

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

RHODE ISLAND LATINO ARTS,
NATIONAL QUEER THEATER,
THE THEATER OFFENSIVE, and
THEATRE COMMUNICATIONS GROUP,

Case No. 25-cv-00079

Plaintiffs,

v.

NATIONAL ENDOWMENT FOR THE
ARTS, and MARY ANNE CARTER, in her
official capacity as Acting Chair of the
National Endowment for the Arts,

Defendants.

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION,
EXPEDITED HEARING, AND/OR A TEMPORARY RESTRAINING ORDER**

Plaintiffs hereby move this Court, pursuant to Federal Rule of Civil Procedure 65, for an order preliminarily enjoining Defendants from violating the First Amendment and Fifth Amendments to the United States Constitution, and the Administrative Procedure Act, 5 U.S.C. § 551 et seq. by requiring applicants seeking grants from the National Endowment for the Arts (“NEA”) to certify that they will not “promote” what the government deems to be “gender ideology,” and by barring any applicants that appear to “promote” such ideas from receiving funding (“gender ideology” prohibition).

Plaintiffs seek expedited consideration of, and hearing on, this motion in order to permit a ruling before March 24, 2025, the current deadline for NEA applications, so that they can submit applications without being subject to the “gender ideology” prohibition. In the alternative, if the

Court is unable to hear or rule on the preliminary injunction request by that date, Plaintiffs seek a temporary restraining order to that effect.

In support of the motion, Plaintiffs rely upon the Complaint; the Declarations of Vera Eidelman, Marta V. Martínez, Adam Odsess-Rubin, Giselle Byrd, and Emilya Cachapero, and accompanying exhibits; and a supporting memorandum of law submitted herewith.

Plaintiffs seek a preliminary injunction, or in the alternative a temporary restraining order, enjoining Defendants, their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with them, from (1) implementing or giving effect to Executive Order 14168, Defendants' amendments to the Assurance of Compliance to implement Executive Order 14168, and any other actions by Defendants to implement Executive Order 14168 and (2) from taking any other action that prevents Defendants from fulfilling their statutory duty to judge grant applications using the criteria set forth in the Act of "artistic excellence and artistic merit."

Plaintiffs also respectfully request that the Court's order direct Defendants to accept applications from applicants who did not submit Part 1 of the NEA application, which is due on March 11, 2025, and also requires that applicants agree to the "gender ideology" prohibition, because they were unwilling to agree to it. Plaintiffs respectfully request that the Court's order direct Defendants to permit such applicants to submit Parts 1 *and* 2 of the application by March 24, 2025, or within a reasonable period to be set by the Court after hearing from the parties.

Expedited consideration is required because the NEA's March 2025 funding cycle requires applicants to submit their applications by March 24, and an initial certification agreeing to be bound by the prohibition on "promot[ing] gender ideology" by March 11. In the absence of judicial relief, Plaintiff RILA will be forced to alter its application; Plaintiffs NQT and TTO will be barred

from eligibility for this cycle, though they need to be eligible in March in order to seek funding for the projects they are envisioning; and members of TCG will be chilled from applying for funding at all. Because the “gender ideology” prohibition is unconstitutional and unauthorized by statute, and will inflict irreparable harm by denying organizations who depend on NEA funding from competing fairly for such grants, Plaintiffs seek expedited consideration.

On March 5, 2025, prior to filing this motion, undersigned counsel Vera Eidelman called and emailed Valencia Rainey, Acting General Counsel for the NEA, to notify her of Plaintiffs’ intent to seek a preliminary injunction, expedited hearing, and/or a temporary restraining order.

Plaintiffs respectfully request that the motion be scheduled for an expedited hearing.

By their attorneys,

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**Pro hac vice* applications forthcoming

CERTIFICATE OF SERVICE

I hereby certify that I filed the within document via the ECF system on the 6th day of March, 2025 and that it is available for viewing and downloading to all counsel of record and that I provided the within document by email to:

Valencia Rainey, Acting General Counsel for the NEA, OGC@arts.gov

/s/ Lynette Labinger
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**MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR A
PRELIMINARY INJUNCTION,
EXPEDITED HEARING, AND/OR A
TEMPORARY RESTRAINING
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INTRODUCTION

Congress created the National Endowment for the Arts (“NEA”) to fund excellent art by individuals and organizations, without regard to viewpoint. The statutory criteria for grants are artistic merit and artistic excellence: Congress did not authorize the agency to exclude applicants from consideration because it disagrees with the viewpoint they seek to express. Yet, in response to Executive Order 14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” the NEA now requires applicants to certify that they will not use federal funds to “promote” what the government deems to be “gender ideology.” Applicants whose projects appear to “promote” such messages and ideas are ineligible for NEA grants, no matter their artistic merit, solely because the government disapproves of the viewpoint they express.

Plaintiffs Rhode Island Latino Arts, National Queer Theater, and The Theater Offensive have each received NEA funding in the past and seek NEA funding in the current funding cycle and beyond, but they object to the ban on “promoting” what the government deems to be “gender ideology,” are uncertain about what it means, and reasonably fear that it would bar the specific projects they would like to pitch to the NEA in applications due on March 24, 2025. The same is true for many of the more than 600 theater members of Plaintiff Theatre Communications Group, including many who reasonably fear submitting an application at all in light of the ideological certification requirement and funding prohibition (together, “gender ideology prohibition”).

Plaintiffs seek a preliminary injunction to stay and enjoin this prohibition, which was never authorized by Congress and is invalid because it: (1) violates the Administrative Procedure Act (“APA”) by exceeding the NEA’s statutory authority, being arbitrary and capricious, and violating constitutional rights; (2) violates the First Amendment by imposing a viewpoint-based prohibition on funding; and (3) is void for vagueness under the Fifth Amendment.

Plaintiffs seek expedited consideration in order to permit a ruling before March 24, 2025, the due date for NEA applications, so that they can submit applications without being subject to the “gender ideology” prohibition.

STATEMENT OF FACTS

A. National Endowment for the Arts

Congress established the NEA in 1965 as part of “a broadly conceived national policy of support for . . . the arts in the United States.” 20 U.S.C. § 953(b). Congress pledged federal funding “to help create and sustain not only a climate encouraging freedom of thought, imagination, and inquiry but also the material conditions facilitating the release of this creative talent.” *Id.* § 951(7).

The NEA’s enabling statute, the National Foundation on the Arts and the Humanities Act of 1965 (the “Act”), “authorize[s]” the NEA’s Chair to offer grants to groups “of exceptional talent engaged in or concerned with the arts.” *Id.* § 954(c). The Act broadly defines funding priorities, including, *inter alia*, projects and productions “which have substantial national or international artistic and cultural significance”; “that reach, or reflect the culture of, a minority, inner city, rural, or tribal community”; and “that will encourage public knowledge, education, understanding, and appreciation of the arts.” *See id.* §§ 954(c)(1), (4), (5).

In response to concerns that government support for the arts might lead to “attempts at political control of culture,” Congress took several steps to insulate the agency from political pressures, and to insulate private grantees’ speech from government content control. H.R. Rep. No. 89-618, at 21 (1965), *reprinted in* 1965 U.S.C.C.A.N. 3186, 3205 (“H.R. Rep. No. 618”). First, Congress required that funding criteria be based on artistic merit. *See* 79 Stat. 846–47, § 5(c)(1). As reflected in the current language of the Act, “artistic excellence and artistic merit are the criteria

by which applications are judged.” 20 U.S.C. § 954(d)(1).¹ Second, in what the House Report described as an “assurance against federal interference in the arts,” H.R. Rep. No. 618, 1965 U.S.C.C.A.N. at 3200, Congress forbade the NEA from “exercis[ing] any direction, supervision, or control over the policy determination, personnel, or curriculum, or the administration or operation of any . . . institution, organization, or association,” 20 U.S.C. § 953(c). Third, Congress made the NEA an agency of arts professionals guided by artistic merit rather than of politicians who might be driven by political concerns. It required that the NEA’s decisionmakers—the Chair and the National Council on the Arts—be experts in the arts. *See* 78 Stat. 905, § 5(a) (requiring National Council on the Arts members to be selected “for their broad knowledge of or experience in, or for their profound interest in the arts,” to include those “professionally engaged in the arts,” and to be from “the major art fields”); 79 Stat. at 849, § 6(a) (transferring the National Council on the Arts to the NEA); 20 U.S.C. § 955(b) (continuing to impose similar requirements on NEA Chair and Council); *see also* 135 Cong. Rec. 16284 (1989) (statement of Senator Pell) (“When we structured the Endowment, we were careful to put the artistic decisionmaking in the hands of outside experts and away from the influence of government . . .”). Fourth, the Senate Report devoted an entire section to “Freedom of Expression,” stating that those administering the Act should give “the fullest attention to freedom of artistic and humanistic expression.” S. Rep. No. 300, 89th Cong., 1st Sess. at 3–4 (1965). The Act was designed to encourage “free inquiry and

¹ As described in more detail below, *see infra* Argument I.B.1, in 1990, Congress added a requirement that the process for choosing grant recipients “tak[e] into consideration general standards of decency and respect for the diverse beliefs and values of the American public” and barred the NEA from funding obscenity. 20 U.S.C. § 954(d). Artists challenged the “decency and respect” clause as imposing a viewpoint-based restriction on grants but the Supreme Court held that the language was purely hortatory and did not require any particular weight to be given to “decency and respect,” much less impose a viewpoint-based prohibition on funding. *See Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 580–81 (1998).

expression,” not “conformity for its own sake”; in particular, it was not meant to give “undue preference . . . to any particular style or school of thought or expression.” *Id.*

Since its founding, the NEA has awarded more than \$5.5 billion in funding. The NEA typically announces awards semiannually. On January 14, 2025, the NEA announced its latest tranche of funding, consisting of “1,474 awards totaling \$36,790,500 to support the arts in communities” around the country. Ex. 3 to Eidelman Decl.

B. The NEA’s Grantmaking Process

The Act sets forth the process by which grantees are chosen: the Chair must “utilize advisory panels to review applications,” 20 U.S.C. § 959(c), which must be “composed, to the extent practicable, of individuals reflecting a wide geographic, ethnic, and minority representation as well as individuals reflecting diverse artistic and cultural points of view,” *id.* § 959(c)(1). They must also include “lay individuals who are knowledgeable about the arts.” *Id.* § 959(c)(2). The panels “make recommendations to the National Council on the Arts,” *id.* § 959(c), which then counsels the Chair on whether to approve or deny funding, *id.* § 955(f). The Chair has “final authority,” though any grant amount must be limited to the “amount . . . recommended by the Council” and the Chair may not approve an application that the Council recommended denying. *Id.* § 955(f)(2).

C. Grants for Arts Projects

The NEA’s Grants for Arts Projects (“GAP”) is the agency’s principal grant category. It offers funding for “arts projects with specific, definable activities” across disciplines, from arts education to dance to theater. Ex. 1 to Eidelman Decl. at 6. “Projects may be small, medium, or large” and funding can cover “any or all phases.” *Id.* Applicants may request between \$10,000 to

\$100,000. *Id.* at 20. The NEA anticipates awarding \$62,245,000 for fiscal year 2026. *Id.* It anticipates that it will receive 4,500 applications and make 2,075 awards. *Id.* at 4.

The GAP application process has two parts. *Id.* at 22. In Part 1, applicants must complete the Application for Federal Domestic Assistance/Short Organization Form, “a brief form that collects basic information” about the applicant organization, and submit it on Grants.gov. *Id.* at 21. In Part 2, an applicant must complete the Grant Application Form, which constitutes “the majority of [the] application material, including information about [the] organization’s history and budget, and project details including a project description, timeline, budget information, and work samples,” and submit it on the NEA’s applicant portal. *Id.*

Applications are reviewed for “artistic excellence and artistic merit.” 20 U.S.C. § 954(d)(1); *see also* Ex. 1 to Eidelman Decl. at 25. Excellence refers to the quality of the artists, work, and organizations involved. Ex. 1 to Eidelman Decl. at 25. Merit includes the “value and appropriateness of the project” to the organization’s mission, field, and community; the feasibility of the project; how clearly defined the goals, outcomes, and plan are; evidence of direct compensation to artists; and, where applicable, “[e]ngagement with individuals whose opportunities to experience and participate in the arts are limited by geography, ethnicity, economic status, or disability.” *Id.* The only content-based bar is on obscenity. *Id.* at 9.

D. Executive Order 14168: “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”

On January 20, 2025, President Trump issued Executive Order 14168, titled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” (“Gender Ideology EO” or “EO”). *See* 90 Fed. Reg. 8615 (Jan. 30, 2025). The Gender Ideology EO explains its purpose is to resist “ideologues who deny the biological reality of sex.” *Id.* § 1. “Gender ideology,” the EO states, “replac[es] the immutable biological reality of

sex with an internal, fluid, and subjective sense of self unmoored from biological facts,” and it is, in the White House’s view, an “attack against the ordinary and longstanding use and understanding of biological and scientific terms.” *Id.* The EO asserts that “[t]his is wrong” and that “[t]he erasure of sex in language and policy has a corrosive impact not just on women but on the validity of the entire American system.” *Id.* The EO declares that it is therefore “the policy of the United States to recognize two sexes, male and female.” *Id.* § 2. It directs that “[f]ederal funds shall not be used to promote” what the government deems to be “gender ideology” and that “[e]ach agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology.” *Id.* § 3(g).

The Gender Ideology EO defines “gender ideology” as a “false claim” that “replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity,” and “includes the idea that there is a vast spectrum of genders that are disconnected from one’s sex.” *Id.* § 2(f). The EO condemns “gender ideology” as “internally inconsistent, in that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body.” *Id.*

E. NEA’s Assurance of Compliance and Funding Prohibition

Applicants must agree to the following in both Part 1 and Part 2 of their application:

By signing this application, I certify (1) to the statements contained in the list of certifications* and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances* and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 18, Section 1001).

* The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Ex. A to Odsess-Rubin Decl. In seeking to register to apply for an NEA grant, there is no option not to agree or to modify the text of the certification. Applications must be submitted online, and the website only accepts a submission if the applicant checks a box that reads, “I agree.” *See, e.g.,* Odsess-Rubin Decl. ¶ 12.

On February 6, 2025, the NEA announced that it was revising the GAP guidelines for the current submission cycle. Ex. 4 to Eidelman Decl. Following the revisions, the Assurance of Compliance applicants must agree to now includes the following language:

By signing and submitting its application form on Grants.gov, the applicant certifies that it is in compliance with the [antidiscrimination] statutes outlined below and all related National Endowment for the Arts regulations as well as all applicable executive orders, and that it will maintain records and submit the reports that are necessary to determine its compliance.

Ex. 2 to Eidelman Decl. at 1. In particular, “the applicant agrees that, if the applicant is selected and becomes a NEA grant recipient . . . federal funds shall not be used to promote gender ideology, pursuant to Executive Order No. 14168[.]” *Id.* Accordingly any application that appears to “promote” what the government deems to be “gender ideology” will not receive funding, and any funded project cannot “promote” such ideas or messages.

The Assurance of Compliance warns applicants that the NEA “may conduct a review of your organization to ensure that the applicant is in compliance with these statutes, regulations, and executive orders. If the NEA determines that a recipient has failed to comply . . . , it may suspend or terminate the award, and/or recover the funds.” *Id.* It also states that “[t]he applicant’s assurance of compliance is subject to judicial enforcement,” and requires that applicants “maintain records of [their] compliance and submission for three (3) years . . . and permit access to records as required by applicable regulations, guidelines or other directives.” *Id.* It concludes “[t]he United States has the right to seek judicial or administrative enforcement of this assurance.” *Id.*

Prior to the revisions, the deadline for the current GAP submission cycle had been February 13, 2025. When announcing the forthcoming revisions, the NEA shifted the deadline to March 2025, and directed organizations “that have already submitted an application . . . to submit a new application[.]” Ex. 4 to Eidelman Decl. Part 1 of the application for the March 2025 cycle must now be submitted by March 11 and Part 2 is due on March 24. Ex. 1 to Eidelman Decl. at 23. The NEA will consider extensions due to “registration or renewal issues,” or technical malfunctions that are the result of failures on the government’s submission or registration sites. *Id.* The NEA Chair may also “adjust application deadlines for affected applicants” “[i]n the event of a major emergency,” such as a “systems technological failure” in the submission or registration systems. *Id.*

Prior to February 21, 2025, the NEA had also required that grant applicants certify that they “will not operate any programs promoting ‘diversity, equity, and inclusion’ (DEI) that violate any applicable Federal anti-discrimination laws, in accordance with Executive Order No. 14173.” On February 21, 2025, a district court enjoined DEI certification requirements stemming from that Executive Order. *Nat’l Ass’n of Diversity Officers in Higher Educ. v. Trump*, No. 1:25-CV-00333-ABA, 2025 WL 573764, at *19 (D. Md. Feb. 21, 2025). The NEA subsequently updated its Assurance of Compliance to state that it “is not currently requiring any grantee or contractor to make any ‘certification’ or other representation pursuant to Executive Order No. 14173.” Ex. 2 to Eidelman Decl. It assures applicants that “[t]his term will not apply to your award as long as this preliminary injunction remains in effect.” *Id.*

F. The Plaintiffs

Rhode Island Latino Arts (“RILA”) is a Latino arts nonprofit organization in Rhode Island. Martínez Decl. ¶ 2. Founded in 1988, its mission is to promote, encourage, and preserve the art,

history, heritage, and cultures of Latinos in Rhode Island. *Id.* RILA offers programming of every genre of art, including visual art, dance, and music. *Id.* ¶ 3. It puts on theatrical and musical performances, Latin percussion sessions, dancing events, script readings, and storytelling events. *Id.* RILA also conducts literacy programs and has a gallery. *Id.* The NEA awarded grants to RILA in 2019, 2020, and 2022. *Id.* ¶¶ 5–7.

