To assist entrepreneurs, support development of the creative economy, and encourage international cultural exchange, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2016

Mr. UDALL introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To assist entrepreneurs, support development of the creative economy, and encourage international cultural exchange, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Comprehensive Resources for Entrepreneurs in the Arts to Transform the Economy Act of 2016” or the “CREATE Act of 2016”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
TITLE I—SUPPORT FOR ARTISTS AND ENTREPRENEURS

Sec. 101. Charitable contributions of certain items created by the taxpayer.
Sec. 102. Microloan program expansion.
Sec. 103. SBA business loans for the creative economy.
Sec. 104. SBA technical assistance programs.
Sec. 105. Arts-focused economic development.
Sec. 106. Arts-focused rural development.
Sec. 107. Expedited adjudication of employer petitions for aliens of extraordinary artistic ability.
Sec. 108. Disaster support for artists through FEMA.

TITLE II—SUPPORT FOR THE CREATIVE ECONOMY

Sec. 201. Modification of rules for charitable contributions of fractional gifts.
Sec. 202. Capital gains tax rate relating to art.

TITLE III—CREATIVE COMMUNITY DEVELOPMENT

Sec. 301. Artist corps.
Sec. 302. Community development entities focused on the arts for purposes of the new markets tax credit.
Sec. 303. Demonstration program on support of local programs that promote creative and performance arts in local economic planning.
Sec. 304. Clarification of jurisdictional immunity for cultural objects of foreign states.

1 TITLE I—SUPPORT FOR ARTISTS AND ENTREPRENEURS

SEC. 101. CHARITABLE CONTRIBUTIONS OF CERTAIN ITEMS CREATED BY THE TAXPAYER.

(a) In General.—Subsection (e) of section 170 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(8) Special rule for certain contributions of literary, musical, or artistic compositions.—"

"(A) In General.—In the case of a qualified artistic charitable contribution—"

"(i) the amount of such contribution shall be the fair market value of the prop-
erty contributed (determined at the time of such contribution), and

“(ii) no reduction in the amount of such contribution shall be made under paragraph (1).

“(B) QUALIFIED ARTISTIC CHARITABLE CONTRIBUTION.—For purposes of this paragraph, the term ‘qualified artistic charitable contribution’ means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both), but only if—

“(i) such property was created by the personal efforts of the taxpayer making such contribution no less than 18 months prior to such contribution,

“(ii) the taxpayer—

“(I) has received a qualified appraisal of the fair market value of such property in accordance with the regulations under this section, and

“(II) attaches to the taxpayer’s income tax return for the taxable year in which such contribution was made a copy of such appraisal,
“(iii) the donee is an organization described in subsection (b)(1)(A),

“(iv) the use of such property by the donee is related to the purpose or function constituting the basis for the donee’s exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described under subsection (c)),

“(v) the taxpayer receives from the donee a written statement representing that the donee’s use of the property will be in accordance with the provisions of clause (iv), and

“(vi) the written appraisal referred to in clause (ii) includes evidence of the extent (if any) to which property created by the personal efforts of the taxpayer and of the same type as the donated property is or has been—

“(I) owned, maintained, and displayed by organizations described in subsection (b)(1)(A), and

“(II) sold to or exchanged by persons other than the taxpayer,
donee, or any related person (as defined in section 465(b)(3)(C)).

“(C) MAXIMUM DOLLAR LIMITATION; NO CARRYOVER OF INCREASED DEDUCTION.—The increase in the deduction under this section by reason of this paragraph for any taxable year—

“(i) shall not exceed the artistic adjusted gross income of the taxpayer for such taxable year, and

“(ii) shall not be taken into account in determining the amount which may be carried from such taxable year under subsection (d).

“(D) ARTISTIC ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term ‘artistic adjusted gross income’ means that portion of the adjusted gross income of the taxpayer for the taxable year attributable to—

“(i) income from the sale or use of property created by the personal efforts of the taxpayer which is of the same type as the donated property, and

“(ii) income from teaching, lecturing, performing, or similar activity with respect to property described in clause (i).
“(E) Paragraph not to apply to certain contributions.—Subparagraph (A) shall not apply to any charitable contribution of any letter, memorandum, or similar property which was written, prepared, or produced by or for an individual while the individual is an officer or employee of any person (including any government agency or instrumentality) unless such letter, memorandum, or similar property is entirely personal.

