legislation.

# # #

from the office of

Senator Edward M. Kennedy

of Massachusetts

FOR IMMEDIATE RELEASE
April 28, 2004

CONTACT: David Smith/ Jim Manley
(202) 224-2633

STATEMENT OF SENATOR EDWARD M. KENNEDY AT THE HEARING ON THE PLAYWRIGHT LICENSING ANTITRUST INITIATIVE ACT

It's a privilege to join Senator Hatch in sponsoring the Playwright Licensing Antitrust Initiative Act. and I look forward to today's testimony from our distinguished witnesses about the impact of the bill on the American theater community.

Our witnesses symbolize the highest level of achievement in the arts. We're proposed this legislation because of our concern about the continuing erosion of support for the uniquely important work that they do.

From the day he took office, President Kennedy made the arts one of his priorities for the nation. He wanted the arts to be a part of all of our lives. Robert Frost was a major part of his Inauguration, and later, in dedicating a library to Frost at Amherst College, he said, "the nation which disdains the mission of art invites the fate of Robert Frost's hired man, the fate of having 'nothing to look backward to with pride, and nothing to look forward to with hope'."

Clearly, we fall short on that mission in many aspects of the arts today. The bill we propose deals with one key aspect of the issue – the need for greater support for the artists who create the plays and musicals that are such an extraordinary part of the nation's modern cultural life.

This bill will provide needed protections for those who create the plays and the musicals that are such an important part of the nation's modern cultural life.

American theater has an unequalled and proud heritage. We have been blessed with some of the finest writers of the age. At the Kennedy Center, a celebration of the works of Tennessee Williams is underway. Enthusiastic audiences are preparing for new productions of "A Streetcar Named Desire," "Cat On a Hot Tin Roof," and "The Glass Menagerie."

Audiences return to these modern classics time and again, because they so magnificently capture the hopes and dreams that so many of us share in our own lives, and speak to the tragedies we suffer as well.

These plays and so many other wonderful American works of art have enriched our lives immeasurably, and we need to encourage similar eloquent voices to be heard in the future as well.

It may sound implausible to some, but the antitrust laws in our modern economy stand in the way of that goal today. The bill that Senator Hatch and I support will modify those laws and enable playwrights to negotiate minimum compensation packages as fair reimbursement for their work. The issue is fairness, and this change is overdue.

Currently, playwrights are prohibited from participating in any joint negotiation for compensation or control of their work. Because they are not members of a union, they must negotiate individually with the producers of their work. Even for well-know playwrights, such negotiations are difficult. For emerging authors, they can be impossible.

The legislation provides a way for playwrights and producers to agree on a package that provides fair return on the commercial use of their work, and I'm hopeful that the bill will be enacted to permit such negotiations to begin as soon as possible.

We are privileged to have a very distinguished panel of witnesses today. Arthur Miller is in many ways the patron saint of American theater. "Death of a Salesman" opened on Broadway in 1949. He has testified only on rare occasions in Congress – once at the infamous House Unamerican Activities Committee and again before the Senate to call for literary and journalistic freedoms around the world. The fact that he is here today is a tribute to the importance of this legislation for his colleagues in the theater. He is widely recognized for his principled and courageous beliefs, and it is an honor to have him with us.

We also welcome Stephen Sondheim. He is an icon of American theater. He has collaborated with Hal Prince and Leonard Bernstein and our most gifted playwrights to create a body of work that includes "Sweeney Todd," "Sunday in the Park with George," and "West Side Story."

We also welcome Wendy Wasserstein who has won critical and popular acclaim for her works, and also for her leadership in introducing theater to public school children in New York City. She is a visionary writer and a compelling artist, and we are honored to have her with us today.

It is also a privilege to welcome Gerald Schoenfeld, who is Chairman of the League of American Theaters and Producers, and we look forward to his testimony and his point of view on the bill.

I especially commend Senator Hatch for convening this hearing. With so many other issues before Congress, it is not always easy to provide appropriate attention for these important issues affecting creative artists. We know that there are major financial considerations involved in producing plays – on Broadway and in communities across the nation – but we cannot accept the continuing systematic erosion of the rights of the geniuses who create the gold for the theater. This is our bottom line, and it should be the nation's bottom line on this key issue as well.

Appropriate action by Congress can encourage new vitality in theaters and communities across America. Young artists must know that we respect their potential and we welcome their creativity. Especially in difficult times like these, it is essential to re-emphasize one of the founding principles of our nation, that there are better ways to change the world than at the point of a gun.

I thank all of you for coming, and I look forward very much to your testimony.

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Statement of Senator Herb Kohl
Senate Judiciary Committee
April 28, 2004

Mr. Chairman, the issues raised by today's hearing are important to anyone who cares about our creative art and culture in America. Live theater is one of the cultural jewels of our nation. From plays such as "Death of a Salesman" to "Angels in America," and from musicals from "West Side Story" to "Chicago," live theater has entertained, challenged and inspired Americans for generations. And it is the original works of our playwrights and dramatists which have been essential to the development of this art form.