National Queer Theater (“NQT”) is a theater collective dedicated to celebrating LGBTQ+ artists and providing a home for otherwise unheard storytellers. Odsess-Rubin Decl. ¶ 2. NQT strives to support the most marginalized people in the queer community, including transgender people, immigrants, and people of color. *Id.*² Since 2019, NQT has hosted the annual Criminal Queerness Festival (“CQF”), which features works by emerging artists from countries that criminalize homosexuality, such as Syria, Venezuela, Uganda, China, and Poland. *Id.* ¶ 5. The plays are accompanied by talkback discussions facilitated by the playwrights, human rights advocates, and other subject matter experts. *Id.* The NEA awarded NQT grants for the festival in 2023 and 2024. *Id.* ¶ 3. In addition, NQT was offered an NEA grant in 2025 for CQF, and that award is pending processing. *Id.* In January 2025, the festival received a prestigious Obie Award that honors theater grant recipients. *Id.* ¶ 4. Supporting transgender writers and transgender themes has always been a part of the festival, including when it received NEA funding. *Id.* ¶ 7.

The Theater Offensive (“TTO”) is a theatrical organization whose mission is to present liberating art by, for, and about queer and trans people of color, that transcends artistic boundaries, celebrates cultural abundance, and dismantles oppression. Byrd Decl. ¶ 2. TTO is open to all

² Most people are “cisgender,” meaning that they have a gender identity that aligns with their sex assigned at birth. Transgender people have a gender identity different from their sex assigned at birth. “Nonbinary” people have a gender identity that is neither exclusively male nor exclusively female. The term “intersex” describes a wide range of natural bodily variations, and intersex people are born with sex characteristics that do not fit binary notions of bodies designated “male” or “female.”

without regard to race, sex, or other identifying characteristics, and it seeks in particular to support the voices of transgender, nonbinary, and queer people, including people of color. *Id.* The NEA awarded grants to TTO in 2016, 2017, 2021, 2022, and 2024. *Id.* ¶¶ 4–9.

The Theatre Communications Group (“TCG”) is a national theater organization with over 600 member theaters and affiliates and over 3,500 individual members. Cachapero Decl. ¶ 2. Its mission is to support a just and thriving theater ecology, meaning one that has the investments, commitments, and participants it needs to create, produce, and present diverse stories; encourage, engage, and financially sustain theater makers and practitioners; abundantly serve multifaceted communities; advance values and practices of equity and justice; and sustain theater as a viable industry. *Id.* ¶ 3. At the core of TCG’s work is ensuring equitable participation in all areas of practice and that all populations in its community have access to TCG’s services, including those of LGBTQ+ and transgender/gender-nonconforming identities. *Id.* Many of TCG’s members, who include TTO, have received NEA funding in the past, and TCG itself has received 42 NEA grants since 1998. *Id.* ¶¶ 4–5. TCG sues on its own behalf and on behalf of its members, many of whom are deterred from applying for NEA grants because of the new provision prohibiting “promot[ion]” of what the government deems to be “gender ideology.” *Id.* ¶¶ 9. It has also had to divert resources in response to the new prohibition, which has caused much confusion and concern in the theatre community. *Id.* ¶¶ 12–13.

G. The Harm of the NEA’s Changes to Plaintiffs

The “gender ideology” prohibition bars RILA from being eligible to apply for funding to support two priority projects: (1) a production of “Faust,” in which the lead character is gay and queer, and an actor RILA was considering for the role is nonbinary and uses they/them pronouns, Martínez Decl. ¶ 12; and (2) a storytelling program that has included stories about coming out as

queer, and is intended to be open to all stories and themes, including those that might contravene the “gender ideology” prohibition, *id.* ¶ 13. Because of the prohibition, RILA shifted gears and, absent judicial relief, will instead apply for an NEA grant to support performance tours and an oral history performance highlighting the contributions of Latinos to American history and Rhode Island history. *Id.* ¶ 15. If not for the “gender ideology” prohibition, RILA would seek support for a project that would explicitly include supporting and celebrating the transgender, nonbinary, and queer members of RILA’s community, both as artists and thematically. *Id.*

RILA is also unsure of the precise contours of the “gender ideology” prohibition, including whether it can cast transgender and/or nonbinary actors in the performance tours, whether the performance can feature transgender and nonbinary characters, and what it means for the unrestricted freedom RILA typically gives its actors to create, interpret, and perform characters as they choose, including dressing as a man one night and a woman the next for the same role. *Id.* ¶¶ 12, 16–17. Because the new NEA guidelines do not make it clear what is prohibited, RILA must steer clear of any potential violations. For example, RILA would like to explicitly state that it will support transgender, nonbinary, and queer artists and themes, but RILA fears compliance penalties and being ineligible for funding if it does so. *Id.* ¶ 16. It seeks judicial relief that would permit it to submit an application that supports these artists and themes without surrendering an opportunity for NEA support. *Id.* ¶ 18.

NQT and TTO have similar concerns about whether “promoting” what the government deems to be “gender ideology” includes working with actors, playwrights, and other artists who identify as transgender, nonbinary, or intersex, and whether it prohibits the mere presence of a trans, nonbinary, or intersex character. Odsess-Rubin Decl. ¶ 14; Byrd Decl. ¶ 18. They fear that

their very missions as organizations dedicated to queer and transgender people might run afoul of the “gender ideology” prohibition, making them ineligible for funding for any project. *Id.*

In the absence of this funding restriction, NQT would again seek NEA funding to support the Criminal Queerness Festival, specifically the production scheduled to take place in the summer of 2026. Odsess-Rubin Decl. ¶¶ 8–9. The festival celebrates freedom of expression and opposes censorship in other countries, and it is expressly intended to support artists who explore LGBTQ+ stories, including work that affirms the equal dignity and genuine experience of transgender artists, that explores and celebrates stories of and about transgender people, and that rejects the notion that people’s identities are determined by their biological anatomy at birth. *Id.* ¶¶ 6, 16. NQT fears that, absent injunctive relief against the “gender ideology” prohibition, the viewpoints expressed by the festival will render it ineligible for NEA funding. *Id.* ¶ 18.

Were it not for the “gender ideology” prohibition, TTO would apply for an NEA grant in the upcoming March 2025 cycle to support a new play titled “Smoke,” written by a transgender playwright. Byrd Decl. ¶ 10. The play is set to feature two transgender actors in leading roles; it explores love, found family, motherhood, and healing, and reveals the complexities of trans life at a time when transgender people were at a turning point in the fight for their human rights. *Id.* The NEA funds would be used to support the artists in the play. *Id.* Rehearsals for the play begin in May 2026. *Id.* TTO seeks injunctive relief to ensure that the viewpoints expressed in “Smoke” do not bar it from competing for NEA funding. *Id.* ¶ 20.

TCG sues on its own behalf and on behalf of its members, who include theaters and theater makers, among them TTO, who object to the “gender ideology” prohibition and would like to seek funding in the March 2025 cycle and in future funding cycles for projects that involve transgender characters, cast transgender or nonbinary actors, and otherwise celebrate and affirm transgender

and nonbinary people. Cachapero Decl. ¶¶ 6, 9, 11. Some TCG members intend to check the box in the NEA application agreeing to the certification while simultaneously making clear that they do not agree to abide by the “gender ideology” prohibition. *Id.* ¶ 11. Other TCG members fear submitting an application at all in the March 2025 cycle because they believe it requires agreeing to the Assurance of Compliance, and they fear penalties that might flow to them if they are deemed to have falsely certified. *Id.* ¶ 9. If the “gender ideology” prohibition were lifted, these members would apply for NEA funding in the March 2025 cycle, but they are currently not able to apply. *Id.* TCG also relies on NEA funding in its own right and plans to apply for an NEA grant during the July 2025 cycle to support its fieldwide convenings, national conference, and research, but only if there is no longer a “gender ideology” prohibition, because their convenings and conferences are committed to affirming the equal dignity of all artists, including transgender, queer, and nonbinary artists. *Id.* ¶ 19.

Each plaintiff relies on NEA funding, and intends to seek funding in future years as well, and seeks relief that will protect its right to receive funding based on artistic merit and excellence, while preserving its freedom to express viewpoints that the government has defined (and condemned) as “promoting” what it deems to be “gender ideology.” *Id.* ¶ 17; Martínez Decl. ¶ 22; Odsess-Rubin Decl. ¶ 19; Byrd Decl. ¶ 20.

LEGAL STANDARD

The APA authorizes courts to “postpone the effective date of an agency action or to preserve status or rights pending conclusion” of APA proceedings, “to the extent necessary to prevent irreparable injury.” 5 U.S.C. § 705. There is “substantial overlap” between the factors considered in analyzing a stay under the APA and a preliminary injunction. *Seafreeze Shoreside, Inc. v. U.S. Dep’t of Interior*, 2023 WL 3660689, at *3 (D. Mass. May 25, 2023) (citation omitted). The plaintiffs must show that weighing the following factors favors preliminary relief: “(1) the

plaintiff’s likelihood of success on the merits; (2) the potential for irreparable harm in the absence of an injunction; (3) whether issuing the injunction will burden the defendants less than denying an injunction would burden the plaintiffs and (4) the effect, if any, on the public interest.” *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 10 (1st Cir. 2012) (cleaned up). “The legal standard for a Temporary Restraining Order (‘TRO’) mirrors that of a preliminary injunction.” *New York v. Trump*, No. 25-CV-39-JJM-PAS, 2025 WL 357368, at *1 (D.R.I. Jan. 31, 2025). “In the First Amendment context, the likelihood of success on the merits is the linchpin of the preliminary injunction analysis.” *Fortuño*, 699 F.3d at 10. And when the government is the party opposing the injunction, the final two factors merge. *Nken v. Holder*, 556 U.S. 418, 435–36 (2009).

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THEIR CLAIMS.

A. The “Gender Ideology” Prohibition Violates the APA.

Congress directed that NEA funding decisions shall be based on “artistic merit and artistic excellence.” 20 U.S.C. § 954(d). Nothing in the statute authorizes the NEA to impose a viewpoint-suppressing screen on funding decisions, yet the NEA has imposed just that. Even if the statute authorized the NEA to impose a “gender ideology” prohibition, the agency can offer no reasoned explanation for this decision. Accordingly, Plaintiffs are likely to succeed in establishing that the prohibition violates the APA.

The “gender ideology” prohibition constitutes final agency action. The APA authorizes courts to review “final agency action,” 5 U.S.C. § 704—i.e., action that “mark[s] the consummation of the agency’s decisionmaking process” and determines “rights or obligations . . . from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (cleaned up). “The core question [for finality] is whether the agency has completed its decisionmaking

process, and whether the result of that process is one that will directly affect the parties.” *Trafalgar Cap. Assocs., Inc. v. Cuomo*, 159 F.3d 21, 35 (1st Cir. 1998) (cleaned up).

Defendant’s “gender ideology” prohibition marks the consummation of the NEA’s decisionmaking process with respect to implementing the Gender Ideology EO. *See* EO § 3(g). The prohibition explicitly cites the EO, stating that “[t]he applicant understands that federal funds shall not be used to promote gender ideology, pursuant to [the] Executive Order. . . .” Ex. 3 to Eidelman Decl. at 12. And it marks the consummation of the NEA’s decisionmaking process with respect to its grant guidelines for fiscal year 2026. *See* Ex. 4 to Eidelman Decl. It is a “definitive statement of the agency’s position” that an applicant must accept and comply with the prohibition in order to apply for and/or accept an NEA grant. *Trafalgar*, 159 F.3d at 35 (cleaned up).

The prohibition also has “direct and immediate consequences” for Plaintiffs and their members. *Id.* Each applicant must certify that they will abide by the prohibition, and any application that seeks to “promote” what the government deems to be “gender ideology” will be rendered ineligible for funding. The provision has compelled RILA to change the scope of the project for which it will apply and forced it to alter the language it uses to describe itself as an organization. Martínez Decl. ¶¶ 15–16. For TTO and NQT, the prohibition requires them to sign an illegal certification while simultaneously objecting to it, and, unless lifted by this Court, will render them ineligible for funding without regard to the artistic merit of their proposals. Byrd Decl. ¶ 17; Odsess-Rubin Decl. ¶ 17. Many of TCG’s members reasonably feel unable to even submit Part 1 of the application as long as the “gender ideology” prohibition stands. Cachapero Decl. ¶¶ 9, 11.

The Assurance of Compliance “warns” every applicant that if it accepts a grant without conforming to the gender ideology condition, “it does so at the risk of incurring . . . penalties,”

specifically suspension, termination, or recovery of the grant funds. Moreover, a false certification could expose an applicant to criminal penalties, *see* 18 U.S.C. § 1001(a) (allowing for criminal penalties up to five years), and potentially even *qui tam* actions brought by private citizens, *see* 31 U.S.C. § 3730(b) (allowing for *qui tam* action under the False Claims Act). The condition therefore imposes “direct and appreciable legal consequences” on Plaintiffs. *Bennett*, 520 U.S. at 178.

This final agency action exceeds the NEA’s statutory authority, is arbitrary and capricious, and is contrary to constitutional right.

1. The “Gender Ideology” Prohibition Exceeds the NEA’s Statutory Authority.

The “gender ideology” prohibition has no basis in the Act, and indeed directly contravenes the statute’s core purpose, which is to fund meritorious art without regard to its viewpoint. Just as the Act would not authorize the executive branch to prohibit art that “promotes liberal ideology” or “is critical of the administration’s policies,” so it does not authorize a ban on art that “promotes” what the government deems to be “gender ideology.”

The APA directs courts to “hold unlawful and set aside” agency action that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2). Under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), courts afford no deference to the agency, but instead independently interpret the relevant statute to assess whether agency action is contrary to law.

Here, the Act provides that “the Chairperson shall ensure that

- (1) artistic excellence and artistic merit are the criteria by which applications are judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public; and
- (2) applications are consistent with the purposes of this section. Such regulations and procedures shall clearly indicate that obscenity is without

artistic merit, is not protected speech, and shall not be funded. . . .

20 U.S.C. § 954(d).

Thus, “artistic excellence and artistic merit are *the* criteria by which applications are judged.” *Id.* (emphasis added). “It is clear . . . that the text of § 954(d)(1) imposes no categorical requirement” on eligibility for NEA funding. *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 581 (1988); *see also id.* at 580-81 (rejecting the plaintiffs’ argument that the “decency and respect” clause “constrains the agency’s ability to fund certain categories of artistic expression,” and instead interpreting it as satisfied by diverse peer review panels). The statute “does not . . . place conditions on grants, or even specify that [specific] factors must be given any particular weight in reviewing an application.” *Id.*

By prohibiting any art that “promotes” what the government deems to be “gender ideology,” the NEA has imposed a new, extra-statutory eligibility criterion. The “gender ideology” prohibition fundamentally subverts the Act’s regime of assigning grants according to artistic excellence and merit by precluding applicants “otherwise eligible under the Act from receiving grants for which they are eligible.” *City of Los Angeles v. Barr*, 2020 WL 11272648, at *6 (C.D. Cal. June 17, 2020) (holding that DOJ conditions on grants exceeded the agency’s authority under the Juvenile Justice Act). By imposing it, the NEA is acting in clear contravention of the Act.

As the Supreme Court noted, the statute’s focus on “artistic merit and excellence,” without regard to particular viewpoints, is underscored by § 954(d)(2). *Finley*, 524 U.S. at 581. In § 954(d)(2), Congress instructed that “obscenity is without artistic merit, is not protected speech, and shall not be funded,” thereby “prohibit[ing] the funding of [a] certain class[] of speech” under the Act. *Id.* The *only* content that Congress explicitly forbade the NEA from funding was the wholly unprotected category of obscenity. *See Miller v. California*, 413 U.S. 15 (1973). That

choice underscores that the agency is to be guided by artistic merit and excellence, and may not exclude meritorious art because it disapproves of the viewpoint it expresses.

Congress’s purpose in establishing the NEA was to fund a broad range of private artistic expression, *without* exercising any control over the content or viewpoints expressed. *See* Statement of Facts, *supra* at 1–4. Indeed, by disfavoring expression that “promotes” what the government deems to be “gender ideology”—and not expression that opposes it—the condition flouts the Act’s express purpose of cultivating “mutual respect for the diverse beliefs and values of all persons and groups,” 20 U.S.C. § 951(6), and “freedom of thought, imagination, and inquiry,” *Finley*, 524 U.S. at 573 (quoting 20 U.S.C. § 951(7)).

The Act’s statutory and legislative history, *see* Statement of Facts, *supra* at 1–4, underscores the plain meaning of the text, and makes clear that it does not authorize the NEA to superimpose a viewpoint-based restriction on arts funding. When Congress added the “decency and respect” clause, it did so in response to a congressionally appointed commission that “cautioned Congress against the adoption of distinct viewpoint-based standards for funding.” *Finley*, U.S. at 581–82. “In keeping with that recommendation, the criteria in § 954(d)(1) inform the assessment of artistic merit, but Congress declined to disallow any particular viewpoints.” *Id.* at 582. In imposing a viewpoint-based prohibition, the NEA has now done precisely what Congress rejected.

2. The “Gender Ideology” Prohibition Is Arbitrary and Capricious.

The APA requires courts to “hold unlawful and set aside” agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Under that standard, “the agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice

made.” *Motor Vehicles Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). Agency action is arbitrary and capricious

if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before [it], or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Id. It is also “arbitrary and capricious if it departs from agency precedent without explanation.” *Dillmon v. Nat’l Transp. Safety Bd.*, 588 F.3d 1085, 1090 (D.C. Cir. 2009) (citation omitted); *see also FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (“An agency may not . . . depart from a prior policy *sub silentio*” and “must show that there are good reasons for the new policy.”).

The “gender ideology” prohibition is arbitrary and capricious because the NEA provides *no* explanation for its inclusion in the Assurance of Compliance, while departing from longstanding agency precedent. The only possible explanation is contained in the EO, which the condition implements. But the EO says nothing about arts funding at all, and the NEA’s reliance on the EO is insufficient to demonstrate a “satisfactory explanation for its action.” *State Farm*, 463 U.S. at 30; *see also Louisiana v. Biden*, 543 F. Supp. 3d 388, 414 (W.D. La. 2021), *vacated and remanded for lack of specificity in the injunction*, 45 F.4th 841 (5th Cir. 2022) (“A decision supported by no reasoning whatsoever in the record cannot be saved merely because it involves an Executive Order.”); *Texas v. United States*, 524 F. Supp. 3d 598, 653–54 (S.D. Tex. 2021) (holding that a two-page Executive Order and a five-page Memorandum does not “demonstrate[] reasoned decisionmaking”); *cf. Dickson v. Sec’y of Def.*, 68 F.3d 1396, 1405 (D.C. Cir. 1995) (“When an

agency merely parrots the language of a statute without providing an account of how it reached its results, it has not adequately explained the basis for its decision.”).