“(F) Copyright treated as separate property for partial interest rule.—In the case of a qualified artistic charitable contribution, the tangible literary, musical, artistic, or scholarly composition, or similar property and the copyright on such work shall be treated as separate properties for purposes of this paragraph and subsection (f)(3).”.

(b) Effective Date.—The amendment made by this section shall apply to contributions made after the date of the enactment of this Act in taxable years ending after such date.
SEC. 102. MICROLOAN PROGRAM EXPANSION.

Section 7(m)(6) of the Small Business Act (15 U.S.C. 636(m)(6)) is amended by adding at the end the following:

“(F) LOAN CRITERIA FOR ARTISTS AND ARTS ENTREPRENEURS.—The Administration, in consultation with eligible intermediaries, shall develop loan criteria to ensure that small business concerns owned and controlled by artists and small business concerns that support the creative economy receive loan proceeds under this subsection.”.

SEC. 103. SBA BUSINESS LOANS FOR THE CREATIVE ECONOMY.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following:

“(35) CREATIVE ECONOMY.—In providing assistance under this subsection, the Administration shall develop procedures to evaluate the business proposals and business plans of small business concerns that focus on economic development, job creation, and community growth with respect to the creative economy.”.

SEC. 104. SBA TECHNICAL ASSISTANCE PROGRAMS.

Section 21 of the Small Business Act (15 U.S.C. 648) is amended by adding at the end the following:
“(n) Technical Assistance Programs for Artists and Arts Entrepreneurs.—The Administration, in consultation with relevant stakeholders, shall develop technical assistance programs to be carried out by small business development centers under this subsection that target the specific needs of artists and arts entrepreneurs.”.

SEC. 105. ARTS-FOCUSED ECONOMIC DEVELOPMENT.

Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) is amended by adding at the end the following:

“SEC. 219. ARTS-FOCUSED ECONOMIC DEVELOPMENT.

“(a) Definitions.—In this section:

“(1) Business incubation program.—The term ‘business incubation program’ means a program that—

“(A) accelerates the successful development of entrepreneurial businesses through business support resources and services, developed or orchestrated by incubator management;

“(B) is designed to produce successful businesses; and

“(C) provides management guidance, technical assistance, and consulting designed for
young, growing businesses, including by pro-
viding—

“(i) rental space and flexible leases;
“(ii) shared basic business services
and equipment;
“(iii) technology support services; and
“(iv) assistance in obtaining financing
necessary for growth of the business.

“(2) INCUBATOR.—The term ‘incubator’ means
a multitenant facility with on-site management that
directs a business incubation program.

“(b) ARTS-FOCUSED ECONOMIC DEVELOPMENT.—In
providing grants and assistance under this Act (including
through the local technical assistance, partnership plan-
ning, and comprehensive economic development strategies
programs of the Economic Development Administration),
the Secretary shall provide to artists and the creative
economy support through traditional economic develop-
ment tools, including—

“(1) incubators; and
“(2) economic development planning and tech-
nical assistance.”.
SEC. 106. ARTS-FOCUSED RURAL DEVELOPMENT.

The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) is amended by adding at the end the following:

“Subtitle J—Arts-Focused Economic Development

“SEC. 386A. ARTS-FOCUSED ECONOMIC DEVELOPMENT.

“(a) DEFINITIONS.—In this section:

“(1) BUSINESS INCUBATION PROGRAM.—The term ‘business incubation program’ means a program that—

“(A) accelerates the successful development of entrepreneurial businesses through business support resources and services, developed or orchestrated by incubator management;

“(B) is designed to produce successful businesses; and

“(C) provides management guidance, technical assistance, and consulting designed for young, growing businesses, including by providing—

“(i) rental space and flexible leases;

“(ii) shared basic business services and equipment;

“(iii) technology support services; and
“(iv) assistance in obtaining financing necessary for growth of the business.