The playwrights we will hear from today are some of the most gifted and talented our nation has ever produced. They have experienced first-hand the economics of today's theater that stifles new voices, drives talent from the business and drowns creativity. These playwrights argue that the business has changed so much during their careers -- due in part to consolidation among theatrical producers and theater owners -- that playwrights are forced to accept "take it or leave it" deals for their creative works. Chairman Hatch and Senator Kennedy have therefore proposed legislation which they argue will level the playing field by giving an antitrust exemption to playwrights to negotiate collectively with producers.

While the goals of this legislation may be laudable, we need to be cautious about the means proposed. In general, we have disfavored antitrust exemptions, and those proposing such exemptions have the burden to establish that such exemptions are truly necessary. Enacting antitrust exemptions too readily for those that a claim special need could result in a piece-by-piece, industry-by-industry, repeal of our nation's essential competition law. The record so far is not sufficiently developed for us to reach a conclusion as to the wisdom of this proposal. We will need to consider carefully the arguments of theater producers that playwrights have many alternative venues to sell their works, and the significance of the fact that playwrights generally retain the copyright to their underlying work.

Finally, we should be gratified that Chairman Hatch has saw fit to schedule this hearing so that we can fairly and openly consider this proposal. All too often recently, proponents of

antitrust exemptions have sought to insert these provisions in secret, hidden away in the corners of unrelated legislation, with no hearings or consideration by our Committee. Such a practice is unacceptable and should not be tolerated by any member of this Committee, the body with the responsibility to be the guardian of our antitrust laws.

Thank you for holding this hearing, Mr. Chairman, and I look forward to the testimony of our distinguished panel of witnesses.

U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

Statement of Senator Patrick Leahy
Hearing in the Senate Judiciary Committee
"The Playwrights Licensing Antitrust Initiative Act:
Safeguarding the Future of American Live Theater"
April 28, 2004

Thank you, Mr. Chairman and Senator Kennedy, for bringing the Broadway stage into the Judiciary Committee hearing room. This Committee has a long history of tackling intellectual property questions. I would note tomorrow's mark-up agenda, which includes half a dozen IP bills, largely dealing with the copyright and patent problems that have arisen along with the new technologies and distribution methods. But the playwrights' plaint is a long-standing one, and I will be interested to hear the story of its history and possible resolution.

Live theater is a delightful and important part of our culture, and a wonderful way to bring children and young people into the community of arts supporters. I am an enthusiastic proponent of the many new technologies which are making audiovisual works available, at an ever higher quality and ever lower cost, to an ever greater number of people. At the same time, I am very interested in preserving and promoting the unique and wonderful experience of live productions, opera and community theater. The best of the Internet age can co-exist peacefully and productively alongside the tradition that has been entertaining and educating people since the ancient Greeks.

I am very cautious about the antitrust laws. They were designed to ensure that competitive marketplaces could operate without undue pressures and, in large part, have been effective. I do recognize that markets can fail, and that adjustments sometimes must be made that recognize imbalance in bargaining power. This may be such a case. I will need to hear more about the situation to make that determination. I am hopeful that our impressive panel of witnesses will help make a fair and thorough record. In addition, I have asked the Department of Justice to share with us the views of its Antitrust Division on this legislative proposal.

We are a fortunate nation, to have the benefit of the creative genius of so many writers and artists, and to have the financial and administrative acumen of the producers and promoters who can bring that art to so many people. We need to be sure that we encourage rather than burden this wonderful source of entertainment and enlightenment for us, and that we ensure that Americans are able to experience live theater now and in generations to come.

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Prepared Testimony
Arthur Miller
The Playwrights Licensing Antitrust Initiative Act:
Safeguarding the Future of American Live Theater
Senate Committee on the Judiciary
April 28, 2004

Mr. Chairman. Members of the Committee. It is indeed an honor to appear before you today in support of S. 2349, The Playwrights Licensing Antitrust Initiative Act of 2004.

In preparing for this testimony today, I am reminded of Muriel Humphrey's admonishment to her husband: "Hubert, a speech does not need to be eternal to be immortal." I will take that advice to heart as I testify today.

It has been some time since I was last asked to testify before Congress. But, I have to tell you, today I am actually happy to appear on behalf of what I believe is truly an important topic worthy of Congressional debate and action – the future of the American theater.

I have been blessed to be lucky enough to be a successful playwright. Many of my plays, I am proud to say, have won critical acclaim – *Death of a Salesman* and *The Crucible* won a Pulitzer and a Tony award respectively.

I raise these plays, and my success, not to brag, but to emphasize an important point: I and my colleagues before you today are here not for ourselves, but for others. We are speaking on behalf of the up and coming playwrights: The Arthur Millers, the Stephen Sondheims and the Wendy Wassersteins as young playwrights. Indeed, the American theater risks losing the next generation of playwrights to other media and opportunities as the pressures on playwrights increase and their power to protect their economic and artistic interests diminish. The legislation we are advocating isn't for us, it's for them. And it's for the theater-going public.