Nor does the EO on which the NEA relies provide a “satisfactory explanation.” *State Farm*, 463 U.S. at 43. To begin, by directing that “grant funds” not “promote” what the government deems to be “gender ideology,” the EO requires the NEA to consider a factor “which Congress has not intended it to consider.” *Id.* As discussed above, the plain text of the Act instructs that the NEA judge grant applications by two criteria only—artistic excellence and artistic merit—and therefore prohibits the agency from precluding applicants based on a viewpoint-based screen.

Moreover, even if the Act did not prohibit the NEA from imposing a viewpoint-based prohibition on grant funding, the EO on its face provides no “satisfactory explanation” for such agency action. It makes allegations—for example, regarding “ideologues . . . us[ing] legal and other socially coercive means to permit men to self-identify as women” and an “attack against the ordinary and longstanding use and understanding of biological and scientific terms,” EO § 1—but offers no support, much less “facts found,” for them. Therefore, the EO cannot possibly articulate any “rational connection between” those (non-existent) facts “and the choice made.” *State Farm*, 463 U.S. at 43 (citation omitted).

In addition, “the choice made”—prohibiting the NEA from funding any art that “promotes gender ideology”—does not even conceivably further the EO’s stated aim of “defend[ing] women’s rights and protect[ing] freedom of conscience.” EO § 1. Art that “promotes gender ideology” does not deny women any rights. Moreover, requiring applicants to certify that they will not “promote gender ideology” is a quintessential *restriction* on the applicants’ freedom of conscience and rights. *See, e.g.*, Martínez Decl. ¶ 20, Odsess-Rubin Decl. ¶ 15, Byrd Decl. ¶ 17

(noting expressive rights as artists, and desire to affirm all gender identities, including transgender, nonbinary, and queer identities).

Defendants have also “entirely failed to consider . . . important aspect[s] of the problem.” *State Farm*, 463 U.S. at 43. As discussed below, the “gender ideology” prohibition is unconstitutionally vague and captures vast swaths of artistic expression. *See infra* Argument I.B, I.C. Yet the NEA made no effort whatsoever to clarify what is and is not prohibited. This lack of clarity will place NEA funding out of reach for many organizations—which may, in turn, place many works of art out of reach of the public—actively undermining the NEA’s purpose of “develop[ing] and promot[ing] a broadly conceived national policy of support for the humanities and the arts” and “creat[ing] and sustain[ing] not only a climate encouraging freedom of thought, imagination, and inquiry but also the material conditions facilitating the release of this creative talent.” 20 U.S.C. §§ 951(7), 953(b).³ As authorized by Congress, the NEA exists to “giv[e] emphasis to American creativity and cultural diversity,” 20 U.S.C. § 954(c)(1), and it has procedures to take into account “respect for the diverse beliefs and values of the American public,” *id.* § 954(d)(1). By forbidding the expression of one viewpoint held by members of the American public—that gender is real and is not determined by “biological sex”—the prohibitions “distort

³ Because the prohibition will be imposed on grant applications that have nothing to do with gender identity, or would have been granted without any consideration as to whether they concern gender or sex, it is perhaps even further removed from “the purposes of the grant.” *Cf. Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508 F. Supp. 3d 521, 543 (N.D. Cal. 2020) (“Requiring federal grantees to certify that they will not use grant funds to promote concepts the Government considers ‘divisive,’ even where the grant program is wholly unrelated to such concepts, is a violation of the grantee’s free speech rights.”); *Bella Lewitzky Dance Found. v. Frohnmayer*, 754 F. Supp. 774, 785 (C.D. Cal. 1991) (“[O]nce [applicants] are chosen for grants, on the basis of artistic merit, the government may not place restrictions on disbursement of those grants that require grantees to certify to . . . provisions that are vague . . . and which correspondingly cause a chilling effect.”).

[the] usual functioning” of NEA funding. *Cf. Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 543 (2001).⁴

B. The “Gender Ideology” Prohibition Violates the First Amendment.

The “gender ideology” prohibition violates the First Amendment, because it imposes an impermissible viewpoint-based restriction on a government program designed to support private speech. The government need not support the arts at all. But if it chooses to create a forum to support private artistic expression, as it has done here, it may not “aim at the suppression of dangerous ideas” by excluding disfavored viewpoints. *See Finley*, 524 U.S. at 587 (cleaned up).

1. The First Amendment Prohibits Viewpoint-Based Discrimination.

When it comes to “what is good art,” “[o]ur system of government” intentionally “accommodat[es] . . . the widest varieties of tastes and ideas,” for it is a judgment that “varies with individuals as it does from one generation to another.” *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 157 (1946). In the arts, as in other contexts, the First Amendment rests on “[t]he bedrock principle of viewpoint neutrality,” which “demands that the state not suppress speech” due to “disagreement with the underlying ideology or perspective that the speech expresses.” *Ridley v. Mass. Bay Transp. Auth.*, 390 F.3d 65, 82 (1st Cir. 2004).

Viewpoint-based restrictions are not “proper when the [government] does not itself speak or subsidize transmittal of a message it favors but instead expends funds to encourage a diversity of views from private speakers.” *Velazquez*, 531 U.S. 533 at 542 (alteration in original) (quoting *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 834 (1995)). Even where the government program’s purpose “is not to encourage a diversity of views,” but simply to “facilitate

⁴ The APA also requires courts to “hold unlawful and set aside” agency action “found to be . . . contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B). As explained below, the gender ideology condition violates the First Amendment and is unconstitutionally vague under the Fifth Amendment.

private speech, not to promote a governmental message,” the rule against viewpoint-based discrimination stands. *Id.* at 542 (cleaned up); *see also Bullfrog Films, Inc. v. Wick*, 847 F.2d 502, 509 (9th Cir. 1988) (rejecting argument that content-based waiver of import duties did not implicate the First Amendment “because [it does] not punish or directly obstruct plaintiffs’ ability to produce or disseminate their films”).

“The essence of a viewpoint discrimination claim is that the government has preferred the message of one speaker over another,” *McGuire v. Reilly*, 386 F.3d 45, 62 (1st Cir. 2004), and not merely “incidentally,” but “intent[ionally],” “in a way that prefers one particular viewpoint in speech over other perspectives on the same topic,” *Ridley*, 390 F.3d at 82. The “gender ideology” prohibition is a textbook example: it restricts only speech that “*promotes*” what the government deems to be “gender ideology,” not speech that condemns, questions, or criticizes it. *See Matal v. Tam*, 582 U.S. 218, 243 (2017) (opinion of Alito, J.) (“[T]he disparagement clause discriminates on the bas[i]s of ‘viewpoint.’ . . . Giving offense is a viewpoint.”). It prohibits a play celebrating and affirming the idea that “biological sex” is not immutable, *see* Odsess-Rubin Decl. ¶¶ 6–7, 15–16, Byrd Decl. ¶¶ 10, 17, but not the opposite. In imposing this requirement, the government has made plain its aim is to silence those “who deny the biological reality of sex.” EO § 1.

2. Viewpoint-Based Discrimination Is Unconstitutional in Grants.

Even in the context of a public grant program, where the government necessarily chooses winners among private speakers, the intentional suppression of disfavored ideas is constitutionally impermissible. “The NEA’s mandate is to make esthetic judgments” about “excellence,” *Finley*, 524 U.S. at 586, not values-based or political decisions about viewpoints. “In simple terms, the government may well be able to put restrictions on who it subsidizes, and how it subsidizes, but once the government moves to subsidize, it cannot do so in a manner that . . . violates the First and

Fifth Amendments.” *Bella Lewitzky Dance Found. v. Frohnmayer*, 754 F. Supp. 774, 784–85 (C.D. Cal. 1991).

The Supreme Court’s decision in *NEA v. Finley* is particularly instructive. In that case, the Supreme Court considered the constitutionality of 20 U.S.C. § 954(d), added to the Act by Congress in 1990, after controversy erupted over two NEA-funded projects in 1989—a Robert Mapplethorpe retrospective that included homoerotic photographs, and an Andres Serrano piece entitled *Piss Christ*, which featured a photograph of a crucifix covered in urine. Congress enacted Section 954(d) in response, directing “the Chairperson, in establishing procedures to judge the artistic merit of grant applications, to ‘tak[e] into consideration general standards of decency and respect for the diverse beliefs and values of the American public.’” *Finley*, 524 U.S. at 576 (alteration in original) (quoting 20 U.S.C. § 954(d)). Four performance artists who had been denied NEA funding in the past, and sought to apply for future funding, along with the National Association of Arts Organizations, sued to challenge the validity of this provision. They alleged, *inter alia*, that the “decency and respect” provision imposed a viewpoint-based prohibition on NEA funding.

The Supreme Court held that § 954(d) does not violate the First Amendment, but only after concluding that it did not impose a viewpoint-based restriction. Instead, the Court interpreted the provision as “merely hortatory.” *Id.* at 580. The NEA had implemented the requirement “merely by ensuring that the members of the advisory panels that conduct the initial review of grant applications represent geographic, ethnic, and esthetic diversity.” *Id.* at 577. The Court held that “[i]t is clear . . . that the text of § 954(d)(1) imposes no categorical requirement.” *Id.* at 581. Section 954(d)(1) “does not preclude awards to projects that might be deemed ‘indecent’ or ‘disrespectful,’ nor place conditions on grants, or even specify that those factors must be given any particular

weight in reviewing an application.” *Id.* at 580–81. The Court emphasized that the provision does not “set forth a clear penalty, proscribe[] views on particular ‘disfavored subjects,’” or “suppress[] ‘distinctive idea[s], conveyed by a distinctive message.’” *Id.* at 582 (last alteration in original) (citations omitted).

At the same time, the Court noted that it “would confront a different case” if the NEA were to deny grants to projects or productions expressing disfavored viewpoints. *Id.* at 587. That is because, “even in the provision of subsidies, the Government may not ‘ai[m] at the suppression of dangerous ideas,’” *id.* at 587 (alteration in original) (quoting *Regan v. Tax’n With Representation of Wash.*, 461 U.S. 540, 550 (1983)), especially if doing so “result[s] in the imposition of a disproportionate burden calculated to drive ‘certain ideas or viewpoints from the marketplace,’” *id.* (quoting *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U. S. 105, 116 (1991)). It may not “threaten[] to suppress the expression of particular ideas or viewpoints.” *Id.* (quoting *Leathers v. Medlock*, 499 U.S. 439, 447 (1991)). Even a subsidy cannot be “‘manipulated’ to have a ‘coercive effect’” on private speech. *Id.* (citing *Ark. Writers’ Project, Inc. v. Ragland*, 481 U.S. 221, 237 (1987)).

The Supreme Court’s decisions regarding other government benefits echo this rule. When considering the constitutionality of a restriction on which student groups a public law school would recognize—opening the door to benefits like access to school funds, facilities, and channels of communication—the Supreme Court deemed it “effectively a state subsidy,” *Christian Legal Soc’y Chapter of the Univ. of Cal., Hastings Coll. of the L. v. Martinez*, 561 U.S. 661, 682 (2010), and held that any restrictions on recognition had to be viewpoint-neutral, *id.* at 679. Equally, when reviewing Congress’ limitation on the use of Legal Services Corporation funds, the Supreme Court explained that suits “involv[ing] a subsidy for specified ends” rely on rules that mirror those

present in “limited forum cases,” including their prohibition on viewpoint-based restrictions. *Velazquez*, 531 U.S. at 543–44 (2001); *see also Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 114 (2001) (framing access to a limited public forum as “exten[sion of a] benefit”) (quoting *Rosenberger*, 515 U.S. at 839 (1995)). And though the justices have not agreed on whether viewpoint-based prohibitions on trademark registration constitute “a condition on a government benefit or a simple restriction on speech,” *Iancu v. Brunetti*, 588 U.S. 388, 392 (2019), they unanimously agreed that “if a trademark registration bar is viewpoint-based, it is unconstitutional.” *id.* at 393; *see also Matal*, 582 U.S. at 243–44 (opinion of Alito, J.); *id.* at 248–49 (Kennedy, J., concurring).

The prohibition on viewpoint discrimination also applies where the government provides support to speech through any kind of forum, even, as here, a nonpublic forum. Nonpublic forum doctrine “concern[s] government’s authority to provide assistance to certain persons in communicating with other persons who would not, as listeners, be acting for the government”—in other words, government support for speech by private actors. *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 282 (1984). What typically distinguishes nonpublic forums from limited public forums are the kinds of “selectivity” and “discretionary access” involved here. *Ridley*, 390 F. 3d at 95 (citing *Finley*, 534 U.S. at 589–90). And in a nonpublic forum, any regulations must be viewpoint-neutral and reasonable “in light of the purposes served by the forum.” *Id.* at 82 (citation omitted). Yet the “gender ideology” prohibition is viewpoint-based and directly contrary to the purposes served by the NEA.

Since *Finley*, lower courts considering public funding for the arts have drawn and applied the same lines. In *Brooklyn Inst. of Arts & Scis. v. City of New York*, 64 F. Supp. 2d 184 (E.D.N.Y. 1999), the court held that New York’s decision to stop funding a museum because of a

controversial exhibit—which included, for example, a painting titled “The Holy Virgin Mary” with “small photographs of buttocks and female genitalia scattered on the background,” *id.* at 190–92—constituted impermissible viewpoint-based discrimination. “[T]he issue is not whether the City could have been required to provide funding for the Sensation Exhibit,” the court wrote, “but whether the Museum, having been allocated a general operating subsidy, can now be penalized with the loss of that subsidy . . . because of the perceived viewpoint of the works in the Exhibit.” *Id.* at 202. The court held that the city’s censorious funding withdrawal violated the First Amendment because the government may not “prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Id.* at 198 (citing *Texas v. Johnson*, 491 U.S. 397, 414 (1989)).

Similarly, in *Esperanza Peace & Justice Center v. City of San Antonio*, the court held that San Antonio impermissibly discriminated on the basis of viewpoint when it rescinded a grant previously extended to a nonprofit, because the groups assertedly “advocat[ed] a gay and lesbian lifestyle.” 316 F. Supp. 2d 433, 454 (W.D. Tex. 2001). While acknowledging that the city had discretion to choose programs for any number of reasons—for example, their ability to draw more tourists or produce better quality works—the court held that what it could “*not* [do was to] choose to withhold funds from a group merely because the council—or its constituents—disagree with the message the group espouses.” *Id.* at 454–56. While “the government is not required to fund arts programs . . . if it chooses to do so, it must award the grants in a scrupulously viewpoint-neutral manner.” *Id.* at 447. *See also Cuban Museum of Arts and Culture v. City of Miami*, 766 F. Supp. 1121, 1125 (S.D. Fla. 1991) (holding that Miami violated the First Amendment when, motivated by its ideological objections to an exhibit, it refused to renew the lease of a museum even though the museum was not contractually entitled to the lease).

The “gender ideology” prohibition is unconstitutional for the same reason. Unlike the “merely hortatory” provision upheld in *Finley* because it was *not* viewpoint-based, this prohibition expressly makes works ineligible for funding, no matter how artistically meritorious, merely because they express a viewpoint disfavored by the government. The prohibition’s very purpose is to “aim at the suppression of dangerous ideas,” *see* EO § 2(f) (describing the viewpoint that “males can identify as and thus become women and vice versa” as a “false claim”), and is therefore impermissible, *Regan*, 461 U. S. at 550.

C. The “Gender Ideology” Prohibition Is Unconstitutionally Vague.

The “gender ideology” prohibition is also unconstitutionally vague. A law is impermissibly vague if it either “fail[s] to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits” or “authorize[s] and even encourage[s] arbitrary and discriminatory enforcement.” *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). “When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.” *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253–54 (2012). And where a law carries potential criminal penalties, the test for vagueness is even more demanding. *Reno v. ACLU*, 521 U.S. 844, 871–72 (1997).

Under these principles, the “gender ideology” prohibition must satisfy the most exacting vagueness standard, and it fails. It is hard to understand what, exactly, constitutes “promot[ing] gender ideology,” and yet NEA applicants, like RILA, who certify that they will not use federal funds to “promote gender ideology” may face criminal, civil, or administrative sanctions if they cross the line. *See* Part I.A *infra* (describing potential consequences).

Here, too, a previous case considering Congress’ 1990 amendments to the Act is instructive. That case, *Bella Lewitzky*, arose in response to Congress’s requirement that all NEA

grant recipients certify in writing that they would not use federal funding “to promote, disseminate, or produce materials which in the judgment of the [NEA] . . . may be considered obscene.” 754 F. Supp. at 776. Two grantees sued—one who had “completed the certification, but crossed out and initialed [the obscenity condition], indicating [its] refusal to be bound” by it and another who had “refused to make the required certification.” *Id.* at 777.

The reviewing court held that the certification was unconstitutionally vague “because it leaves the determination of obscenity in the hands of the NEA,” *id.* at 782, and forces grantees to “speculate about how the NEA will assess obscenity,” *id.* at 781. Though the NEA pointed to the *Miller* obscenity test and argued that it would adhere to those constitutional limits, the court held that the NEA could not possibly fulfill that promise because obscenity law requires consideration of community standards and processes that a national agency could not realistically enact. *Id.* And, because the vagueness was part of an oath, the court held that it also violated the First Amendment, for it would “cause the oath takers to ‘steer far wider of the unlawful zone’ than if the boundaries of the forbidden area were clearly marked.” *Id.* at 782–83 (quoting *Speiser v. Randall*, 357 U.S. 513, 526 (1958)).