“(2) INCUBATOR.—The term ‘incubator’ means a multitenant facility with on-site management that directs a business incubation program.

“(b) ARTS-FOCUSED ECONOMIC DEVELOPMENT.—In providing grants and assistance under this Act (including through the local technical assistance, partnership planning, and comprehensive economic development strategies programs of the Office of Rural Development), the Secretary, acting through the Under Secretary for Rural Development, shall provide to artists and the creative economy support through traditional economic development tools, including—

“(1) incubators; and

“(2) economic development planning and technical assistance.”.

SEC. 107. EXPEDITED ADJUDICATION OF EMPLOYER PETITIONS FOR ALIENS OF EXTRAORDINARY ARTISTIC ABILITY.

Section 214(c)(6)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(6)(D)) is amended—

(1) in the first sentence, by inserting “(i)” before “Any person”;

(2) in the second sentence—
(A) by striking “Once” and inserting “Except as provided in clause (ii), once”; and

(B) by striking “Attorney General shall” and inserting “Secretary of Homeland Security shall”;

(3) in the third sentence, by striking “The Attorney General” and inserting “The Secretary”; and

(4) by adding at the end the following:

“(ii) The Secretary of Homeland Security shall adjudicate each petition for an alien with extraordinary ability in the arts (as described in clause (i) of section 101(a)(15)(O)), an alien accompanying such an alien (as described in clause (ii) or (iii) of such section), or an alien described in section 101(a)(15)(P) (other than an alien described in section 214(c)(4)(A) (relating to athletes)) not later than 30 days after—

“(I) the date on which the petitioner submits the petition with a written advisory opinion, letter of no objection, or request for a waiver; or

“(II) the date on which the 15-day period described in clause (i) has expired, if the petitioner has had an opportunity, as appropriate, to supply rebuttal evidence.

“(iii) If a petition described in clause (ii) is not adjudicated before the end of the 30-day period described in
clause (ii) and the petitioner is an arts organization described in paragraph (3), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code for the taxable year preceding the calendar year in which the petition is submitted, or an individual or entity petitioning primarily on behalf of such an organization, the Secretary of Homeland Security shall provide the petitioner with the premium-processing services referred to in section 286(u), without a fee.”.

**SEC. 108. DISASTER SUPPORT FOR ARTISTS THROUGH FEMA.**

(a) In General.—The President, acting through the Administrator of the Federal Emergency Management Agency, shall promulgate rules to ensure that expenses incurred, as a result of a major disaster or emergency, by a self-employed or freelance worker, including a craft artist, fine artist, designer, literary artist, performing artist, or musician, to repair or replace tools needed by the self-employed or freelance worker are considered eligible expenses for assistance under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174).

(b) Requirement.—The rules promulgated under subsection (a) may not require, as a condition of receiving
such assistance under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174), an applicant—

(1) to apply or be declined for assistance from the Small Business Administration; or

(2) to demonstrate that assistance received from the Small Business Administration does not satisfy the total necessary expenses or serious needs arising out of a major disaster or emergency.

TITLE II—SUPPORT FOR THE CREATIVE ECONOMY

SEC. 201. MODIFICATION OF RULES FOR CHARITABLE CONTRIBUTIONS OF FRACTIONAL GIFTS.

(a) Income Tax.—

(1) Additional requirements for deduction.—Paragraph (1) of section 170(o) of the Internal Revenue Code of 1986 is amended to read as follows:

“(1) DENIAL OF DEDUCTION IN CERTAIN CASES.—

“(A) IN GENERAL.—No deduction shall be allowed for a contribution of an undivided portion of a taxpayer’s entire interest in tangible personal property unless—
“(i) all interests in the property are held immediately before such contribution by—

“(I) the taxpayer, or

“(II) the taxpayer and the donee,

“(ii) in the case of an initial fractional contribution, such contribution is an undivided portion of not less than 10 percent of all interests in the property,

“(iii) in the case of an initial fractional contribution, the contribution is made pursuant to a written binding contract which requires the donor—