The legislation introduced by you, Chairman Hatch and Senator Kennedy, is meant to keep the legacy of aspiring playwrights who write for the theater alive. It will help ensure that American playwrights, through the theater, can speak to the hearts and minds of the audience. That we can challenge social morays, ideology, beliefs, or simply entertain. Drama is one of civilization's greatest art forms and we must do all that we can to promote its vitality.

The American theater has undergone enormous changes over the years. From its entrepreneurial start it has become increasingly dominated by corporate interests. Sure, business is changing in virtually every sector of our economy and there is no reason that the theater should be immune from business pressures.

But, unfortunately, in the midst of these increasing pressures, only one entity does not have a seat at the bargaining table: the playwrights. The status of the playwright is difficult to discern as it has fallen under the long shadow of questionable and conflicting legal opinions. The result is that all other entities have the collective power and ability to fight for their rights. As a result, it is the playwright who gets squeezed.

The Playwrights Licensing Antitrust Initiative Act of 2004 would provide a very limited legislative fix that would allow for the standard form contract that was last negotiated in 1982 to be updated to take account of today's market realities and intellectual property protection climate. It does not force producers to hire any playwrights, but it does allow playwrights with a willing producer to protect their economic and artistic interests.

Today many new playwrights are presented with take-it-or-leave-it contracts. In their hunger to get their plays produced, many have no choice. Others, facing the economic pressures that face all-too-many people in today's economy, are abandoning their dreams of writing for the theater as they go to Hollywood or write for other media.

Some may say that this is just basic economics. But, the legislation the Chairman and Senator Kennedy have introduced is not intended to change the laws of economics. It simply says that playwrights should have a seat at the table. Failure to pass the legislation will continue the unfair bargaining situation that the playwrights find themselves in and not only will the playwright and the theater suffer, but society as a whole.

It was Senator Kennedy's brother, President Kennedy, who once said:

> *"I look forward to an America which will reward achievement in the arts as we reward achievement in business or statecraft."*

Unfortunately, under today's legal shadows, the up and coming playwrights must offer their wares at a discount.

I understand that antitrust exemptions are not easy to come by. And I believe that amending our laws should not be done at the drop of a hat.

But, where there the national interest demands that change occur, I believe it is appropriate.

Mr. Chairman. Members of the Committee. I urge your prompt approval of this legislation.

Testimony Submitted for the Record
Marsha Norman
The Playwrights Licensing Antitrust Initiative Act:
Safeguarding the Future of American Live Theater
Senate Committee on the Judiciary
April 28, 2004

I am currently Vice-President of the Dramatists Guild of America, and have been on its Council for over twenty years, having been elected after my play 'night, Mother, won the Pulitzer Prize in 1983. But it is as a teacher that I write here, on behalf of Christopher Durang, my Co-Chair in the Juilliard program, and the many distinguished playwriting teachers in America including Donald Margulies at Yale, Paula Vogel at Brown, Mark Bly at Harvard, Edward Albee at the University of Houston, and Edwardo Machado at Columbia and Zelda Fichandler at NYU.

What we know as teachers is that Broadway may well be thriving, but we are losing our young writers as fast as we can train them, to television and other unionized venues which pay them in advance and don't quibble over the price. Of the eight fellows in the Juilliard playwriting program this year, four of them are in California today talking to TV show-runners and producers about jobs for next year. Five years ago, we lost at most one writer a year. Now we're losing half before they even graduate. The TV people know that theatre writers are the best. That's why they come to us. "Who've you got?" they'll say. And we try to warn the writers about the dangers of work for hire, but at the moment, the Broadway arena is offering them little reason to stay.

Young writers want to see their plays done, but they don't want to be asked how little they'll take for them, or if they'll wait til the show makes money before they get paid. Young writers have heard that Broadway and off-Broadway contracts can take as much as a year to negotiate, during which time the producers' interest may wane or wander. Young playwrights don't understand why the actors and stagehands are getting paid, and they're being asked to wait. It's easy to see how young playwrights start believing they're better off turning their plays into screenplays or pilots, making some money and then coming back to the theatre later, when they can afford it.

The problem is, once writers leave the theatre, they rarely come back. So in addition to our young writers, we're also losing our mid-career playwrights. Warren Leight ,author of the brilliant play, Sideman, is now on staff at Law and Order. Eric Overmeyer, a lyric playwright of power and fury, is now running NYPD Blue. Teresa Rebeck, a mid career Paula Vogel has just shot her own pilot, and our most illustrious example, Aaron Sorkin , author of A Few Good Men, left the theatre to create Sports Night, and The West Wing . Alan Ball is gone, Howard Korder is gone, Steven Belber lives half his life in TV, Diana Son is gone, and Adam Rapp and Annie Wiseman are nearly gone.