The problem here is even worse, for no doctrine defines “gender ideology” or what it means to “promote” it. The term “gender ideology” itself is broad. *Cf. Nat’l Ass’n of Diversity Officers in Higher Educ. v. Trump*, No. 1:25-CV-00333-ABA, 2025 WL 573764, at *19 (D. Md. Feb. 21, 2025) (holding that “equity”-related certification and prohibition was vague in part because “equity” is “broad”). The Gender Ideology EO states the government’s preference for views recognizing “the immutable biological reality of sex,” rather than “an internal, fluid, and subjective sense of self unmoored from biological facts.” EO § 1. It disallows “replac[ing] the biological category of sex” with “self-assessed gender identity” or communicating “the idea that there is a

vast spectrum of genders that are disconnected from one’s sex.” EO § 2(f). It is far from clear what this definition means for women playing male roles in a play, the mere presence of a transgender actor or character, *see* Byrd Decl. ¶ 18, Odsess-Rubin Decl. ¶ 14, Martínez Decl. ¶ 16, or a theater that simply subverts sex-based stereotypes. And that vagueness will inevitably silence protected speech as artists seek to steer clear of violating it. *See* Martínez Decl. ¶ 17.

The vagueness is further exacerbated by the fact that neither the NEA nor the EO defines what it means to “promote” in this context. The ordinary meaning of “promote” is “[t]o further the growth, development, progress, or establishment of,” “to advance or actively support,” or “to encourage.”⁵ These terms are expansive and highly subjective, and multiple courts have recognized that terms like “promote” are susceptible to a “wide range of meanings depending on context.” *United States v. Miselis*, 972 F.3d 518, 536 (4th Cir. 2020) (prohibition on “encourag[ing]” or “promot[ing]” a riot was overbroad);⁶ *see also United States v. Rundo*, 990 F.3d 709, 717 (9th Cir. 2021) (same, explaining that “encourage” and “promote” could mean “to recommend, advise”), *cert. denied*, 142 S. Ct. 865 (2022); *Rosenberger*, 515 U.S. at 836 (emphasizing “vast potential reach” of term “promote[]”). In *Santa Cruz Lesbian and Gay Community Center v. Trump*, the court held that an executive order that contemplated conditioning federal grants on a recipient’s certification that they would not use federal funds to “promote” certain race- and sex-related concepts was unconstitutionally vague because it “lack[ed] clarity” and “pose[d] a danger of arbitrary and discriminatory application.” 508 F. Supp. 3d at 543–44 (quoting *Hunt v. City of Los Angeles*, 638 F.3d 703, 712 (9th Cir. 2011)).

⁵ *Promote*, Oxford English Dictionary (online ed., last modified July 2023); *see also Promote*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/promote> (online ed., last modified Aug. 4, 2023) (“to contribute to the growth or prosperity of: further”).

⁶ Because the court found those statutory terms overbroad, it had no occasion to resolve whether they were also unconstitutionally vague. *Miselis*, 972 F.3d at 546.

The prohibition at issue here could potentially encompass any work involving a transgender or queer character or subject, including “La Cage aux Folles,” “Dog Day Afternoon,” “Rent,” “Boys Don’t Cry,” “Hedwig and the Angry Inch,” and “My Name Is Pauli Murray.” And it could potentially encompass any work involving a male actor playing a female role or a female actor playing a male role, *see* EO, § 2(f) (stating that “gender ideology” permits “the false claim that males can identify as and thus become women and vice versa”). Male and female impersonation is a time-honored tradition in artistic works, going back to Shakespeare’s “Twelfth Night” and “Merchant of Venice,” “Yentl,” “Tootsie,” “Victor Victoria,” and many more. In RILA’s case, this could include a lead actor choosing to dress in women’s clothes one night and men’s another, while performing the same role. Martínez Decl. ¶ 12.

The prohibition might also prohibit NEA funding to support a wide variety of artistic expression, even if the subject matter of the art itself does not touch upon what the government deems to be “gender ideology.” For example, it could potentially capture an organization’s support for a transgender or nonbinary artist, regardless of whether that artist’s work has anything to do with what the government deems to be “gender ideology.” It might even bar any organization from applying for—or accepting—NEA funding so long as the organization’s mission includes an objective of supporting transgender and nonbinary artists and art. *See* Byrd Decl. ¶ 18, Odsess-Rubin Decl. ¶ 14, Martínez Decl. ¶ 17.

II. ABSENT A PRELIMINARY INJUNCTION, PLAINTIFFS WILL SUFFER IRREPARABLE HARM.

Where “plaintiffs have made a strong showing of likelihood of success on the merits of their First Amendment claim,” “[t]here is no need for an extensive analysis of this element of the preliminary injunction inquiry.” *Fortuño*, 699 F.3d at 15. Instead, “it follows that the irreparable injury component of the preliminary injunction analysis is satisfied as well,” *id.*, for “[t]he loss of

First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam) (citation omitted).

Many of TCG’s more than 600 theater members, who are located across the country, will be irreparably harmed absent a preliminary injunction against the gender ideology prohibition before March 24 because that certification requirement is barring them from submitting an application at all. They need relief from this Court in order to seek the funding they would like to ask for in the March 2025 cycle.

Absent relief, Plaintiffs RILA, NGT, and TTO will also be ineligible to receive funding for the projects they hope to have funded in this grant cycle. RILA will have no choice but to submit a project that differs from what it hoped to offer. Martínez Decl. ¶ 18. Meanwhile, NQT and TTO will be barred from receiving funding for projects they have planned specifically for summer 2026 because their projects will be deemed to “promote gender ideology.” Odsess-Rubin Decl. ¶¶ 17–18; Byrd Decl. ¶¶ 15, 17. Submitting in March is important to TTO because putting on a production requires securing everything from a venue to actors to creative and production team members. Byrd Decl. ¶ 11. Having a year to adequately plan is best practice for TTO. *Id.* Submitting in March is also important to NQT because that is the only way to ensure getting a grant notification in December, which is also when NQT passes its organizational budget. Odsess-Rubin Decl. ¶ 9. In addition, if NQT had to wait until the next funding cycle, it would only get notification regarding NEA funding in April 2026, two months prior to the 2026 Criminal Queerness Festival, which would not offer enough time to plan. *Id.* Moreover, absent an injunction against enforcement of the “gender ideology” provision, the certifications submitted by TTO and NQT will be invalid and bar them from any consideration at all.

Plaintiffs seek a preliminary injunction before March 24, the deadline for grant applications for the current funding cycle, to give themselves enough time to ensure they can meet the deadline. They also seek relief that would permit organizations to submit the March 11 certification after the Court rules, as that certification has deterred TCG members from applying at all. Alternatively, the Court could choose to extend the deadlines for both Parts of the application process for the March 2025 cycle.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR AN INJUNCTION.

Both the balance of equities and the public interest weigh strongly in favor of preliminary injunctive relief. Where suppression of speech is at issue, the government action “harms not only the speaker, but also the public to whom the speech would be directed.” *Fortuño*, 699 F.3d at 15. “[T]he public” has an interest “in having a robust debate on the issues of concern to plaintiffs.” *Id.* at 16. Equally, the NEA’s own interest in supporting the diversity of American culture and views will be furthered if the challenged prohibition is enjoined. Moreover, the NEA has already stricken the DEI-related assurance from its requirements in response to another court order. *See* Statement of Facts E *supra*. And should the Court choose to delay the application deadline to allow those organization that do not submit a Part 1 application by March 11 because they object to or fear signing the certification, it is unlikely to seriously harm the NEA, which has already extended the deadline for the March funding cycle because of the new “gender ideology” prohibition—especially given that the NEA explicitly states that system-wide issues with the registration or submission systems can justify further extensions. Ex. 1 to Eidelman Decl. at 23.

IV. THIS COURT SHOULD WAIVE THE BOND REQUIREMENT.

This Court has the discretion to waive the posting of any bond required by Fed. R. Civ. P. 65(b), or to set a token bond. *Crowley v. Loc. No. 82, Furniture & Piano Moving*, 679 F.2d 978,

1000 (1st Cir. 1982), *rev'd on other grounds*, 467 U.S. 526 (1984). In *Crowley*, the First Circuit identified several important factors for a district court to consider: (1) “at least in noncommercial cases, the court should consider the possible loss to the enjoined party together with the hardship that a bond requirement would impose on the applicant”; (2) “in order not to restrict a federal right unduly, the impact that a bond requirement would have on enforcement of the right should also be considered.” *Id.* The court noted: “[a] bond requirement would have a greater adverse effect where the applicant is an individual and the enjoined party an institution that otherwise has some control over the applicant than where both parties are individuals or institutions.” *Id.* These factors weigh in favor of waiving bond.

CONCLUSION

For all of the foregoing reasons, Plaintiffs hereby respectfully request that this Court issue a preliminary injunction and/or temporary restraining order staying and setting aside the NEA’s ideological certification requirement and funding prohibition, and enjoining the Defendants, their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with them, from 1) requiring applicants for NEA funding to certify that they will not “promote gender ideology” in order to be eligible to apply, and 2) forbidding grant recipients from “promot[ing] gender ideology” with federal funds. Plaintiffs further request that the Court order that the NEA accept applications from applicants who missed the Part 1 deadline on March 11 because they were unwilling or unable to agree to the “gender ideology” prohibition, and allow them to submit Parts 1 and 2 of the application by March 24, 2025, or within a reasonable period to be set by the Court after hearing from the parties.

Dated: March 6, 2025

Respectfully submitted,

/s/ Lynette Labinger

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**Pro hac vice applications forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that I filed the within document via the ECF system on this day of March 6, 2025 and that it is available for viewing and downloading to all counsel of record.

Dated: March 6, 2025

By: /s/ Lynette Labinger
Lynette Labinger

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

RHODE ISLAND LATINO ARTS,
NATIONAL QUEER THEATER,
THE THEATER OFFENSIVE, and
THEATRE COMMUNICATIONS GROUP,

Case No.

Plaintiffs,

v.

NATIONAL ENDOWMENT FOR THE
ARTS, and MARY ANNE CARTER, in her
official capacity as Acting Chair of the
National Endowment for the Arts,

Defendants.

DECLARATION OF VERA EIDELMAN

I, Vera Eidelman, declare as follows:

1. I am a Senior Staff Attorney with the American Civil Liberties Union Foundation and counsel for Plaintiffs in the above-captioned action. I submit this declaration in support of Plaintiffs' Motion for Preliminary Injunction.

2. Attached as Exhibit 1 is a true and correct copy of a document issued by the National Endowment for the Arts ("NEA") with the title "Notice of Funding Opportunity: FY26 Grants for Arts Projects (GAP), Grant Program Details," dated February 2025, available at <https://www.arts.gov/sites/default/files/FY26-GAP-Grant-Program-Details-FebRevFinal4.pdf>.

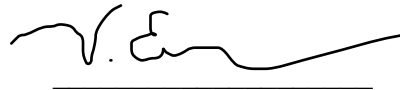
3. Attached as Exhibit 2 is a true and correct copy of a webpage published by the NEA with the title "Legal Requirements and Assurance of Compliance," available at <https://www.arts.gov/grants/legal-requirements-and-assurance-of-compliance>.

4. Attached as Exhibit 3 is a true and correct copy of a press release published by the NEA with the title, “National Endowment for the Arts Supports the Arts with Nearly \$36.8 Million in Funding Nationwide,” dated January 14, 2025, available at <https://www.arts.gov/news/press-releases/2025/national-endowment-arts-supports-arts-nearly-368-million-funding-nationwide>.

5. Attached as Exhibit 4 is a true and correct copy of a press release published by the NEA with the title, “Updates on National Endowment for the Arts FY 2026 Grant Opportunities,” dated February 6, 2025, available at <https://www.arts.gov/news/press-releases/2025/updates-national-endowment-arts-fy-2026-grant-opportunities>.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 2025.

A handwritten signature in black ink, appearing to read 'V. Eidelman', written over a horizontal line.

Vera Eidelman

EXHIBIT 1

Published February 2025

National Endowment for the Arts

Notice of Funding Opportunity: FY26 Grants for Arts Projects (GAP)

Grant Program Details

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Access for individuals with disabilities:



Contact the Office of Accessibility at 202-682-5532 / accessibility@arts.gov or the Office of Civil Rights at civilrights@arts.gov to request an accommodation or an alternate format of the guidelines at least 2 weeks prior to the application deadline.

GAP FY26 Grant Program Details	Basic Information
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Grants for Arts Projects

Basic Information

Federal Agency Name	National Endowment for the Arts
Funding Opportunity Title	Grants for Arts Projects
Announcement Type	Modification of previous announcement
Funding Opportunity Number(s)	March: 2025NEA01GAP1MARCH July: 2025NEA01GAP2
Assistance Listing Number(s)	45.024
Agency Contact Information	GAP Contacts Page

Details in the chart below are estimates. Actual figures may vary.

FUNDING DETAILS	AMOUNT <i>(Contingent upon availability of funds)</i>
Total amount of funding expected to award	\$62,245,000
Anticipated number of applications	4,500
Anticipated number of awards	2,075
Expected dollar value of awards (range)	All Applicants: \$10,000-\$100,000 Local Arts Agencies Subgranting Projects: \$30,000-\$150,000

Executive Summary

Grants for Arts Projects (GAP) provides project-based funding for organizations in the areas of Artist Communities, Arts Education, Dance, Design, Film & Media Arts, Folk & Traditional Arts, Literary Arts, Local Arts Agencies, Museums, Music, Musical Theater, Opera, Presenting & Multidisciplinary Works, Theater, and Visual Arts. Funded activities may include public engagement with the arts and arts education, the integration of the arts with strategies promoting the health and well-being of people and communities, and the improvement of overall capacity and capabilities within the arts sector. Awards require a 1:1 cost share/match.

Eligible applicants include: nonprofit, tax-exempt 501(c)(3), U.S. organizations; units of state or local government; and Federally recognized tribal communities or tribes. Funding in this category is *not available* for individuals, fiscally sponsored entities, commercial/for-profit enterprises, State Arts Agencies (SAA), or Regional Arts Organizations (RAO).

Applications are evaluated based on the published [Review Criteria](#).

GAP FY26 Grant Program Details	Basic Information
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COMPONENTS OF THIS NOTICE OF FUNDING OPPORTUNITY (NOFO):

- **GAP GRANT PROGRAM DETAILS (this document):** Essential information about GAP, including a grant program description, unallowable activities and costs, eligibility, review criteria, award amount and cost sharing, and post-award requirements and administration, among others.
- **APPLICATION INSTRUCTIONS DOCUMENT:** Navigate to the Application Instructions section on the [GAP webpage](#) for complete information on application requirements and instructions on how to apply. Select the discipline that is most relevant to your project activities. Each instructions document also includes a detailed description for the discipline area, accepted project types, and characteristics of competitive proposals.

KEY DATES:

Applying for and managing a federal grant is a significant undertaking and the process is competitive. We estimate that after completing the required registrations, which can take several weeks to finalize, the process to draft and submit an application will take approximately 26 hours.

Step	March Cycle (GAP1)	July Cycle (GAP2)
Grant Program Details and Application Instructions Published	February 2025	February 2025
Part 1 Application Package Available on Grants.gov	February 2025	Mid-May 2025
Part 1 Grants.gov Submission deadline	March 11, 2025 11:59 pm ET	July 10, 2025 11:59 pm ET
Part 2 NEA Applicant Portal Opens to applicants	March 14, 2025 9:00 am ET	July 15, 2025 9:00 am ET
Part 2 NEA Applicant Portal Submission deadline	March 24, 2025 11:59 pm ET	July 22, 2025 11:59 pm ET
Notification of recommended funding or rejection	December 2025	Early to mid April 2026
Earliest project start date	January 1, 2026	June 1, 2026

Grants for Arts Projects Program Description

Program Goals and Objectives

The National Endowment for the Arts is committed to supporting excellent arts projects for the benefit of all Americans. Through project-based funding, Grants for Arts Projects (GAP) supports an expansive range of arts activities. These activities may include opportunities for public engagement with the arts and arts education, for the integration of the arts with strategies promoting the health and well-being of people and communities, and for the improvement of overall capacity and capabilities within the arts sector.

Projects

We fund arts projects with specific, definable activities in the following disciplines: Artist Communities, Arts Education, Dance, Design, Film & Media Arts, Folk & Traditional Arts, Literary Arts, Local Arts Agencies, Museums, Music, Musical Theater, Opera, Presenting & Multidisciplinary Works, Theater, and Visual Arts. **Go to [Artistic Disciplines](#) on page 10 for additional information.**

Projects may be small, medium, or large, and may take place in any part of the nation's 50 states, the District of Columbia, and U.S. jurisdictions. A project may consist of one or more specific events or activities; it may be a new initiative or part of your organization's regular season or activities. Organizations that undertake a single short-term program in a year may apply for that event, or may choose to identify certain components of that program as their project. Organizations may apply for any or all phases of a project, from planning through implementation. A project should not encompass all an organization's activities or costs in a given year. The NEA does not fund general operating support or a full season of programming.

We welcome applications from first-time and returning applicants; from organizations serving rural, urban, suburban, and tribal communities of all sizes; and from organizations with small, medium, or large operating budgets.

Projects are evaluated according to the [Review Criteria](#) on page 25. Applicants should keep these in mind while developing their application materials.

We Encourage

We encourage arts projects in any of the following areas, including activities that:

- **Celebrate the nation's rich artistic heritage and creativity by honoring the semiquincentennial of the United States of America (America250).** Project activities may focus exclusively on celebrating the anniversary, or they may incorporate a special America250-related component or focus within a larger project. For example, projects could examine the work of American artists, present or create art recognizing this

GAP FY26 Grant Program Details

Program Description

important milestone, or undertake educational activities or related programming. See the [FAQ section](#) for more information.

- **Originate from or are in collaboration with the following:**
 - [Historically Black Colleges and Universities](#)
 - [Tribal Colleges and Universities](#)
 - [American Indian and Alaska Native tribes](#)
 - [Hispanic Serving Institutions](#)
 - Asian American and Pacific Islander communities, and
 - Organizations that support the independence of people with disabilities.
- **Support the health and well-being of people and communities through the arts.**
- **Support existing and new technology-centered creative practices across all artistic disciplines and forms**, including work that explores or reflects on the impacts of artificial intelligence (AI) in ways that are consistent with valuing human artistry and improve the public’s awareness and understanding of the use of AI.

Period of Performance

NEA support of a project (i.e., “Earliest Start Date”) can begin no sooner than:

- January 1, 2026 (for applicants to the March cycle, “GAP1”), or
- June 1, 2026 (for applicants to the July cycle “GAP2”).