“(I) to contribute not less than 20 percent of all interests in the property on or before the date that is 11 years after the date of the initial fractional contribution, and

“(II) to contribute all of the interests in such property to the donee (or if such donee is no longer in existence, to any person described in subsection (c)) on or before the earlier of the date of the death of the donor or the date which is 20 years after the
date of the initial fractional contribu-

tion, and

“(iv) if the value of the tangible per-

sonal property with respect to which the

undivided portion of the taxpayer’s entire

interest relates is greater than $1,000,000

(or such greater amount as determined by

the Secretary), the taxpayer attaches to

the return for the taxable year in which

such contribution is made a statement of

value obtained from the Internal Revenue

Service.

In the case of a donor who dies before the date

which is 20 years after the date of the initial

fractional contribution, clause (iii)(II) is satis-

fied with respect to such initial fractional con-

tribution if the donor’s will specifies that all of

the interests in such property will be contrib-

uted to the donee before such date.

“(B) EXCEPTIONS.—The Secretary may,

by regulation, provide for exceptions to sub-

paragraph (A)(i) in cases where all persons who

hold an interest in the property make propor-

tional contributions of an undivided portion of

the entire interest held by such persons. Such
regulations may modify the requirements of clauses (ii) and (iii) of subparagraph (A) to the extent necessary to carry out the purposes of this subparagraph.”.

(2) VALUATION OF SUBSEQUENT GIFTS.—Paragraph (2) of section 170(o) of such Code is amended to read as follows:

“(2) VALUATION OF SUBSEQUENT GIFTS.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using a certified appraisal from the Art Advisory Panel of the Commissioner of Internal Revenue.”.

(3) RECAPTURE OF DEDUCTION.—Paragraph (3) of section 170(o) of such Code is amended—

(A) by redesignating subparagraph (B) as subparagraph (C), and

(B) by striking subparagraph (A) and inserting the following:

“(A) RECAPTURE.—The Secretary shall provide for the recapture of the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer’s entire interest in tangible personal property—
“(i) in any case in which the donor fails to meet the requirements described in paragraph (1)(A)(iii), and

“(ii) in any case where such property is not in the physical possession of the donee (other than in the case of art which is fragile or unwieldy) and used in a use which is related to a purpose or function constituting the basis for the donee organization’s exemption under section 501 during any applicable period for a period of time which bears substantially the same ratio to 5 years as—

“(I) the percentage of the undivided interest of the donee in the property (determined on the day after such contribution was made), bears to

“(II) 100 percent.

“(B) APPLICABLE PERIOD.—For purposes of subparagraph (A), the applicable period means—

“(i) the 5-year period beginning on the date of the later of the initial fractional contribution, and
“(ii) each subsequent 5-year period occurring during the 20-year period described in paragraph (1)(A)(iii)(II).”.

(b) Gift Tax.—

(1) Additional Requirements for Deduction.—Paragraph (1) of section 2522(e) of the Internal Revenue Code of 1986 is amended to read as follows:

“(1) Denial of Deduction in Certain Cases.—

“(A) In general.—No deduction shall be allowed for a contribution of an undivided portion of a taxpayer’s entire interest in tangible personal property unless—

“(i) all interests in the property are held immediately before such contribution by—

“(I) the taxpayer, or

“(II) the taxpayer and the donee,

“(ii) in the case of an initial fractional contribution, such contribution is an undivided portion of not less than 10 percent of all interests in the property,

“(iii) in the case of an initial fractional contribution, the contribution is
made pursuant to a written binding contract which requires the donor—

“(I) to contribute not less than 20 percent of all interests in the property on or before the date that is 11 years after the date of the initial fractional contribution, and

“(II) to contribute all of the interests in such property to the donee (or if such donee is no longer in existence, to any person described in subsection (c)) on or before the earlier of the date of the death of the donor or the date which is 20 years after the date of the initial fractional contribution, and

“(iv) if the value of the tangible personal property with respect to which the undivided portion of the taxpayer’s entire interest relates is greater than $1,000,000 (or such greater amount as determined by the Secretary), the taxpayer attaches to the return for the taxable year in which such contribution is made a statement of
value obtained from the Internal Revenue Service.