The question is not whether TV is OK or not. It is. And it's getting better as more playwrights take over TV shows, and more theatre audiences stay home to watch them. The question is, what plays will we never see from these artists. No work for hire arena would ever suggest that Edward Albee write Who's Afraid of Virginia Wolff. No TV network would ever commission Long Day's Journey into Night, or Streetcar Named Desire, or even Proof, the Pulitzer-Prize winning play by our Juilliard student, David Auburn. So in buying our writers' time, they tear up the paper the great plays would be written on, they channel the passion of a real dramatist into the life of a writer writing for an audience as defined by focus groups and rewritten by production executives. Great writing cannot be bought in advance. Greatness always appears unbidden, but heroes need a field on which to appear. That's what our young writers have lost in New York. Their playing field.

In short, as playwriting teachers we feel like we're standing in the wheelhouse on the Titanic. Everybody's dancing in the ballrooms down below, but there's something bad up ahead. And we're only seeing the tip of it. Without some kind of standard contract to rely on, our young playwrights will never get to mid career, and our mid career artists will never get to be masters, and all because the contract maze is not someplace anybody wants to be.

We would be happy to provide more sad stories or bring a hall full of young writers to tell you what they need, but maybe that isn't necessary. Sometimes we just need to act on behalf of the young ones and never even tell them about it. If we have done our part, they'll just grow up and find a world is waiting for them.

Thank you for listening.

Marsha Norman
Pulitzer Prize, 'night, Mother 1983
Tony Award, The Secret Garden, 1991
Co-Chair, Playwriting Department, The Juilliard School
Vice-President, The Dramatists Guild of America
Artistic Advisor, The Sundance Theatre Institute
Guest Teacher, The Kennedy Center, American College Theatre Festival
Board of Trustees, Agnes Scott College, Decatur, Georgia

STATEMENT OF GERALD SCHOENFELD,
Chairman of The Shubert Organization, Incorporated
And
Chairman of The League of American Theatres and Producers

Before The United States Senate
Committee on the Judiciary
Orrin G. Hatch, Utah, Chairman

For the hearing entitled:
"The Playwrights Licensing Antitrust Initiative Act:
Safeguarding the Future of American Live Theater"

Wednesday, April 28, 2004
2pm
Room SD-226
Dirksen Senate Office Building

My name is Gerald Schoenfeld. I am Chairman of the Board of The Shubert Organization, Incorporated, and also Chairman of The League of American Theatres and Producers, the legitimate theatre's trade association.

The Shubert Organization is the owner and/or operator of twenty first class legitimate theatres and one Off-Broadway theatre in the United States located in the cities of New York, Washington, DC, Philadelphia and Boston. It is also a producer of plays and musicals. Among its most recent productions are: Cats, Amour, The Heidi Chronicles, Sunday in the Park with George, Passion, The Ride Down Mount Morgan, Indiscretions, Dirty Blonde, An Inspector Calls, Amadeus, The Grapes of Wrath, The Life and Adventures of Nicholas Nickleby, Jerome Robbins' Broadway, The Most Happy Fella, Children of a Lesser God, Bob Fosse's Dancin', Whoopi Goldberg, Pygmalion, Chess, Dreamgirls, Ain't Misbehavin', The Gin Game, A Streetcar Named Desire, Lettice & Lovage, Skylight, Closer, Les Liaisons Dangereuses, Amy's View, Little Shop of Horrors, The Blue Room, and Dance of Death.

I have occupied my present position for thirty-two years and have been engaged in the negotiation of all of the various contracts involved in a theatrical production as well as in the collective bargaining agreements with the industry's unions and guilds. I am personally familiar with the Dramatists Guild and many of its members and have personal knowledge of the matters hereinafter referred to.

Obviously, the Dramatists Guild must believe it is subject to the anti-trust laws of this country, otherwise it would not be seeking an exemption from its provisions. It is also obvious that an exemption from the anti-trust laws is rarely granted. I submit that the Guild is not an organization that is deserving of exemption.

I was significantly involved in the defense of the predecessors of The Shubert Organization in an action instituted by The United States in February, 1950 claiming alleged violations of the anti-trust laws. This case was settled by a Consent Decree entered in February, 1956.

Contractual relations between legitimate theatre producers and the Guild's members, who are the writers of dramatic plays and musicals, are incorporated in a "suggested" contract known as the Approved Production Contract [APC]. Such has been the case since 1985. Prior to 1985, an antecedent agreement incorporating many of the same provisions was promulgated by the Guild as a mandatory, rather than suggested, contract and was known as the Minimum Basic Production Contract.

The APC sets forth minimum terms and conditions regarding the production of plays and musicals written by Guild members. These terms, among other things, relate to fees and advances against royalties, territorial restrictions, participation in subsidiary rights such as stock and amateur performances, motion picture, television and radio performances, foreign productions both in English and in foreign languages. The APC is a license agreement which grants the producer the right to produce the play as written by the dramatist without any right to make any changes of any kind in the text, lyrics and/or music. It also grants the dramatist the right to approve the director , the cast, the designers and all other creative elements of the play such as the scenic, costume and lighting designers.