Grants awarded in this program generally may cover a period of performance of up to two years. **The two-year period is intended to allow an applicant time to plan, execute, and close out its project, not to repeat a one-year project for a second year.**

No pre-award costs are allowable in the Project Budget. A recipient may not receive more than one NEA award or other federal funding for the same activities/costs during the same period of performance.

Legal Requirements and Assurance of Compliance

The [Legal Requirements](#) section on our website provides information about key legal requirements that may apply to an applicant or recipient. It is not an exhaustive list, more details may be found in Appendix A of the [General Terms and Conditions](#).

By signing and submitting the application form on Grants.gov, the Applicant certifies that it is in compliance with the statutes outlined in the [Assurance of Compliance](#) and all related National Endowment for the Arts regulations as well as all applicable executive orders, and that it will maintain records and submit the reports that are necessary to determine its compliance.

It is ultimately your responsibility to ensure that you are compliant with all legal, regulatory, and policy requirements applicable to your award.

Nondiscrimination Policies

Projects may reach a particular group or demographic (such as sex, disability, economic status, race, color, or national origin, including limited English proficiency), however, projects may not be exclusionary under Federal civil rights laws and policies prohibiting discrimination. This nondiscrimination requirement extends to hiring practices, artist selection processes, and audience engagement. Your application should make it clear that project activities are not exclusionary. Please review the [Assurance of Compliance](#), which outlines the relevant federal statutes, NEA regulations, and executive orders.

Accessibility

Federal regulations require that all NEA-funded projects be accessible to people with disabilities. Individuals with disabilities may be artists, performers, audiences, visitors, teaching artists, students, staff, and volunteers. Funded activities should be held in a physically accessible venue, and program access and effective communication should be provided for participants and audience members with disabilities. If your project is recommended for funding, you will be asked to provide [detailed information](#) describing how you will make your project physically and programmatically accessible to people with disabilities.

National Historic Preservation Act and National Environmental Policy Act Review

Recommended projects are subject to the [National Historic Preservation Act](#) (NHPA) and/or the [National Environmental Policy Act](#) (NEPA) compliance review.

Some of the common project types requiring a review are:

- Projects involving a building over 50 years old. This also includes structures such as bridges; or objects such as sculptures; or a landscape that is historically significant.
- The commissioning and installation of temporary or permanent outdoor artworks or structures, such as: sculptures, statues, murals, or permanent signs.

GAP FY26 Grant Program Details	Program Description
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- Outdoor arts/music festivals or activities requiring ground disturbance.
- Maintenance or rehabilitation of landscapes and gardens.
- Design services and planning for projects that may affect historic properties.

See more information about NHPA/NEPA review under [Post-Award Requirements and Administration](#).

Subject Matter

Per the NEA’s legislation, projects or programs that are determined to be obscene are without artistic merit and shall not be funded. 20 USC 952(j)-(l); 20 USC 954(d),(l).

Authorizing Statute

The NEA offers this funding opportunity under the authority of 20 U.S.C. § 954.

Program Description: Artistic Disciplines

We fund arts projects through 15 different subcategories, based on artistic discipline or field, which we broadly refer to as “disciplines.” Applicants apply to a specific discipline area. In the Instructions documents found on the [GAP webpage](#), each discipline has outlined the types of projects they encourage, and guidance on characteristics of competitive proposals.

Select the discipline that most closely aligns with your project activities. The short descriptions on this page offer an overview; however, applicants should review the full discipline description before applying. [Contact us](#) if you have any questions about which discipline is most appropriate for your project.

Discipline	Summary
Artist Communities	Artist residencies that provide dedicated space, time, and resources to artists for the creation or development of new work.
Arts Education	Projects for pre-K-12 students, the educators and artists who support them, and the schools and communities that serve them (see below for more guidance on selecting the right discipline for educational projects) .
Dance	Projects in all genres of dance, including creation of work, presentation and touring, residencies, archive/preservation of dance, services to the field, and education projects.
Design	Projects including architecture, communications and graphic design, fashion design, historic preservation, industrial and product design, interior design, accessible design, landscape architecture, rural design, social impact design, and urban design.
Film & Media Arts	Artist support programs, public engagement activities, and services to the field focused on film, cinema, audio, broadcast, creative code and computation, interactive media, and emergent practices at the intersection of arts and digital technology.
Folk & Traditional Arts	Project activities in folk and traditional arts, including culturally- or community-centered artistic traditions, represented by a wide range of genres including, but not limited to, music, dance, crafts, foodways, dress/adornment, occupation, ceremony, and oral expression, such as stories, poetry, and language.
Literary Arts	Projects supporting publishing, distribution, and/or promotion of literary content, as well as literary arts programming and services to the field.

GAP FY26 Grant Program Details	Program Description: Artistic Disciplines
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Discipline	Summary
Local Arts Agencies	Projects by arts commissions, arts councils, or departments of cultural affairs; national or statewide service organizations partnering with local arts agencies; and arts projects by local government and special districts.
Museums	Museums projects including exhibitions, care of collections, conservation, commissions, public art works, community engagement, and education activities.
Music	Music and music presentation projects in all genres including classical, contemporary, and jazz.
Musical Theater	Musical theater and musical theater presentation projects.
Opera	Opera and opera presentation projects.
Presenting & Multidisciplinary Works	Projects presenting works from across disciplines, multidisciplinary works, and/or interdisciplinary artists.
Theater	Theater and theater presentation projects.
Visual Arts	Projects supporting visual artists and projects in all visual arts mediums.

In limited cases, and in consultation with the applicant, NEA staff may transfer an application to a discipline other than the one selected by the applicant to ensure appropriate panel review. However, we cannot guarantee that an application will be transferred in all cases where this might be desirable.

Choosing the Right Discipline for Educational Projects

All GAP disciplines welcome educational projects. The Arts Education discipline is specifically geared toward pre-K-12 students (Direct Learning), the educators and artists who support them (Professional Development), and the schools and communities that serve them (Collective Impact). Projects submitted to Arts Education must incorporate robust measures to assess student and/or teacher learning in arts education. Assessment of student learning should align with state or [national arts standards](#).

Projects for short-term arts enrichment or exposure to the arts for youth, adults, and intergenerational audiences are welcome in the other disciplines. Applicants should select the discipline that most closely matches their project activities.

Arts events in all disciplines may be accompanied by ancillary learning activities (e.g., study guides for teachers and students, artists' visits prior to or following the event, workshops,

GAP FY26 Grant Program Details

Program Description: Artistic Disciplines

lecture-demonstrations, or master classes).

Select the **Arts Education** discipline for:

- Pre-K through 12th grade Direct Learning or Professional Development projects that **align with either national or state arts education standards, and include robust student and/or teacher assessment.**
- Collective Impact projects intended to transform schools and communities by providing access and engagement in the arts to students through collective, systemic approaches.
- Projects from Local Arts Agencies proposing a Collective Impact project.

Select one of the **other disciplines** for:

- Youth programs with a focus on exposure to or appreciation of the arts—including activities that take place in school, after school, during the summer, or in community settings. Such projects may include the work of professional artists and/or teaching artists.
- Youth programs that do not include robust student assessment.
- Programs serving adults and intergenerational groups.

Be sure to review the discipline description and project types found in the Instructions document (found under the Application Instructions section of the [GAP webpage](#)) to confirm that your educational project is an appropriate fit.

Program Description: Unallowable Activities/Costs

The activities and costs listed below are **not** allowable and must not be included as part of your project activities or budget. This includes activities/costs covered by cost share/matching funds. Applicants should carefully review the [General Terms and Conditions](#) (GTC) for additional information about allowable and unallowable costs.

Unallowable Activities

- General operating support, or support for a full season of programming.
- Direct grants to individuals.
- Direct grants to individual elementary or secondary schools - charter, private, or public, or booster clubs and similar organizations dedicated to supporting individual elementary or secondary schools. See [Eligibility](#) on page 16 for more information.
- Projects that replace or supplant arts instruction provided by an arts specialist.
- Generally, courses/coursework in degree-granting institutions.
- Literary publishing that does not focus on contemporary literature and/or writers.
- Generally, publication of books, exhibition of works, or other projects by the applicant organization's board members, faculty, or trustees.
- Generally, exhibitions of, and other projects that primarily involve, single, individually-owned, private collections.
- Projects for which no curatorial, juried, or editorial judgment has been applied to the selection of artists or art works.
- Costs of entertainment, including amusement, diversion, and social activities such as receptions, parties, galas, community dinners, picnics, and potlucks. Generally, this also includes activities at venues such as bars, wineries, and breweries where the consumption of alcohol/social activity is the primary purpose of the venue.
- Awards to individuals or organizations to honor or recognize achievement.
- Commercial (for-profit) enterprises or activities, including arts markets, concessions, food, T-shirts, artwork, or other items for resale. This includes online or virtual sales/shops.
- Lobbying, including activities intended to influence the outcome of elections or influence government officials regarding pending legislation, either directly or through specific lobbying appeals to the public.
- Voter registration drives and related activities.
- Construction, purchase, or renovation of facilities or the purchase of land. Design fees, preparing space for an exhibit, installation or de-installation of art, and community planning are allowable.
- [Subgranting or regranting](#), except for local arts agencies that meet the NEA's eligibility criteria for subgranting. Local arts agencies may not subgrant to individuals.

Certain Unallowable Costs

- Cash reserves and endowments.
- Costs for the creation of new organizations.
- Costs to bring a project into compliance with federal grant requirements. This includes environmental or historical assessments or reviews and the hiring of individuals to write assessments or reviews or to otherwise comply with the National Environmental Policy Act and/or the National Historic Preservation Act.
- Expenditures related to compensation to foreign nationals and/or travel to or from foreign countries when those expenditures are not in compliance with regulations issued by the [U.S. Treasury Department Office of Foreign Assets Control](#). For further information, contact our Office of Grants Management at grants@arts.gov.
- Project costs supported by any other federal funding. This includes federal funding received either directly from a federal agency (e.g., National Endowment for the Humanities, Housing and Urban Development, National Science Foundation, or an entity that receives federal appropriations such as the Corporation for Public Broadcasting or Amtrak); or indirectly from a pass-through organization such as a state arts agency, regional arts organization, or a grant made to another entity.
- Alcoholic beverages.
- Purchase and/or use of gift cards, gift certificates, or other cash equivalents to support project costs.
- Gifts and prizes, including cash prizes as well as other items (e.g., electronic devices, gift certificates) with monetary value.
- Stipends/fees to individuals who are incarcerated.
- Contributions and donations to other entities, including donation drives.
- General miscellaneous or contingency costs.
- Fines and penalties, bad debt costs, deficit reduction.
- Marketing expenses that are not directly related to the project.
- Audit costs that are not directly related to a single audit (formerly known as an A-133 audit).
- Rental costs for home office workspace owned by individuals or entities affiliated with the applicant organization.
- The purchase of vehicles.
- Visa costs paid to the U.S. government.
- Costs incurred outside of the approved period of performance.

Eligibility

Applicants may be arts organizations, local arts agencies, arts service organizations, local education agencies (school districts), and other organizations that can help advance the NEA’s mission.

ELIGIBLE

The following **are eligible** to apply:

- Nonprofit, tax-exempt 501(c)(3), U.S. organizations;
- Units of state or local government; and
- Federally recognized tribal communities or tribes.

To be eligible, **the applicant organization must:**

- Meet the NEA’s [Legal Requirements](#) including non-profit, tax-exempt status at the time of application.
- Have an active registration with the [System for Award Management](#) (SAM), and have a Unique Entity Identifier (UEI), at the time of application. Applicants must maintain an active SAM registration until the application process is complete and throughout the life of an award.
- Have completed a five-year history of arts programming prior to the application deadline.
 - Applicants will provide examples of previous arts programming in the application:
 - Arts programming may have taken place prior to when the organization incorporated or received non-profit, tax-exempt status.
 - If arts programming was suspended due to the pandemic, you may include examples that occurred in 2018 or 2019 to meet the five-year requirement. Do not include examples prior to 2018. Virtual programming is acceptable.
 - Organizations that previously operated as a program of another institution may include arts programming it carried out while part of that institution.
 - For applicants to the March 2025 GAP1 cycle, programming must have started in or before March 2020.
 - For applicants to the July 2025 GAP2 cycle, programming must have started in or before July 2020.

NOT ELIGIBLE

The following are **not eligible** to apply:

- Individuals;
- Commercial and for-profit enterprises;
- Applications using a fiscal sponsor/agent (organizations must apply directly on their own behalf); and
- State and jurisdictional arts agencies (SAAs), and Regional Arts Organizations (RAOs). SAAs and RAOs may serve as partners in projects; however, they may not receive NEA funds through GAP.

GAP FY26 Grant Program Details

Eligibility

“Friends of” and Other Affiliated Fundraising Organizations

An organization whose primary purpose is to channel resources (financial, human, or other) to an affiliated organization may only apply if the affiliated organization does not submit its own application. This prohibition applies even if each organization has its own 501(c)(3) status. For example, the "Friends of ABC Museum" may not apply if the ABC Museum applies. Fiscally sponsored organizations and projects are not eligible for NEA funding, see more information about Fiscal Sponsors below.

Elementary and Secondary Schools

Individual elementary or secondary schools - charter, private, or public, **are not eligible** to apply. Booster clubs and similar organizations dedicated to supporting individual elementary or secondary schools **are not eligible** to apply. Schools may participate as partners in an eligible organization's project.

Local education agencies (LEAs), school districts, and state and regional education agencies **are eligible to apply**. If a single school also is a local education agency, as is the case with some charter schools, the school may submit documentation that supports its status as a local education agency.

Fiscal Sponsorship

Fiscally sponsored organizations and projects are not eligible for NEA funding. An organization or individual **may not** use a fiscal sponsor/agent for the purpose of applying. The NEA does not fund unincorporated or for-profit entities or individuals that use non-profit, tax-exempt 501(c)(3) U.S. organizations; units of state or local government; or federally recognized tribal communities or tribes to apply for grants on their behalf.

If your organization does not have its own non-profit status, you may still participate in a project submitted by another eligible organization, but you may not submit your own application.

An organization that provides fiscal sponsor/agent services that otherwise meets the eligibility criteria above may apply for its own programs and projects. In this case, the organization must clearly demonstrate that it is applying only for its own programmatic activities.

What is a fiscal sponsor/agent?

A fiscal sponsor/agent is an entity that oversees the fiscal activities of another organization, company, or group of independent artists or projects. These activities may include bookkeeping, filing of W2s or 1099s, daily banking, or grant preparation.

An application must demonstrate the active involvement of the applicant organization in the proposed project activities. This might include:

GAP FY26 Grant Program Details

Eligibility

- Producing or co-producing.
- Partnering on creative direction or development.
- Organizing workshops, public showings, or distribution of work.
- Providing social networking strategies or web implementation.

The NEA may review your website and other materials in addition to your application to determine the eligibility of the application.

Cost Sharing/Matching Requirement

Applications that do not include a project budget meeting the *minimum* requirements of at least a \$10,000 NEA funding request, a \$10,000 cost share/match, and \$20,000 in total project expenses will be deemed ineligible and not be reviewed. See [Award Amounts and Cost Share Matching](#) on page 20 for more information related to cost share/matching requirements.

GAP FY26 Grant Program Details

Eligibility: Application Limits

Eligibility: Application Limits

An organization may submit only one application to the FY 2026 Grants for Arts Projects program (i.e., one application per calendar year), with limited exceptions.

Applications to other NEA funding categories:

- An organization *may not* apply to both the Grants for Arts Projects category and the [Our Town](#) category in the same calendar year.
- An organization *may* apply to the NEA's [Research Awards](#) program in addition to Grants for Arts Projects. If you submit applications to other opportunities, each request must be for a **distinctly different project (with different activities and costs), or a distinctly different phase of the same project**, with a different period of performance and costs.

If you have other NEA awards with activities and/or periods of performance that will overlap with your proposed Grants for Arts project, please contact NEA staff for guidance to ensure that the projects are different or for a distinctly different phase of a project.

Project participants such as individuals (project staff or artists) or partner organizations may participate in more than one application if there is no overlap in proposed costs or activities.

Exception: Parent Organizations with Independent Components (IC)

Exceptions to the one-application rule are made only for parent organizations that have separately identifiable and independent components (e.g., a university campus that has a presenting organization and a radio station).

A parent organization may apply for each eligible component. In addition, a parent organization also may submit one application on its own behalf for a **project that is different from any project submitted in an application by its independent component(s)**.

The application for the independent component must be for a project of the component. For example, if a university campus applies for its art museum as an independent component, the project must be for the art museum. The art museum cannot be used as a passthrough entity for projects from other areas of the university, nor can the university's own application be a submission to support a second art museum project.

Independent Component (IC) Eligibility

An eligible IC must be a unit that is both programmatically and administratively distinct from the parent organization. To qualify it should be equivalent to a stand-alone institution. The independent status is demonstrated by the component's:

- Unique mission, separate and distinct from the parent entity;
- Separate, dedicated staff, with duties specific to the mission of the component;

GAP FY26 Grant Program Details

Eligibility: Application Limits

- Independent board, mostly consisting of members not associated with the parent entity (the board should generally function with substantial oversight and management of the component);
- Separate budget, maintained by the component; and
- Five-year history of arts programming undertaken by the component.

A parent organization should consult with [NEA staff](#) to verify the eligibility of the component before preparing an application. If an application is submitted by a parent organization on behalf of a component that the NEA determines does not to meet the eligibility criteria for an IC, that application may be marked ineligible, unless the parent applicant has not submitted any other applications in the same calendar year.

The following **do not qualify** as eligible ICs:

- Academic departments of colleges and universities.
- Programs, initiatives, and projects of organizations.
- Collaboratives or consortiums of multiple organizations.

For example:

- **Eligible IC:** An art museum on a university campus serves the general public and does not grant degrees. The museum board, not the university trustees, manages the museum's budget, staff, and programming. In this example, the art museum essentially is a stand-alone organization and qualifies as an independent component.
- **Ineligible IC:** A symphony association sponsors a youth orchestra in addition to its professional orchestra. Some symphony musicians serve as faculty for the youth orchestra; there is some overlap of membership between the symphony trustees and the youth orchestra's advisory board; and the executive director for the symphony association serves as CEO for both the professional and youth orchestras. In this case the youth orchestra is not equivalent to a separate institution and therefore does not qualify as an independent component.