In the case of a donor who dies before the date which is 20 years after the date of the initial fractional contribution, clause (iii)(II) is satisfied with respect to such initial fractional contribution if the donor’s will specifies that all of the interests in such property will be contributed to the donee before such date.

“(B) EXCEPTIONS.—The Secretary may, by regulation, provide for exceptions to subparagraph (A)(i) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons. Such regulations may modify the requirements of clauses (ii) and (iii) of subparagraph (A) to the extent necessary to carry out the purposes of this subparagraph.”

(2) RecapTURE OF DEDUCTION.—Paragraph (2) of section 2522(e) of such Code is amended—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and
(B) by striking subparagraph (A) and inserting the following:

“(A) RECAPTURE.—The Secretary shall provide for the recapture of the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer’s entire interest in tangible personal property—

“(i) in any case in which the donor fails to meet the requirements described in paragraph (1)(A)(iii), and

“(ii) in any case where such property is not in the physical possession of the donee (other than in the case of art which is fragile or unwieldy) and used in a use which is related to a purpose or function constituting the basis for the donee organization’s exemption under section 501 during any applicable period for a period of time which bears substantially the same ratio to 5 years as—

“(I) the percentage of the undivided interest of the donee in the property (determined on the day after such contribution was made), bears to
“(II) 100 percent.

“(B) APPLICABLE PERIOD.—For purposes of subparagraph (A), the applicable period means—

“(i) the 5-year period beginning on the date of the later of the initial fractional contribution, and

“(ii) each subsequent 5-year period occurring during the 20-year period described in paragraph (1)(A)(iii)(II).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions and gifts made after the date of the enactment of this Act.

(d) TRANSITION RULE.—In the case of any additional contribution (as defined in section 170(o)(4) of the Internal Revenue Code of 1986) with respect to an initial fractional contribution (as defined in such section) made after August 17, 2006, and before the date of the enactment of this Act—

(1) except for purposes of determining the fair market value of such contribution under section 170(o)(2) of the Internal Revenue Code of 1986 (as amended by this Act), such contribution shall be treated as an initial fractional contribution (as so
defined) subject to the amendments made by this section, and

(2) sections 170(o)(3)(A)(i) and 2522(e)(3)(A)(i) of such Code (as in effect before the date of the enactment of this Act) shall not apply with respect to any prior contribution of an undivided portion of the taxpayer’s interest in the property.

SEC. 202. CAPITAL GAINS TAX RATE RELATING TO ART.

(a) EXCLUSION FROM 28-PERCENT RATE GAIN.—Subparagraph (A) of section 1(h)(5) of the Internal Revenue Code of 1986 is amended by striking “paragraph (3)” and inserting “paragraph (2)(A) or (3)”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

TITLE III—CREATIVE COMMUNITY DEVELOPMENT

SEC. 301. ARTIST CORPS.

(a) CORPS.—Section 122(a) of the National and Community Service Act of 1990 (42 U.S.C. 12572(a)) is amended by adding at the end the following:

“(6) ARTIST CORPS.—

“(A) IN GENERAL.—The recipient may carry out national service programs through an
Artist Corps that identifies and meets unmet needs within communities through artistic activities such as those described in subparagraph (B) and improves performance on the indicators described in subparagraph (C).

“(B) ACTIVITIES.—An Artist Corps described in this paragraph may carry out activities such as—

“(i) providing skilled visual and performance artists to address community needs through artistic activities in education, health care, and therapeutic settings, and in other settings in the community; or

“(ii) providing other artistic activities, addressing unmet community needs, that the Corporation may designate.

“(C) ARTIST CORPS INDICATORS.—The indicators for a corps program described in this paragraph are—

“(i) any indicator relating to meeting critical needs that the Corporation establishes; or

“(ii) any local indicator (applicable to a particular recipient or community and on
which an improvement in performance is needed) relating to meeting critical needs, that is approved by the Corporation or a State Commission.”.