The territory granted by the license is restricted to The United States, Canada and The British Isles. The APC also limits the period of time that the licensed rights may be exploited by the producer as well as the duration of the producer's right to participate in subsidiary rights. The exploitation of all subsidiary rights is reserved by the dramatist as are all other rights not specifically granted to the producer pursuant to the provisions of the APC. In the event that a play or musical is initially presented in a non-profit or Off-Broadway venue in The United States or in a foreign country, the license agreement governing such presentations usually contains a provision that in the event the play or musical is thereafter presented as a first-class production in the United States it shall be subject to all of the terms, covenants and conditions contained in the APC.

Membership in the Guild is a coveted status since members will derive the benefits of the APC.

Dramatists are represented by agents who conduct the negotiations on their behalf. Certain negotiated provisions are added to the APC such as billing, per diems, travel arrangements and accommodations, types of transportation, the number of house seats, approval of venues, managers,

press agents, attorneys, accountants, and certain additional financial provisions. Since the promulgation of the APC in 1985, and in order to accommodate changing economic conditions involved in the production of plays and musicals, a form of compensation for royalty participants such as authors, directors, designers, and producers was created and is known as the "royalty pool". The royalty pool provides for a certain percentage of the weekly net profits to be allocated to the royalty participants in the following manner: the total of all of the royalty percentages is the denominator of a fraction whose numerator is the percentage paid to each royalty participant, so that for example;

- if the royalty pool participants are to receive 35% percent of the weekly operating profits
- and the total royalties amount to 15%
- and the dramatist's royalty amounts to 6%,
- the dramatist would receive 6/15 of 35% of the weekly net profits.
- The dramatist and all royalty participants are entitled to receive an agreed amount of money weekly for each royalty percent regardless of whether there is any weekly net profit.

The Guild has unilaterally decreed that in no event shall the dramatist receive less than a certain specified percentage of the total weekly net profits regardless of what the dramatist might otherwise receive as a royalty pool participant. Of course, this has an impact on the ability of the producer to negotiate with other pool participants since they too are expected to receive pari-passu treatment with the dramatist.

Unfortunately, these provisions of the APC are not left to the negotiations between the agent and the producer. The ultimate party that is granted the right to approve the terms and conditions of the agreement negotiated between the producer and the dramatist(s) is reserved exclusively to the Guild. The approval process is subject is to what is known as the Certification Process pursuant to which the Guild must certify that the APC, as negotiated at arm's length, conforms to the minimum terms and conditions of the APC. If the Guild does not certify, the APC provides that the agreement between the dramatist and the producer nevertheless may proceed provided that the dramatist, simultaneously with the submission of the APC to the Guild for certification, submits a letter of resignation to the Guild. This has resulted in a unilateral re-negotiation of the APC compelling compliance with its provisions upon pain of dismissal.

I know of no agreement amongst producers regarding the terms and conditions to be included in an APC. In public offerings relating to the production of plays and musicals, the significant provisions of a dramatist's agreement are set forth in the offering documents. They demonstrate no uniform provisions manifesting the existence of a conspiracy on the part of producers. Indeed, all dramatists are not equally talented yet they must receive at least the same terms and conditions of the APC.

The Guild, its members and their agents, by requiring compliance with the APC and its certification process, have had an impact upon the producer's ability to enter into a negotiation on equal terms with the Guild members. The Guild is not a labor union and thereby exempt by statute from the anti-trust laws. If they are granted exemption, then all inventors, researchers, and creators of literary property other than employees for hire would also be entitled to exemption.

Suffice it to say the conduct of the Guild and its members do not deserve an exemption but should continue to be subject to the strictures of the anti-trust laws. They are the owners of their work and the copyright holder. To

ask for immunity is to seek a shield from both prior and prospective anti-trust law violations. If there are any restraints upon the production of plays and musicals they are imposed by the Guild and its members and not the producers or the venue operators.

In addition, please accept the attached letter from The League of American Theatres and Producers.

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Prepared Testimony
Stephen Sondheim
The Playwrights Licensing Antitrust Initiative Act:
Safeguarding the Future of American Live Theater
Senate Committee on the Judiciary
April 28, 2004

Mr. Chairman. Members of the Committee.

I appreciate having the opportunity to appear before you today in support of The Playwrights Licensing Antitrust Initiative Act.

Mr. Chairman, I was President of the Dramatists Guild from 1973 to 1981 and am now a member of its Council, as is my colleague Wendy Wasserstein. I should note that joining us here today, but not at the Witness table, are John Weidman, the current President and Marsha Norman, our Vice President. The purpose of our being here is to ensure that we leave a legacy of a vibrant theater world to the next generation of playwrights.

The Dramatists Guild is the only professional association for playwrights, composers and lyricists. The Guild works to advance the rights of its more than 6,000 members. Membership, incidentally, is open to all dramatic writers, regardless of their production history.