The parent organization must meet the eligibility requirements for all applicants. An affiliated organization that performs grant administration duties for a parent organization (e.g., a college foundation that administers grants awarded to a college and its components) may submit applications for components and the parent organization in lieu of such applications being submitted by the parent. The affiliated organization must meet the eligibility requirements for all applicants.

Award Amounts & Cost Share/Matching

All funded projects must adhere to federal rules and regulations. Familiarize yourself with the requirements of managing a federal grant by reviewing the [Post-Award Requirements and Administration](#) section of this document, as well as the General Terms and Conditions and reporting requirements found in [Manage Your Award](#).

Award Amounts

Awards range from \$10,000 to \$100,000.

Designated local arts agencies eligible to subgrant may request from \$30,000 to \$150,000 for subgranting in the Local Arts Agencies discipline. Additional eligibility, documentation, and reporting requirements for subgranting applications are detailed in the Local Arts Agencies Instructions document (found under the *Application Instructions* section of the [GAP webpage](#)).

In developing an application, we urge all applicants to consider the funding level of [recent awards](#) and to request a realistic award amount.

The NEA reserves the right to limit support of a project to a particular portion(s) or cost(s).

Applicants whose recommended funding amount is less than the amount requested in the application will have the opportunity to revise the project's budget and/or scope to reflect any necessary changes to the project's activities.

Cost Share and Matching Funds

All awards require a nonfederal cost share/match of at least 1 to 1. For example, if an organization receives a \$10,000 award, the total project costs must be at least \$20,000, and the organization must provide at least \$10,000 toward the project costs from nonfederal sources. NEA funding cannot exceed 50% of the total cost of the project.

Cost share/matching funds cannot include other federal funds from the NEA or other federal entities; including federal funds subgranted through State Arts Agencies, Regional Arts Organizations, or Local Arts Agencies.

Cost share/matching funds do not need to be committed at the time of application, but applicants will be asked to provide potential sources of funding in the project budget section of the application.

Application Contents & Format

Applying is a multi-step process. We estimate that after registering, the process to draft and submit an application takes approximately 26 hours.

Application Instructions

A detailed instructions document outlining how to complete and submit both parts of the application, including *all application questions and requirements*, can be found on the [GAP webpage](#), under the Application Instructions section.

Registration

Before applying, applicants must finalize required registrations detailed on the next page. **All three required registrations must be active to submit Part 1 of the application through Grants.gov.**

Application Part 1, Grants.gov

Part 1 of the application is submitted through Grants.gov. All applicants must submit the “Application for Federal Domestic Assistance/Short Organization Form.” This is a brief form that will collect basic information about your organization.

A direct link to the Part 1 Grants.gov Opportunity Package where you will complete this form, is included on the [GAP webpage](#) under How to Apply. You must successfully submit Part 1 to continue to Part 2.

Application Part 2, NEA Applicant Portal

Part 2 of the application is submitted via the NEA’s [Applicant Portal](#). This is a separate website from Grants.gov.

All applicants must complete the “Grant Application Form (GAF)” and upload items through the portal. Information is submitted via a web form where you will enter the majority of your application material, including information about your organization’s history and budget, and project details including a project description, timeline, budget information, and work samples.

Applications Recommended for Funding

Applicants whose projects are recommended for funding must submit additional information, which may include: a project activity update, a revised project budget, [an accessibility form](#), and if required by your project activities, information about compliance with the National Historic Preservation Act and/or the National Environmental Policy Act.

See [Post-Award Requirements and Administration](#) for more information on Accessibility and NEPA/NHPA compliance, as well as other information about award management.

Submission Requirements & Deadlines

Pre-Application Required Registrations

Before applying, all applicants must register with [Login.gov](#), [Grants.gov](#), and the System for Award Management (SAM) at [SAM.gov](#). Applicants must provide a valid unique entity identifier (UEI) in their application; and continue to maintain an active SAM.gov registration with current entity information at all times during which it has an active Federal award or an application or plan under consideration by a Federal agency. **All three required registrations must be active to submit Part 1 of the application through Grants.gov.**

Returning applicants must renew or verify that their registrations are up to date prior to the application deadline.

Registering and maintaining accounts with Login.gov, SAM, and Grants.gov is always FREE.

The **Registration Guidance document** available on the [GAP webpage](#) provides detailed information about the registration process, including links to each registration site, and support resources.

Submission Methods

Application materials must be submitted electronically. See Application Instructions on the previous page.

Contact Information

For assistance with application requirements, [contact NEA staff](#) .

Login.gov, SAM, and Grants.gov Help

The NEA does not have access to your Login.gov, SAM, or Grants.gov accounts. If you have any questions about or need assistance with these sites, including questions regarding electronic accessibility, you must contact them directly:

- **Login.gov Help:** Call 1-844-875-6446, consult the information posted in their [Help Center](#), or use their [online form](#) to submit a question.
- **SAM Federal Service Desk:** Call 1-866-606-8220 or see the information posted on the SAM website at [SAM Help](#).
- **Grants.gov Contact Center:** Call 1-800-518-4726, email support@grants.gov, or consult the information posted on the Grants.gov website at [Support](#). The Grants.gov Contact Center is available 24 hours a day, 7 days a week.

GAP FY26 Grant Program Details	Submission Requirements & Deadlines
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Application Submission Dates & Times

Step	March Cycle (GAP1) *	July Cycle (GAP2)
Grant Program Details and Application Instructions Published	February 2025	February 2025
Part 1 Application Package Available on Grants.gov	February 2025	Mid-May 2025
Part 1 Grants.gov Submission deadline	March 11, 2025 11:59 pm ET	July 10, 2025 11:59 pm ET
Part 2 NEA Applicant Portal Opens to applicants	March 14, 2025 9:00 am ET	July 15, 2025 9:00 am ET
Part 2 NEA Applicant Portal Submission deadline	March 24, 2025 11:59 pm ET	July 22, 2025 11:59 pm ET
Notification of recommended funding or rejection	December 2025	Early to mid April 2026
Earliest project start date	January 1, 2026	June 1, 2026

*All Artist Communities and Design applicants must apply at the March 11, 2025, deadline.

Literary Arts accepts particular project types at each deadline; applicants should refer to the Literary Arts instructions to determine which deadline is appropriate for their proposal.

Please do not request the status of your application before the notification date that is listed above.

Late, ineligible, and incomplete applications will not be reviewed.

Exceptions to the Submission Deadlines

Exceptions to the submission deadlines will be considered **only** for registration or renewal issues, or technical malfunctions that are the result of failures on the part of Login.gov, SAM, Grants.gov, or NEA systems, as determined by the NEA. To be considered for this exception, you must provide documentation of a Login.gov, SAM, Grants.gov, or NEA systems failure that prevented your submission by the deadline.

In the event of a major emergency (e.g., a hurricane or a Login.gov, SAM, Grants.gov, or NEA systems technological failure), the NEA Chair may adjust application deadlines for affected applicants. If a deadline is extended for any reason, an announcement will be posted on our website.

GAP FY26 Grant Program Details

Submission Requirements & Deadlines

Exceptions to the deadline **will not be considered** for reasons such as:

- User error, including but not limited to, failing to register or apply on time, or failure to verify that your application was successfully submitted to Grants.gov and/or the Applicant Portal.
- Problems with computer systems or Internet access at the applicant organization.

Please note:

- Permission for late application submission cannot be granted in advance. If you feel you have a case for an exception, contact staff as soon as possible **after** the deadline with documentation of the issues you encountered.
- Applications submitted late or outside the Grants.gov system (e.g., an emailed SF-424) will not be processed, reviewed, or considered for funding.

Intergovernmental Review

This funding opportunity is not subject to Intergovernmental Review of Federal Programs Executive Order 12372.

Application Review

Review Criteria

Applications will be reviewed based on the criteria below, with equal weight assigned to artistic excellence and artistic merit. While proposals need not address each criterion marked “as applicable,” applicants may consider all the criteria when developing their proposals.

Proposals must be for arts projects with specific, definable activities. The application may be rejected if it does not sufficiently describe the project activities.

For more information about how these criteria relate to a specific discipline, review the discipline-specific instructions and/or contact staff.

Artistic Excellence

The **artistic excellence** of the project includes:

- The quality of the artists and other key individuals, works of art, organizations, arts education providers, artistic partners, and/or services involved in the project.

Artistic Merit

The **artistic merit** of the project includes:

- The value and appropriateness of the project to the organization’s mission, artistic field, artists, audience, community, and/or constituency.
- The ability to carry out the project based on such factors as the appropriateness of the budget, clarity of the project activities, resources involved, and the qualifications of the project's personnel and/or partnerships.
- Clearly defined goals and/or proposed outcomes and an appropriate plan to determine if those goals and/or outcomes are met. This includes, where relevant, measures to assess student and/or teacher learning in arts education.
- Evidence of direct compensation to artists, makers, art collectives, and/or art workers.
- As applicable:
 - Engagement with individuals whose opportunities to experience and participate in the arts are limited by geography, ethnicity, economic status, or disability.

Review & Selection Process

Applications are checked for completeness and eligibility by NEA staff. Eligible applications are evaluated according to the Review Criteria above, in closed session, by advisory panelists. Each panel comprises a group of arts experts and other individuals, including at least one knowledgeable layperson, with broad knowledge in the areas under review. Panels are convened virtually by discipline. Panel membership changes regularly. The panel recommends the projects to be supported, and the staff reconciles panel recommendations with the funds

GAP FY26 Grant Program Details

Application Review

that are available. These recommendations are forwarded to the National Council on the Arts, where they are voted on in an open public session.

The National Council on the Arts makes recommendations to the NEA Chair.

The NEA Chair reviews the recommendations for grants in all funding categories and makes the final decision on all grant awards. Applicants are then notified of funding decisions.

Risk Review

All recommended applications undergo a review to evaluate risk posed by the applicant prior to making a federal award. This may include past performance on grants, meeting reporting deadlines, compliance with terms and conditions, audit findings, etc.

Award Notices

The notification date for your category on the [Application Calendar](#) tells you when we expect to announce award decisions.

Notifications are sent via email. Applicants recommended for funding will receive a preliminary congratulatory message, with a request for project and budget updates. Applicants not recommended for funding will receive a rejection notice via email.

The official award notification (i.e., a notice of action authorized by the NEA Office of Grants Management) is the only legal and valid confirmation of award. Receipt of your official award notification may take several months depending on a number of factors such as changes to your project, the number of awards to be processed, whether the NEA has its funding appropriation from Congress, etc. **All NEA awards are contingent on active SAM registration. The NEA will not be able to issue an award if you have an expired SAM.gov registration on September 1 of the fiscal year listed on this funding opportunity.**

Final Reports for Previous Awards

Before the NEA issues any award, organizations must have submitted acceptable Final Report packages by the due date(s) for all previous NEA award(s).

Post-Award Requirements and Administration

General Terms & Conditions

Federal government-wide and agency-specific requirements that relate to NEA awards are highlighted in our [General Terms & Conditions](#) (GTCs). The GTCs incorporate the adoption of 2 CFR Part 200 by reference. The document also explicitly identifies where the NEA has selected options offered in the regulation, such as budget waivers and requirements for use of program income. It also includes requirements for cost share funds, reporting requirements, amendment processes, and termination actions. **Recipients must review, understand, and comply with these requirements.** Failure to comply with the GTCs for an award may result in termination of an award, and/or returning funds to the NEA, among other consequences.

Implementation of Title 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

The guidance under 2 CFR Part 200 from the federal government's Office of Management and Budget (OMB) establishes clarity and consistency of the pre- and post-award requirements applicable to federal award recipients. The NEA has adopted the OMB Guidance in [2 CFR part 200 under §3255.1 Adoption of 2 CFR Part 200](#). The NEA's adoption of 2 CFR Part 200 gives regulatory effect to the OMB guidance, including any updates to it.

Crediting Requirement

Recipients must clearly acknowledge NEA support of the project in their programs and related promotional material, including publications and websites. Additional acknowledgment requirements may be provided later. The NEA does not fund general operating support, so you must ensure that the NEA is only credited with funding the specific project, and not your entire organization or its operations.

Changes in Projects

Pre-Award: Applicants must notify the NEA of any significant changes in their project that occur after applying. If the project or the organization's capacity to carry out the project changes significantly before an award is made, the NEA may revise or withdraw the funding recommendation.

Post-Award: Recipients are expected to carry out a project consistent with the project approved for funding by the NEA. If changes to the project are required, the recipient must request written approval from the Office of Grants Management, **which is the only office authorized to amend or change an NEA award. Written and/or verbal approval of proposed project changes from any other NEA office does not constitute an approved change to an award.** Detailed information is included in the NEA's [General Terms & Conditions](#) for Grants to Organizations.

GAP FY26 Grant Program Details Post Award Requirements and Administration

Accessibility

As outlined in the [Assurance of Compliance](#), Section 504 of the Rehabilitation Act of 1973, and the NEA's implementing regulation, all NEA-funded projects are required to be accessible to people with disabilities. Individuals with disabilities may be artists, performers, audiences, visitors, teaching artists, students, staff, and volunteers. Funded activities must be held in a physically-accessible venue, and program access and effective communication must be provided for participants and audience members with disabilities.

If your project is recommended for funding, you will be asked to provide detailed information describing how you will make your project physically and programmatically accessible to people with disabilities:

- Buildings and facilities (including projects held in historic facilities) must be physically accessible. The following are some examples, but are not an exhaustive list:
 - Ground-level/no-step entry, ramped access, and/or elevators to project facilities and outdoor spaces;
 - Wheelchair-accessible box office, stage/backstage, meeting, and dressing rooms;
 - Wheelchair-accessible restrooms and water fountains;
 - Directional signage for accessible entrances, restrooms, and other facilities; and
 - Accessible workspaces for employees.
- The programmatic activities must be accessible either as part of the funded activity or upon request, where relevant. The following are some examples, but they are not an exhaustive list:
 - Accommodations for performances, tours, virtually streamed events, conferences, and lectures, such as sign language interpretation, real-time captioning, and audio description;
 - Print materials in alternative formats, such as large-print brochures/labels/programs, braille, and electronic/digital formats;
 - Accessible and screen reader-compatible electronic materials, documents, websites, and virtual platforms, and alternative text for images;
 - Closed/open captioning and audio/visual description for video, film, television broadcasts, and virtual events;
 - Auxiliary aids and devices, such as assistive listening devices.

Costs associated with project-related programmatic accommodations, such as those listed above, may be included in an NEA grant budget. However, costs associated with physical construction or renovation expenses may not be included in the grant budget.

In accordance with the General Terms & Conditions, a Section 504 self-evaluation must be on file at your organization, and you must have a designated 504/accessibility coordinator on staff.

For technical assistance on how to make your project accessible, contact the Accessibility Office at accessibility@arts.gov, 202-682-5532; or the Civil Rights Office at civilrights@arts.gov, 202-682-5454; or see our online [Accessibility Resources](#).

GAP FY26 Grant Program Details Post Award Requirements and Administration

National Historic Preservation Act and/or the National Environmental Policy Act Review

All awards are subject to review and compliance with the [National Historic Preservation Act](#) (NHPA) and the [National Environmental Policy Act](#) (NEPA). The NEA will conduct a review of your project to ensure that it is in compliance with NHPA/NEPA and other Federal environmental laws.

If you are recommended for an award which may have historic preservation or environmental concerns (NHPA/NEPA), you will be notified and asked to provide [additional information](#). This review and approval process takes time to complete and may delay your project's start date, and/or our ability to release award funds, the NEA cannot release award funds until the NHPA/NEPA review is complete.

Once notified that additional NHPA/NEPA review is needed, be sure to include thorough and complete information for all project activities and locations, which will help expedite the review. If project activities and locations are not yet finalized, you must provide the timeline for determining project activities and locations as these details are required to complete the NHPA/NEPA review.

For projects requiring ground disturbance or impacting buildings over 50 years old, you may be instructed to continue the NHPA review with the appropriate State Historic Preservation Office (SHPO).

Some of the project types that may require additional information or SHPO review include:

- Projects involving a building over 50 years old. This also includes structures such as bridges; or objects such as sculptures; or a landscape that is historically significant.
- The commissioning and installation of temporary or permanent outdoor artworks or structures, such as: sculptures, statues, murals, or permanent signs.
- Outdoor arts/music festivals or activities requiring ground disturbance.
- Maintenance or rehabilitation of landscapes and gardens.
- Design services and planning for projects that may affect historic properties.

Project Reporting and Evaluation

Before applying, carefully review the reporting requirements for the NEA's [Final Reports](#). If you have any questions about the NEA's objectives or the required final reports, contact NEA staff.

All recipients are required at minimum to submit a Final Descriptive Report (FDR), a Federal Financial Report (FFR), and a Geographic Location of Project Activity Report (GEO) within 120 days of the end of the award's period of performance. The estimated time burden for completing final reports is 5 hours. Local Arts Agencies with awards for Subgranting projects are also required to submit a Subgrants report, with an additional time burden of 4.5 hours.

GAP FY26 Grant Program Details Post Award Requirements and Administration

Recipients of Arts Education Direct Learning awards will be required to describe the methods used to assess student learning.

You are required to maintain project source documentation, including financial records, for three years following submission of your final reports.

Beyond the required final reports for all recipients, some recipients may be asked to assist in the collection of additional information to help the NEA determine the degree to which agency objectives were achieved. You may be asked to share project accomplishments such as work samples, community action plans, cultural asset studies, programs, reviews, relevant news clippings, and playbills.

Responsible Conduct of Program Evaluation and Research

NEA recipients should comply with all applicable laws and regulations governing the responsible conduct of research in the United States.

NEA PROGRAM EVALUATION ETHICS REVIEW: In limited cases, the NEA may conduct a review of your project prior to making an award if your project activities include *formal program evaluation, research that involves directly collecting personal information from program participants, and/or activities involving vulnerable populations*. Examples include activities that require program participants to provide sensitive and/or confidential information about themselves, and/or that involve systematic studies to assess a program’s benefits for participants.