(b) Conforming Amendments.—Section 122 of such Act is amended—

(1) in subsection (b)(3), by striking “or (5)” and inserting “(5), or (6)”;

(2) in subsection (c)(1), in the matter preceding subparagraph (A), by striking “through (5)” and inserting “through (6)”.

SEC. 302. COMMUNITY DEVELOPMENT ENTITIES FOCUSED ON THE ARTS FOR PURPOSES OF THE NEW MARKETS TAX CREDIT.

(a) In General.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall develop and promulgate guidelines for the creation and operation of qualified community development entities—

(1) which will be eligible to be certified as such by the Secretary of the Treasury under section 45D(c)(1)(C) of the Internal Revenue Code of 1986;

(2) a qualified equity investment in which will, subject to allocation under section 45D(f) of such
Code, be eligible for the credit under such section 45D; and

(3) which will focus on investment in and the development and encouragement of the creative economy in low-income communities.

(b) DEFINITIONS.—For purposes of this section, any term used in subsection (a) which is also used in section 45D of the Internal Revenue Code of 1986 has the same meaning as when used in such section.

SEC. 303. DEMONSTRATION PROGRAM ON SUPPORT OF LOCAL PROGRAMS THAT PROMOTE CREATIVE AND PERFORMANCE ARTS IN LOCAL ECONOMIC PLANNING.

(a) Demonstration Program Required.—The Secretary of Commerce shall establish a demonstration program to assess the feasibility and advisability of providing support to covered programs to promote creative and performing arts in the economic planning of local governments.

(b) Covered Programs.—For purposes of the demonstration program required by subsection (a), a covered program is any program that—

(1) was in effect on the day before the date of the enactment of this Act; and
(2) the Secretary considers part of an art com-
munity.

SEC. 304. CLARIFICATION OF JURISDICTIONAL IMMUNITY
FOR CULTURAL OBJECTS OF FOREIGN
STATES.

(a) In General.—Section 1605 of title 28, United
States Code, is amended by adding at the end the fol-
lowing:

“(h) JURISDICTIONAL IMMUNITY FOR CERTAIN ART
EXHIBITION ACTIVITIES.—

“(1) In general.—If—

“(A) a work is imported into the United
States from any foreign country pursuant to an
agreement that provides for the temporary exhi-
bition or display of such work entered into be-
tween a foreign state that is the owner or cus-
todian of such work and the United States or
one or more cultural or educational institutions
within the United States;

“(B) the President, or the President’s des-
ignee, has determined, in accordance with sub-
section (a) of Public Law 89–259 (22 U.S.C.
2459(a)), that such work is of cultural signifi-
cance and the temporary exhibition or display
of such work is in the national interest; and
“(C) the notice thereof has been published in accordance with subsection (a) of Public Law 89–259 (22 U.S.C. 2459(a)), any activity in the United States of such foreign state, or of any carrier, that is associated with the temporary exhibition or display of such work shall not be considered to be commercial activity by such foreign state for purposes of subsection (a)(3).

“(2) Nazi-era claims.—Paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection and—

“(A) the property at issue is the work described in paragraph (1);

“(B) the action is based upon a claim that such work was taken in connection with the acts of a covered government during the covered period;

“(C) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in section 1603(d); and

“(D) a determination under subparagraph (C) is necessary for the court to exercise juris-
dition over the foreign state under subsection (a)(3).

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘work’ means a work of art or other object of cultural significance;

“(B) the term ‘covered government’ means—

“(i) the Government of Germany during the covered period;

“(ii) any government in any area in Europe that was occupied by the military forces of the Government of Germany during the covered period; and

“(iii) any government in Europe that was established with the assistance or cooperation of the Government of Germany during the covered period; and

“(iv) any government in Europe that was an ally of the Government of Germany during the covered period; and

“(C) the term ‘covered period’ means the period beginning on January 30, 1933, and ending on May 8, 1945.”.
(b) **Effective Date.**—The amendment made by this section shall apply to any civil action commenced on or after the date of the enactment of this Act.