The Dramatists Guild is not a union, and because of our unique status in the theater, we do not come under the protections of the National Labor Relations Act. We do not necessarily meet the definition of "employee" that would allow us to bargain collectively. And that is what we are here to talk about, since it is at the heart of our collective concern about the future of the theater.

As you know, Mr. Chairman, I have been working for some time with you and other members of Congress to promote this legislation. I have walked the halls of Congress and met with Members and their staffs to highlight the problems in today's theater.

Your leadership on this legislation, Mr. Chairman, along with that of Senator Kennedy, its co-author, is deeply appreciated. And we are encouraged by companion legislation, which was introduced in the House last Congress by Representatives Hyde and Frank, legislation which will be reintroduced shortly. The breadth of support for this legislation shows that it is not a partisan issue confined by ideological boundaries.

Arthur Miller spoke eloquently about the importance of theater to the nation. I won't embellish on what he said, but I would like to underscore his comment that we are not here today speaking for our own interests; we are speaking for others whose names may not be as well known as ours. This may sound altruistic, but I assure you it is not. Without them the theater has no future. Like Wendy and Arthur, I have been fortunate enough to have my work win critical acclaim, including a Pulitzer Prize and a number of Tony Awards. If we and others like us can use our success to ensure the opportunity for others, then we truly will have spent our time here well.

In walking the halls of Congress during these past months – and it's an awesome walk – I have learned that changes to our laws do not come easily, nor should they. Especially in the antitrust arena, change is very difficult to achieve. Exemptions should not come easily. Yet case precedent has granted the same exemptions we seek to both choreographers and scenic designers, who are permitted to own their own work and bargain collectively. I believe that playwrights and lyricists and composers should be allowed the same opportunity and that this proposed legislation is necessary. Lest this seem to be an adversarial issue with theater producers, let me quote to you a letter written to the Chairman and ranking Members in support of this legislation by Harold Prince, my collaborator for many years since West Side Story, our first venture together, and a man who is generally acknowledged to be the contemporary American theater's leading producer and director. As much as anyone in today's theater, he understands both sides of the issue, since he too is both employer and employee. I quote:

> "As things stand today, some of the great plays and musicals that have not yet been written may never be. Increasingly, up-and-coming playwrights face pressures that are driving them to other media.
>
> "Our core problem is to encourage a return to the negotiation process. Hiding behind arguments about anti-trust prevents us from a practical confrontation. Producers and playwrights are natural allies. Or should be.
>
> "Before it is too late, we must save a vital resource of our nation's artistic life. I hope that your hearings will provide the momentum to get us back to the table. It sounds melodramatic, (of course, I am in the theater) but time is running out. It really is."

Since there are serious questions about coverage of the Dramatists Guild under the NRLA, our ability to work cooperatively and take collective actions on behalf of our members might be subject to attack on antitrust grounds. A standard form contract updating the one that was agreed to as part of a consent decree more than two decades ago might be unenforceable as violating the antitrust laws.

This is not just an economic issue, it is one of intellectual property rights. I, like my colleagues here, have often had to fight for these rights. For instance: one show I wrote, Merrily We Roll Along, is a piece that goes backwards in time. It starts with the end of the story and, scene by scene, proceeds back to the beginning. One producer tried to reverse the order of the play because he believed it would be easier for the audience to understand. Needless to say, it did not improve matters, but even if it had, it was not the show we had written or intended to be presented.

Because I was a recognized name in the theater and had a certain amount of what is known as "clout," I was able to protect the piece and stop the production, thus preserving the integrity of my intellectual property. Not every playwright is so lucky. And it is partly due to this collective ability of the Dramatists Guild that those rights can be enforced. But under the outdated contract we now have with theater producers, our ability to negotiate realistically, based on current market factors and realities, is limited.

As a creative artist in your own right, Mr. Chairman, you understand how important an artist's intellectual property is. A limited exemption to the antitrust laws, as your legislation provides, does not choose sides. Rather, it will help create a competitive marketplace where *all* interests can be appropriately balanced.

We all look forward to working with you and the Members of the Committee on this important legislation, important not only to us as writers but to the future of the American theater as well.

Thank you for listening.

Jeffrey Sweet
Victory Gardens Theatre
2257 N. Lincoln Ave.
Chicago, Ill. 60611

April 25, 2004

Senator Richard Durbin
332 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator:

As an American (and Chicago) playwright, I am writing to request that you support the Playwright's Licensing Relief Act of 2004 introduced by Senators Hatch and Kennedy. Your support will help ensure that the American play continues to be a vibrant component of our cultural life and heritage.

I am one of a dozen resident playwrights of the Victory Gardens Theatre in Chicago. You may know of Victory Gardens as the theatre that won the prestigious Tony Award in 2001, making Chicago the city with the largest number of Tony-winning theatres (the other two being the Goodman and Steppenwolf). In the twenty-five years of my association with the company, I have put up ten plays there, some of which have gone on to productions around the country and the world. (One of them opens in New York in June, another in Cape Cod in September, Jack Klugman is scheduled to star in another in New York in spring 2005, and I'm premiering a new play in Chicago at about the same time.)