INFORMAL PROGRAM EVALUATION AND DATA COLLECTION FOR FINAL REPORTING: Many NEA-funded projects include informal evaluation, such as conducting *anonymized surveys* of program participants about their satisfaction with a program, or *basic field observations* of program participants such as counting the number of audience members or tickets sold. **These types of activities are typically exempt from a program evaluation ethics review.** Data collection activities related to completion of the [Final Descriptive Report \(FDR\)](#) are exempt from a program evaluation ethics review.

Questions: Contact our Office of Research and Analysis (ORA) at research@arts.gov. ORA has compiled [Resources on Program Evaluation and Performance Measurement](#) to help applicants and awardees document the effectiveness and impact of their arts programs.

Legal Requirements and Assurance of Compliance

The [Legal Requirements](#) section on our website provides information about key legal requirements that may apply to an applicant or recipient. It is not an exhaustive list; more details may be found in Appendix A of the [General Terms & Conditions](#).

GAP FY26 Grant Program Details Post Award Requirements and Administration

By signing and submitting the application form on Grants.gov, the Applicant certifies that it is in compliance with the statutes outlined in the [Assurance of Compliance](#) and all related National Endowment for the Arts regulations as well as all applicable executive orders, and that it will maintain records and submit the reports that are necessary to determine its compliance.

It is ultimately your responsibility to ensure that you are compliant with all legal, regulatory, and policy requirements applicable to your award.

Civil Rights

Projects may reach a particular group or demographic (such as sex, disability, economic status, race, color, or national origin, including limited English proficiency); however, projects may not be exclusionary under Federal civil rights laws and policies prohibiting discrimination. This nondiscrimination requirement extends to hiring practices, artist selection processes, and audience engagement. Your application should make it clear that project activities are not exclusionary. Please review the [Assurance of Compliance](#) which outlines the relevant federal statutes, NEA regulations, and executive orders.

The NEA's Office of Civil Rights investigates complaints about compliance with accessibility standards as well as other federal civil rights statutes. For further information and copies of the nondiscrimination regulations identified above, contact the Office of Civil Rights at 202-682-5454 or civilrights@arts.gov. For inquiries about limited English proficiency, go to <http://www.lep.gov>, or contact the Office of Civil Rights at 202-682-5454 or civilrights@arts.gov.

Regulations Relating to Lobbying

For organizations applying for more than \$100,000 (31 U.S.C. 1352).

The applicant certifies that:

- a) It has not and will not use federal appropriated funds or cost share/matching funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of a National Endowment for the Arts advisory panel or the National Council on the Arts, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of or modification to any federal grant or contract.
- b) If it has used or will use any funds other than federal appropriated funds to pay any person for influencing or attempting to influence any of the individuals specified above, the applicant:
 - i) Is not required to disclose that activity if that person is regularly employed by the applicant. (Regularly employed means working for at least 130 days within the year immediately preceding the submission of this application.)
 - ii) Will complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," if that person is not regularly employed by the applicant.

GAP FY26 Grant Program Details Post Award Requirements and Administration

iii) Will require that the language of this certification be included in the award documents for all subawards of more than \$100,000 and that all subrecipients shall certify and disclose accordingly.

Freedom of Information Act (FOIA) Notice

Disclosure Notice: The National Endowment for the Arts (NEA) may share a copy of awarded applications and/or related materials submitted to the NEA by the applicants, with the public or other third parties, where required or permitted by law.

Standards for Service

The NEA has set the following standards for serving applicants. We pledge to:

- Treat you with courtesy and efficiency.
- Respond to inquiries and correspondence promptly.
- Provide clear and accurate information about our policies and procedures.
- Provide timely information about funding opportunities and make guidelines available promptly.
- Ensure that all eligible applications are reviewed thoughtfully and fairly.

We welcome your comments on how we are meeting these standards. Email: webmgr@arts.gov, attention: Standards for Service. For questions about these guidelines or your application, see [Agency Contacts](#). In addition, applicants may receive an invitation to participate in a voluntary survey to provide feedback on the grant application guidelines on our website and any experiences consulting with our staff.

Paperwork Reduction Act Statement

The public reporting burden for this collection of information is estimated at an average of 26 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. We welcome any suggestions that you might have on improving the guidelines and making them as easy to use as possible. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: webmgr@arts.gov, attention: Reporting Burden. Note: Applicants are not required to respond to the collection of information unless it displays a currently valid U.S. Office of Management and Budget (OMB) control number.

ALN 45.024

OMB No. 3135-0112 Expires 10/31/25

Frequently Asked Questions

[America250-Related Projects](#) | [Late or Incomplete Applications](#) | [Eligibility and Allowable Activities/Costs](#) | [Subgranting](#) | [Competitive Projects](#) | [Period of Performance](#) | [Other federal funding](#)

America250-Related Projects

Does my grant application have to include an America250-related project in order to receive funding this year?

No. We are encouraging, but not requiring, applicants to consider celebrating and honoring America250 as part of their project activities. We will certainly continue to fund projects that do not include an America250 focus or related programming.

What is an America250-related project?

For applicants that choose to focus on this milestone, we are interested in projects that celebrate and honor the nation’s rich artistic and cultural heritage as part of America250. For example, projects could examine the work of American artists, present or create art recognizing this important milestone, or undertake educational activities or related programming. We aim to fund a wide range of projects—large and small, in all artistic disciplines, and in communities of all sizes across the country—that celebrate and honor this important milestone.

Does my project have to focus entirely on celebrating America250?

No. If you decide to submit an application for America250-related activities, your project may focus exclusively on celebrating and honoring the anniversary, or it may incorporate a special America250-related component or focus within a larger project that you are planning to undertake. For example, an organization applying for a broader musical series might devote a performance or educational activity to celebrating America250.

Do all America250-related activities have to take place only in 2026?

No. We recognize that project schedules vary based on your organization’s unique needs. As such, America250-related activities can take place anytime during your award’s period of performance in 2026-2027.

Late or Incomplete Applications

We missed the application deadline. Can I submit a late application?

Late, ineligible, and incomplete applications will not be reviewed. Please review the information under [Exceptions to the Submission Deadlines](#).

Will you contact me if my application is missing anything?

No. Because of the volume of applications, the NEA has a strict approach to incomplete applications. For your application to be considered complete, every required item MUST be

included in your application, which must be submitted no later than the application deadline date. **NEA staff will not contact applicants to request missing material.** Do not wait until the day of the deadline to submit! The NEA suggests setting an internal application deadline for your organization that is 24-48 hours before the actual application deadline.

If my application is determined to be incomplete, may I add the missing item(s) and resubmit the application?

No. An organization cannot add missing items and resubmit the application after the application deadline.

Eligibility and Allowable Activities/Costs

Can federally recognized tribes apply?

Yes. In keeping with federal policies of [Tribal Self Governance](#) and [Self-Determination](#), we may provide support for a project with a primary audience restricted to enrolled members of a federally recognized tribe. Applicants (federally recognized tribal governments, non-profits situated on federally recognized tribal lands, or other non-profits whose mission primarily serves federally recognized tribal enrollees) should consult with [NEA staff](#) to verify their eligibility before preparing an application.

Can non-federally recognized tribes apply?

Yes, if the applicant is a non-profit, tax-exempt 501(c)(3), U.S. organization. Projects for non-federally recognized tribes and indigenous groups may be supported, but project participation can't be restricted to only tribal members.

Can Native Hawaiian groups apply?

Yes, if the applicant is a non-profit, tax-exempt 501(c)(3), U.S. organization. Projects for Native Hawaiians may be supported, but project participation can't be restricted to only Native Hawaiians.

Our project may need updated technology to support quality virtual programming. To what extent can these costs be included in the project budget, and do we need to differentiate between supplies or equipment costs?

You can apply for costs related to updated technology if they support the proposed project activities. Costs could include:

- Equipment, purchase or rental
- Hardware
- Software, e.g., timed ticketing software
- Increased bandwidth
- Streaming subscriptions
- Specialized audio-visual equipment for performers

The distinction between supplies and equipment is determined by cost and useful life. A justification for the cost is required in some cases.

If you intend to purchase equipment that costs \$10,000 or more per item with an estimated useful life of more than one year, clearly identify the equipment and you will need to provide a justification for this expenditure either in the Project Budget form or in your narrative.

Digital devices or other technologies are considered supplies if they are less than \$10,000 per item, regardless of the length of useful life, and no additional justification is required.

Can my project budget include the cost of open or closed captions or sign language interpretation for virtual events?

Yes.

How can I make sure that my project is in compliance with Federal civil rights laws?

Projects may reach a particular group or demographic (such as sex, disability, economic status, race, color, or national origin, including limited English proficiency), however, projects may not be exclusionary under Federal civil rights laws and policies prohibiting discrimination. This nondiscrimination requirement extends to hiring practices, artist selection processes, and audience engagement. Your application should make it clear that project activities are not exclusionary. Please review the [Assurance of Compliance](#) which outlines the relevant federal statutes, NEA regulations, and executive orders.

Can my partner organizations also apply for NEA funds to support our collaborative work?

A partnering organization may apply for funds to support a joint effort but there can be no overlapping project costs or activities between the applications. For example, if you are a dance company, and you are applying for the development of a new work and a presenting organization/theater is also applying for a residency/performance project that includes your company and the presentation of the new work, you must ensure that the costs are kept separate. You cannot include as cost share/match any income derived from a federal grant made to another entity (e.g., if a presenter includes your artist fees as an expense in their budget, you cannot use that as income in your own budget). You should communicate closely with your partners to be sure that you are each clear on the division of costs and activity between the applications.

Can my organization submit an additional application in the GAP category through the Film & Media Arts discipline for the July deadline?

No. Organizations may submit only one application to the FY 2026 Grants for Arts Projects program (i.e., one application per calendar year) with limited exceptions made only for Parent (and Related) Organizations. The NEA limits the number of applications an organization may submit to ensure that our award funds extend to a variety of organizations, including first-time applicants and organizations serving communities of all sizes.

Although there is no longer the opportunity to submit an additional application through the Film & Media Arts discipline for the July deadline, the NEA remains committed to supporting existing and new technology-centered creative practices across all artistic disciplines and forms.

The NEA will continue to accept applications for projects that support this work in any relevant artistic discipline within the GAP category.

In the past my organization submitted an additional application to Film & Media Arts, what should we do for FY26?

The NEA recommends that you either focus your application on activities appropriate for the Film & Media Arts program, *or* apply to one of the other disciplines for a project that suits their accepted project types. Many of the other disciplines accept projects that utilize technology-centered creative practices, as well as build arts organization's capacity to serve a broad public by providing access, training, and other resources to engage with digital technologies. You can read more about what kinds of projects are accepted by reviewing the individual discipline instructions documents. If you have questions, we encourage you to [contact NEA staff](#).

Subgranting

The "Unallowable Activities/Costs" section says that subgranting is not allowed. What is subgranting?

Subgranting is defined as regranteeing funds to an organization for activities that are conducted independently of your organization and for the benefit of the subrecipients' own program objectives. A subrecipient is not directly affiliated with your organization. Examples of subgranting include:

- Payment to an organization to obtain training or technical assistance for their own benefit with little or no involvement from your organization.
- Production funds awarded to an organization through a competitive review process with little or no subsequent involvement from your organization.
- Emergency relief funding for housing or food.

Congress prohibits the NEA from making awards for subgranting activity, with exceptions only for state arts agencies, regional arts organizations, and local arts agencies designated to operate on behalf of local governments.

Designated local arts agencies are eligible to apply for subgranting through the Local Arts Agencies discipline of the Grants for Arts Projects category. Designated local arts agencies must meet additional eligibility requirements, provide additional documentation in the application, and follow additional reporting and compliance requirements. Designated local arts agencies are encouraged to contact [Local Arts Agencies staff](#) to discuss eligibility and application requirements when preparing a subgranting application.

My organization wants to apply for support of its apprenticeship program. How can I clarify in my application that my project does not include awarding subgrants even though my budget may include fees to individual artists?

The key to avoiding the appearance of subgranting is the involvement of your organization in carrying out the project activities. For example, an apprenticeship program might include fees paid to artists. These fees are not considered subgranting if your organization provides substantive supervision of and involvement in the mentor-apprentice relationship. This might include:

- Planning a detailed description of the individual master-apprentice course of study.
- Monitoring and evaluating the progress of the activity including conducting site visits.
- Documenting apprenticeship activities including reports from masters and apprentices.
- Arranging public exhibition or performance opportunities for masters and apprentices.
- Archiving material related to the apprenticeships and publicly distributing information about the apprenticeship program and its activities.

Note that simply "checking in" on the activity, including obtaining progress and final reports, does not qualify as substantive involvement in the project.

You can provide evidence of your organization's substantive involvement in the project through project-related information on your website, announcements and evaluations of public events, and archival documentation.

Competitive Projects

Does my project have to be new? Does it have to be big?

No. Projects do not have to be new. Existing projects can be just as competitive as new activities. Projects do not need to be big either; the NEA welcomes small and medium-sized projects that can make a difference in their community or field.

Does my project have to be outside the scope of my regular programming?

No. A project can be a part of an applicant's regular season or activity.

Can I apply for more NEA funding for a project supported by an earlier grant?

Yes. If you have previously received a grant to support an earlier phase of a project, you *may* re-apply to the NEA for additional funding to support a later phase. However, each application must clearly describe the specific phase of work to be supported, and there can be NO overlapping project costs or activity between the awards.

Period of Performance (Support)

How soon after the "Earliest Start Date" for my deadline does my project have to begin?

The NEA's support can start any time on or after that date.

Can my project start before this date?

No. Proposed project activities for which you're requesting support cannot take place before this date. You may only request that the NEA fund the portion of your project that will take place after the "Earliest Start Date."

How long can my project last? May I apply for another project during this period?

The NEA generally allows a period of performance of up to two years. Many applicants request a period of performance somewhere between 12 and 24 months. The two-year period is intended to allow an applicant sufficient time to plan, execute, and close out its project, not to repeat a one-year project for a second year.

Generally, an organization may apply to the NEA for another project (with totally different project costs) the following year even if a previous NEA-supported project is still underway. You are responsible for ensuring that there are no overlapping costs or activities between the projects. Note that this may affect when you can start your new proposed project.

Other federal funding

Can our organization use funds we received from other federal agencies as cost share/match for an NEA grant?

No. Federal funds may not be used as cost share/match for other federal grants. This may include funding from the Paycheck Protection Program and Shuttered Venues Operators Grants (SVOG) from the Small Business Administration (SBA), as well as other federal funding, from:

- AmeriCorps
- Institute of Museum and Library Services
- National Endowment for the Humanities
- National Park Service
- National Science Foundation
- U.S. Department of Agriculture
- U.S. Department of Education (e.g., 21st Century Community Learning Centers)
- U.S. Department of Housing and Urban Development
- Or an entity that receives federal appropriations such as the Corporation for Public Broadcasting or Amtrak

Can my organization use funds we have received from a Regional Arts Organization (RAO), State Arts Agency (SAA), or Local Arts Agency (LAA) as part of the cost-share/match for an NEA grant?

Yes, if those funds *did not* originate at the federal level from the NEA or another federal agency (such the ones listed above). Your program officer at the RAO, SAA, or LAA will be able to tell you if the award you received from them includes any federal funds. It is up to you to ascertain the source of funding. When completing your project budget, be sure to indicate that these funds are non-federal.

EXHIBIT 2



[Menu](#)

Legal Requirements and Assurance of Compliance

Legal Requirements

NOTE: This list highlights some of the significant legal requirements that may apply to an applicant or recipient; however, it is not exhaustive. More information regarding these and other legal requirements may be found at Appendix A of the General Terms & Conditions [</node/45296>](#), which set forth the National Policy and Other Legal Requirements, Statutes, Regulations, and Executive Orders that Govern Your Award. There may be other applicable legal requirements that are not listed in this document. It is ultimately your responsibility to ensure that you are compliant with all legal, regulatory, and policy requirements applicable to your award.

1. By law, the National Endowment for the Arts may support only those organizations:

- **That are tax-exempt.** Organizations qualifying for this status must meet the following criteria:

1. No part of net earnings may benefit a private stockholder or individual.
2. Donations to the organization must be allowable as a charitable contribution under Section 170(c) of the Internal Revenue Code of 1954, as amended.

For further information, go to the Internal Revenue Service's (IRS) website <<http://www.irs.gov>>.

- Who have not had their IRS status revoked. It is your responsibility to ensure that your status is current at the time of the application and throughout the life of your award.
- **That compensate all professional performers and related or supporting professional personnel on National Endowment for the Arts-supported projects at no less than the prevailing minimum compensation.** (This requirement is in accordance with regulations that have been issued by the Secretary of Labor in 29 CFR Part 505 <<http://www.gpo.gov/fdsys/pkg/cfr-1998-title29-vol3/pdf/cfr-1998-title29-vol3-chap-id2.pdf>>. This part does not provide information on specific compensation levels.)

- **That ensure that no part of any National Endowment for the Arts-supported project will be performed under or engaged in working conditions which are unsanitary, hazardous, or dangerous to the health and safety of the employees involved.**

2. **Some legal requirements apply to every applicant. For example:**

- **Compliance with the federal requirements** that are outlined in the Assurance of Compliance below
- **Debarment and Suspension procedures.** The applicant must comply with requirements set forth in Subpart C of 2 CFR 180, as adopted by the National Endowment for the Arts in 2 CFR Part 3254. Failure to comply may result in the debarment or suspension of the recipient, and the National Endowment for the Arts suspending, terminating, and/or recovering the funds. More information on Debarment and Suspension procedures can be found in the GTCs.
- **Federal Debt Status** (OMB Circular A-129
<https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/a129/a-129.pdf>). Processing of applications will be suspended when applicants are delinquent on federal tax or non-tax debts, including judgment liens against property for a debt to the federal government. An organization's debt status is displayed in the System for Award Management (SAM). New awards will not be made if an applicant is still in debt status as of September 1 of the fiscal year listed on this funding opportunity.