Over the years, my fellow playwrights and I have learned that American plays and musicals have had an enormous impact on our nation, and that their impact often reaches beyond our borders. An example: one resident Victory Gardens writer, James Sherman, saw his comedy on domestic Jewish life in Chicago, *Beau Jest*, play a successful run in Austria, which, as you know, has a history of anti-Semitism. That a Chicago-born Jewish playwright should bridge a cultural gap in this way is just one demonstration of the reach and influence of American theatrical culture and its ability to generate international good will.

Whether providing pure entertainment or provoking thoughtful debate about our cultural, political, religious and social norms, plays and musicals have been a vital American art form. In addition, as you probably are aware, the blossoming of scores of vibrant troupes in Chicago, many devoted to the development of new works, has had a lot to do with the resurgence of Chicago as a tourist and convention destination. Many people who used to plan trips to London to see theatre these days choose instead to go to Chicago, where they can see works of equivalent quality for a fraction of the cost. As a drama professor and traveling lecturer, I know, too, that Chicago's reputation as a theatre town has made it the obvious destination for many of my students after graduation.

Unfortunately, the art form that has powered the Chicago theatre renaissance is at risk; playwrights' ability to protect the artistic and economic integrity of the works which we

create comes under constant attack. The Hatch-Kennedy bill is designed simply to restore balance among the different forces within the production process, thus enabling playwrights to protect their intellectual property, and to ensure that the American play continues to flourish.

I am a member of The Dramatists Guild of America, which maintains optional model contracts for Broadway, Off-Broadway, and regional productions. These contracts give us a measure of control over the content of our work, and help to ensure that we are compensated fairly when that work is produced, thus enabling us to continue to write for the living stage.

Unfortunately, as a result of several lower court decisions rendered over 50 years ago, we have to operate in a legal limbo. We are under the shadow of antitrust law, and there are questions about whether or not we are covered by the National Labor Relations Act. These antitrust and labor questions regarding our status mean that—unlike every other group involved in mounting a theatrical production—we have no seat at the table to protect our rights. That the person most responsible for initiating a new production has no power at that table is simply wrong.

This state of affairs has a real impact on me and other playwrights. More and more often, we are being presented with "take it or leave it" contracts. Contracts which may require our youngest writers to pay for costs historically born by producers. Contracts which force us to accept an increasingly smaller percentage of revenues generated by our plays than we were able to get in the past. And even a Pulitzer Prize-winning dramatist like Stephen Sondheim (*West Side Story*) has been pressured to change the content of at least one of his shows—unlike many other dramatists, he was able to protect his intellectual property and have the show performed the way he wrote it. But people without Pulitzer Prizes (and that's most of us) have less chance to stand up for their work.

Few of my colleagues go into playwriting with the expectation of making large sums of money. We have chosen to write for the American theatre largely because it has been one of the few places where we are meaningfully involved in the production process of bringing stories about our community *to* our community. Unlike movies, which are frequently rewritten by committee, the names credited for playscripts are those of the people who actually conceived the work.

Forces that undermine the ability of writers to protect their work or earn an appropriate share of the profits of the productions of their work discourage the creation of new plays and tend to drive writers to work in television or the movies. When this happens the theater suffers and all Americans—and American culture—are the losers.

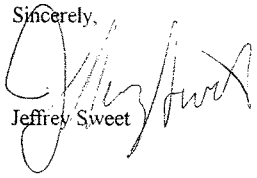
Playwrights are the only participants in the theatrical process that face limits on their ability to develop and implement a standard form contract. Actors don't face these limits, nor do directors, musicians, or technicians. The American theater is the collective voice of America's playwrights. It stands to reason, and as a matter of basic fairness, that the playwrights who create the plays that give employment to these other artists and artisans ought to have similar rights to develop standard contracts. It makes little sense

from a public policy point of view to exclude playwrights from this process because of their ambiguous antitrust status.

The legislation introduced by Senators Hatch and Kennedy would narrowly modify the application of the antitrust laws to permit collective development and implementation of a standard contract form for playwrights for the licensing of their plays and musicals. The legislation is prospective—it would not apply to existing contracts. It is a simple, but vital solution.

I hope to have your support.

Sincerely,



Jeffrey Sweet

Prepared Testimony
Wendy Wasserstein
The Playwrights Licensing Antitrust Initiative Act:
Safeguarding the Future of American Live Theater
Senate Committee on the Judiciary
April 28, 2004

Mr. Chairman. Members of the committee. I want to thank you for the invitation to appear before you.

Like my distinguished colleagues here with me today, both at the witness table and those members of the Dramatists Guild in the room, I am deeply appreciative of your efforts, Mr. Chairman and Senator Kennedy, to help restore the balance of power in the theater for playwrights. This is a National issue that affects the future of the American theater.

It seems very fitting to me that we address here in Congress the power of the spoken word on stage and securing its future. Politics and plays have a great deal in common. Through the integrity and vision of the individual voice, they both create an arena to examine and advance the national character. In the theater, just as here, a well-crafted speech not only inspires change but reveals our sense of morals, justice and ethics. As Oliver Wendell Holmes said, "Eloquence may set fire to reason."

But the independent voice that makes writing for the theater so compelling has become much more challenged as the ownership of the theaters and the production of plays has become increasingly dominated by corporate interests and has become more and more concentrated. The various individuals and groups necessary to ensure the success of any production have become increasingly organized. From the stage hands to the actors to the musicians, the directors, the choreographers, the hairstylists, the ticket sellers, to the press agents, all are represented by unions and are able to bargain collectively. I remember when my play The Heidi Chronicles was celebrating it's second year on Broadway and we had a party in the basement of the Plymouth Theater. All the props people, stage hands, actors and producers came, and I thought to myself, we are here because I sat alone in my room and wrote a play. A play always begins with the word. But ironically, those of us who are the fundamental creators are not able to collectively protect our words.

Today, as my colleagues have pointed out, more and more playwrights find themselves faced with "take it or leave it" contracts and pressures on their artistic integrity. Think of what would have been the impact to Arthur Miller's Death Of A Salesman if the producers had demanded that he change the end of the play to have a happy ending. Imagine if for the sake of selling tickets Eugene O'Neill had been persuaded to transform the Tyrone family in Long Days Journey Into Night into a fun loving family.

It may sound absurd, but the pressures on young playwrights are enormous – and they are increasing. Your legislation, Mr. Chairman, rebalances the equation. It does not force a producer to produce a play or pay a playwright for something they did not write. What it does is allow playwrights as a group to develop a standard form contract so that our work – our copyrights – are respected throughout the production of our work. This legislation allows us to update the standard form contract that was agreed to twenty years ago. Until now, under the shadow of anti-trust laws, we have been unable to renegotiate. A lot of changes have occurred in the theater over the past twenty years and it's time that the standard form contract be updated to reflect those changes.

Theater is a vital art form. Not only for its entertainment value but also for the creation of our national community. Theater is the place where audiences learn to really listen and consider without distraction. And it is also important to recognize that although Broadway is considered to be the heart of commercial American theater, the truth is most Broadway productions begin at regional theaters around the country. And in turn, many of the greatest plays on Broadway filter down from regional theaters to summer stock to schools across the country. Tens of thousands of jobs nationwide are created in these theaters.

Theater inspires and challenges students unlike any other spoken art form. A number of years ago I began a program in New York called Open Doors, in which practicing theater artists like the director Hal Prince take a small group of public High School students who have never been to the theater to eight plays over the course of a year. What we have consistently found is that the students felt that theater was the medium, unlike film or television, where they did not feel manipulated or spoken down to. Kimberly Ebanks, a student at DeWitt Clinton High School in the Bronx, summed up our programs in a speech to New York City High School seniors by saying "Seeing plays has changed me from a student who believed that in order to be successful in life I had to excel at math and science. But life isn't just about math and science. It's about hypocrisy, prejudice, love, joy, compromise, hate and conflict. These are things that we don't examine enough in life, but we can in the theater."

This legislation will ensure that the kinds of plays Kimberly is describing can still be written by an individual author and not tampered with for the purposes of commercial success. It will also secure the protection of all playwrights' words for future generations. My colleague Stephen Sondheim began the Young Playwrights Festival in New York. Every year over a thousand playwrights under 18 from around the country submit their plays. Their ideas and words leap off the page. This legislation will secure that the theater will remain a place where they can bring their unique vitality and insight.

When I was a young playwright, I looked to the great works of American authors like my colleagues, Arthur Miller and Stephen Sondheim, and thought I wanted the privilege of writing for the theater, and during my career, I was the first woman to win a Tony Award and the Pulitzer in the same year for drama. This legislation will secure that same privilege of honoring the individual voice in the theater for generations to come.

As more and more writers, directors, playwrights and other artists from around the country have learned of this legislation, they have begun to write in support.

Horton Foote, who wrote the play A Trip To Bountiful and the screenplays for such films as To Kill A Mockingbird and Of Mice And Men, has written in support of this legislation.

While some in the producing community may question the legislation, the noted producer and director Hal Prince, who Steve quoted in his testimony and who produced Damn Yankees, West Side Story, and Cabaret, and who directed A Little Night Music, Evita, and Phantom Of The Opera, has written in support of this legislation.

Writer, director and producer David Mamet, who was the playwright of American Buffalo and screenwriter for Glengarry Glen Ross and Wag the Dog, has voiced his support as well.

What united these noted individuals, and many more like them across the country, is their support for this important legislation. Mr. Chairman, members of the committee, I urge that you approve this legislation. Without it, I fear, the old cliché "The Show Must Go On" will apply to fewer and fewer productions.

Thank you.

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