- **Labor Standards** (29 CFR Part 505

<<https://www.govinfo.gov/app/details/cfr-2023-title29-vol3/cfr-2023-title29-vol3-part505>>). Recipients must comply with the standards set out in Labor Standards on Projects or Productions Assisted by Grants from the National Endowments for the Arts.

- The Drug-Free Workplace Act of 1988

<<https://www.govinfo.gov/content/pkg/uscode-2020-title41/html/uscode-2020-title41-subtitleiv-chap81-sec8103.htm>> (41 U.S.C. 8101 et seq. and 2 CFR Part 3256). The recipient is required to publish a statement regarding its drug-free workplace program as well as to comply with other requirements.

3. Some legal requirements apply depending upon what activity the award is funding. For example:

- If your project activities have the potential to impact any structure that is eligible for or on the National Register of Historic Places, adjacent to a structure that is eligible for or on the National Register of Historic Places, or located in an historic district, you will be asked to provide additional information about your project or take additional action so that the agency can review and comply with the National Historic Preservation Act <<https://www.achp.gov/protecting-historic-properties>> (NHPA). NHPA also applies to any planning activities that may affect historic properties or districts. The additional agency review must be completed prior to any agency funds being released.
- If your project activities have the potential to impact the environment or environmentally sensitive resources, you will be required to provide information in accordance with the National Environmental Policy Act <<https://www.epa.gov/laws-regulations/summary-national-environmental-policy-act>> (NEPA). The additional agency review must be completed prior to any agency funds being released.

- If your project activities include any contract over \$2,000 involving the construction, alteration, or repair of public buildings or public works, the contract must contain a clause setting forth the minimum wages to be paid to laborers and mechanics employed under the contract in accordance with The Davis-Bacon and Related Acts (DBRA). More information on DBRA can be found in the GTCs </node/45296> under the “Other National Policies” heading.
- Projects or programs that are determined to be obscene are without artistic merit and shall not be funded. 20 USC 952(j)-(l); 20 USC 954(d),(l).

4. **Some legal requirements apply depending upon who the applicant is. For example:**

- The Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001 et seq.) applies to any organization that controls or possesses Native American cultural items, such as human remains or associated funerary objects and receives Federal funding, even for a purpose unrelated to the Act.

5. In addition, State Arts Agencies must meet the requirements in Section 954(g)(2) of the National Endowment for the Arts' authorizing legislation, which state:

"In order to receive assistance under this subsection in any fiscal year, a State shall submit an application for such grants at such time as shall be specified by the Chairperson and accompany such applications with a plan which the Chairperson finds—

(A) designates or provides for the establishment of a State agency (hereinafter in this section referred to as the "State agency") as the sole agency for the administration of the State plan;

(B) provides that funds paid to the State under this subsection will be expended solely on projects and productions approved by the State agency which carry out one or more of the objectives of subsection (c);

(C) provides that the State agency will make such reports, in such form and containing such information, as the Chairperson may from time to time require, including a description of the progress made toward achieving the goals of the State plan;

(D) provides—

- i. assurances that the State agency has held, after reasonable notice, public meetings in the State to allow all groups of artists, interested organizations, and the public to present views and make recommendations regarding the State plan; and

- ii. a summary of such recommendations and the State agency's response to such recommendations; and

(E) contains--

- i. a description of the level of participation during the most recent preceding year for which information is available by artists, artists' organizations, and arts organizations in projects and productions for which financial assistance is provided under this subsection;
- ii. for the most recent preceding year for which information is available, a description of the extent projects and productions receiving financial assistance from the State arts agency are available to all people and communities in the State; and
- iii. a description of projects and productions receiving financial assistance under this subsection that exist or are being developed to secure wider participation of artists, artists' organizations, and arts organizations identified under clause (i) of this subparagraph or that address the availability of the arts to all people or communities identified under clause (ii) of this subparagraph.

No application may be approved unless the accompanying plan satisfies the requirements specified in this subsection."

Assurance of Compliance

By signing and submitting its application form on Grants.gov, the applicant certifies that it is in compliance with the statutes outlined below and all related National Endowment for the Arts regulations as well as all applicable executive orders, and that it will maintain records and submit the reports that are necessary to determine its compliance.

We may conduct a review of your organization to ensure that the applicant is in compliance with these statutes, regulations, and executive orders. If the NEA determines that a recipient has failed to comply with any of these statutes, regulations, or executive orders, it may suspend or terminate the award, and/or recover the funds. The applicant's assurance of compliance is subject to judicial enforcement.

The applicant certifies that it does not discriminate:

- On the grounds of race, color, or national origin, in accordance with **Title VI of the Civil Rights Act of 1964**, as amended (42 U.S.C. 2000d et seq.), implemented by the National Endowment for the Arts at 45 CFR 1110.
- Solely on the grounds of disability, in accordance with **Section 504 of the Rehabilitation Act of 1973** (29 U.S.C. 794), as amended, implemented by the National Endowment for the Arts at 45 CFR 1151, and the **Americans with Disabilities Act of 1990** ("ADA"), as amended, (42 U.S.C. 12101 et seq.).

- On the basis of age, in accordance with the **Age Discrimination Act of 1975**, as amended (42 U.S.C. 6101 et seq.), implemented by the National Endowment for the Arts at 45 CFR 1156.
- On the basis of sex, in any education program or activity, in accordance with **Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681 et seq.).

In addition, the applicant agrees that, if the applicant is selected and becomes a NEA grant recipient:

- The applicant will comply with all applicable Executive Orders while the award is being administered. Executive orders are posted at [whitehouse.gov/presidential-actions](https://www.whitehouse.gov/presidential-actions).
- The applicant's compliance in all respects with all applicable Federal anti-discrimination laws is material to the U.S. Government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code, pursuant to Executive Order No. 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, dated January 21, 2025. *PLEASE NOTE: Due to the preliminary injunction issued on February 21, 2025, by the United State District Court for the District of Maryland, Case No. 1:25-cv-00333-ABA, the NEA is not currently requiring any grantee or contractor to make any "certification" or other representation pursuant to Executive Order No. 14173. This term will not apply to your award as long as this preliminary injunction remains in effect.*

- The applicant will not operate any programs promoting “diversity, equity, and inclusion” (DEI) that violate any applicable Federal anti-discrimination laws, in accordance with Executive Order No. 14173. *PLEASE NOTE: Due to the preliminary injunction issued on February 21, 2025, by the United State District Court for the District of Maryland, Case No. 1:25-cv-00333-ABA, the NEA is not currently requiring any grantee or contractor to make any “certification” or other representation pursuant to Executive Order No. 14173. This term will not apply to your award as long as this preliminary injunction remains in effect.*
- The applicant understands that federal funds shall not be used to promote gender ideology, pursuant to Executive Order No. 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.

The applicant will inform the public that persons who believe they have been discriminated against on the basis of race, color, national origin, disability, sex, or age may file a complaint with the Director of Civil Rights at the National Endowment for the Arts.

The applicant will forward all complaints for investigation and any finding issued by a Federal or state court or by a Federal or state administrative agency to:

Director, NEA Office of Civil Rights

Email: civilrights@arts.gov

The applicant shall maintain records of its compliance and submission for three (3) years. The applicant will compile, maintain and permit access to records as required by applicable regulations, guidelines or other directives.

The applicant must also certify that it will obtain assurances of compliance from all subrecipients and will require all subrecipients of National Endowment for the Arts funds to comply with these requirements.

The United States has the right to seek judicial or administrative enforcement of this assurance.

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EXHIBIT 3



Menu

National Endowment for the Arts Supports the Arts with Nearly \$36.8 Million in Funding Nationwide

Jan 14, 2025



NEA Grants for Arts Projects awardee photos (clockwise beginning in upper left): Students participate in Northern Arizona University’s Indigenous Youth Media Workshop, Summer 2024. Photo courtesy of Northern Arizona University; Iris Musicians perform during the finale of the Weinberg Manor’s 2024 Music Festival. Weinberg Manors is an affordable housing community for low-income older adults in Baltimore City. Photo by Lori Raphael; Territory design team members and community partners at the ribbon cutting for Creating Space, a public space created by youth to explore design as a tool for community healing. Photo courtesy of Territory NFP; A group of Arts Institute for Creative Advancement apprentices hard at work as captured by their instructor during Capitol Hill Arts Workshop’s weekly scenic shop training. Photo by Reuben Rosenthal c/o Arts Institute for Creative Advancement.

En Español </sites/default/files/fy25-january-grant-announcement-spanish.pdf>

Washington, DC—The National Endowment for the Arts (NEA) is pleased to announce 1,474 awards totaling \$36,790,500 to support the arts in communities in all 50 states, Puerto Rico, and Washington, DC. Funding for organizations is recommended in the categories of Grants for Arts Projects, Challenge America, Research Grants in the Arts, and Research Labs, and for individuals through Literature Fellowships in creative writing and for translation projects.

“The NEA is proud to continue our nearly 60 years of supporting the efforts of organizations and artists that help to shape our country’s vibrant arts sector and communities of all types across our nation,” said NEA Chair Maria Rosario Jackson, PhD. “It is inspiring to see the wide range of creative projects taking place—those that address our past and help us consider our future, integrate arts and culture in new ways into our lives and communities, and provide powerful opportunities for people throughout our nation to come together through a shared arts experience.”

- View a state-by-state listings
<https://www.arts.gov/sites/default/files/fall2024_statelistreport_updated_jan14.pdf> Of the grants announced in this release.
- View a listing of awards by discipline / grant category
<https://www.arts.gov/sites/default/files/fall2024_disciplinelistreport.pdf>
- All current grants and additional project details can be viewed through the recent grant search <<https://apps.nea.gov/grantsearch/>>

Each year, the NEA assembles panels of experts and knowledgeable laypeople with relevant expertise and experience to review NEA applications and rate them in accordance with published review criteria. More than 340 panelists <<https://www.arts.gov/grants/recent-grants/panelists>> reviewed the eligible applications for this round of funding. Recommendations were then presented to the National Council on the Arts <<https://www.arts.gov/about/leadership-staff/national-council-arts>>. The council made its recommendations to the NEA Chair, who made the final decision on all grant awards. Learn more about the grant review process <<https://www.arts.gov/grants/grant-review-process>> OR volunteer to be a panelist <<https://www.arts.gov/form/volunteer-to-be-a-national-endowment-for-the-arts-panelist>>.

Grants for Arts Projects

Grants for Arts Projects (GAP) provides expansive funding opportunities to strengthen the nation's arts and cultural ecosystem, including opportunities for public engagement with the arts and arts education, for the integration of the arts with strategies promoting

the health and well-being of people and communities, and for the improvement of overall capacity and capabilities within the arts sector.

The National Endowment for the Arts received 2,195 eligible Grants for Arts Projects applications this round, which were submitted in February 2024. The NEA will award **1,127 grants for a total of \$31,825,500** to support arts projects in 15 artistic disciplines and fields. All grants require a nonfederal cost share/match of at least 1 to 1. Examples include:

- A local arts agencies subgranting award to **Arrowhead Regional Arts Council** in **Duluth, Minnesota**, of \$60,000 to support the expansion of competitive grant programs for arts organizations and individual artists. The Art Project Grant program will support arts activities presented by small organizations with a focus on applicants from rural areas. The Individual Artist Project Grant program will provide a stipend for artists to create, perform, or exhibit work.
- An award to **Artist Communities Alliance** in **Providence, Rhode Island**, of \$80,000 to support a professional development program for the artist residency field focused on emergency preparedness and disaster response. The program will include workshops, training sessions, and the development of resources to share with the broader field.

- An award to **Arts Alive!** in **Keene, New Hampshire**, of \$25,000 to support the conceptual design of a new community arts center. The design process will engage artists, designers, and individuals from Keene and across the rural Monadnock Region, to share ideas and desires for a community arts center that will include studios, music practice rooms, residences, workshop/classroom space, gallery space, office spaces, and more.
- An award to **Great Plains Theatre Commons** in **Omaha, Nebraska**, of \$35,000 to support the annual New Play Conference. Playwrights, actors, directors, dramaturgs, and designers from across the United States will gather for learning, collaboration, rehearsals, readings, and performances.
- An award to the **Iris Music Project Inc** in **Columbia, Maryland**, of \$20,000 to support chamber ensemble performances in underserved healthcare communities. Weekly music programs will be developed in collaboration with musicians and residents at senior living facilities. As part of America 250, a culminating event focusing on the question, “What does it mean to be American?” will provide an opportunity for individuals to share—through stories, songs, and art—their diverse and unique perspectives on their personal and collective histories.

- An award to **Miami Lighthouse for the Blind and Visually Impaired, Inc** in **Miami, Florida**, of \$30,000 to support a year-round arts education program for underserved groups, including individuals with vision disabilities. Tactile and visual arts activities in various mediums aim to enhance sensory perception, fine motor skills, spatial awareness, and overall well-being. Art instruction will be tailored to participants' unique visual needs, empowering them to create art in an inclusive setting with access accommodations and adaptive equipment.
- An award to **Northern Arizona University** in **Flagstaff, Arizona**, of \$25,000 to support the Indigenous Youth Media Workshop. Through mentorship by accomplished filmmakers, journalists, and photographers, high school students will participate in a comprehensive hands-on media arts production program focused on telling stories important to their communities.

This year's Grants for Arts Projects application deadlines are **Thursday, February 13, 2025**, and **Thursday, July 10, 2025**. Each discipline has outlined their broader arts ecosystem, the types of projects they encourage, and guidance on characteristics of competitive proposals. Visit [arts.gov <https://www.arts.gov/grants/grants-for-arts-projects>](https://www.arts.gov/grants/grants-for-arts-projects) for guidelines and application resources [<https://www.arts.gov/grants/grants-for-arts-projects/applicant-resources>](https://www.arts.gov/grants/grants-for-arts-projects/applicant-resources), including an on demand video of the FY 2026 Grants for Arts Projects guidelines webinar.

Challenge America

Challenge America grants are awarded in all artistic disciplines and offer support primarily to small organizations for a wide variety of arts projects that extend the reach of the arts underserved groups and communities that may have limited access to the arts relative to geography, ethnicity, economic status, and/or disability. This includes communities that have limited grant funding opportunities and/or have been underserved by national arts funding; small organizations that may face barriers to accessing grant funding; and organizations that may benefit from enhanced technical assistance resources. This program is often an entry point for organizations that are new to applying for federal funding.

The National Endowment for the Arts reviewed 563 eligible applications for Challenge America funding this year, which were submitted in April 2024, and will award **272 grants for a total of \$2,720,000**. Each grant is for \$10,000 and requires a minimum \$10,000 cost share/match. Examples include:

- An award to **Maryland Youth Ballet** in **Silver Spring, Maryland**, to support dance classes for children with physical and developmental disabilities. Weekly classes are led by specially trained ballet instructors and a pediatric physical therapist. Together, they work with children who are able to walk without assistance as well as those who are supported by wheelchairs, walkers, or other mobility aids.

- An award to **Prison Performing Arts** in **Saint Louis, Missouri**, to support the development and presentation of a new play adaptation of “Little Women” by Louisa May Alcott created in collaboration with incarcerated artists. Playwright Courtney Bailey will work with the artists to develop this new play during their weekly spoken word class for inmates.
- An award to **Three Rivers Arts Council** in **Wahpeton, North Dakota**, to support a Native artists residency program that will engage students and the public through Native arts, music, and storytelling. NEA National Heritage Fellow Bryan Akipa and other artists will give performances, visit classrooms, and participate in other activities in the community.

The next Challenge America application deadline is **Thursday, April 24, 2025**. Visit [arts.gov](https://www.arts.gov/grants/challenge-america) <<https://www.arts.gov/grants/challenge-america>> for guidelines and application resources and register for the FY26 Challenge America guidelines webinar <<https://www.arts.gov/news/events/fy26-challenge-america-guidelines-webinar>> on Wednesday, February 27, 2024, from 3:00–4:00 p.m. ET.

Research Awards

The NEA has two research grant opportunities for projects that engage with the NEA’s five-year research agenda <https://www.arts.gov/sites/default/files/nea-research-agenda-12.21_revdec2024.pdf>.

Research Grants in the Arts supports research studies that investigate the value and/or impact of the arts, either as individual components of the U.S. arts ecosystem or as they interact with each

other and/or with other domains of American life. In total, the NEA will award **18 organizations grants totaling \$1,045,000**. Recent examples include:

- An award to **American Symphony Orchestra League (aka League of American Orchestras)** in **New York** of \$45,000 to support a mixed-methods study examining business practices and financial strategies implemented by nonprofit orchestras after the COVID-19 pandemic.
- An award to **Carnegie Mellon University** in **Pittsburgh, Pennsylvania**, of \$80,000 for a study examining university students' creative practices with artificial intelligence (AI), for the purpose of informing arts-integrative secondary education.
- An award to **Robert W. Woodruff Arts Center, Inc. (aka High Museum of Art)** in **Atlanta, Georgia**, of \$80,000 to support a mixed-methods study of the relationship between visiting an art museum and individual well-being across various adult populations.

In addition, the NEA also supports **NEA Research Labs**—these are grounded in the social and behavioral sciences and support transdisciplinary research teams investigating the value and impact of the arts for the benefit of both the arts and non-arts sectors.

There are currently 29 active Research Labs

<<https://www.arts.gov/initiatives/nea-research-labs>>.

This year's Research Labs and Research Grants in the Arts application deadline is **Monday March 24, 2025**. Visit arts.gov for guidelines and application resources and register for a Research Grants in the Arts webinar on Tuesday, February 4, 2025, from 2:00–3:00 p.m. ET.

Literature Fellowships

Fellowships help writers and translators to create new work and thus expand the portfolio of literary art available to American audiences. These fellowships allow recipients to set aside time for writing, research, travel, and general career advancement.

This year's Creative Writing Fellowships are in poetry. These fellowships are highly competitive, with more than 2,000 eligible applications received for FY 2025. The NEA will award **35 Creative Writing Fellowships** of \$25,000 each, **totaling \$875,000**. You can read more about the recipients in the Creative Writing Fellowships <<https://www.arts.gov/impact/literary-arts/creative-writing-fellows>> section of arts.gov. The next deadline for Creative Writing Fellowships <<https://www.arts.gov/grants/creative-writing-fellowships>> is **Wednesday, March 12, 2025**, and will be for prose (fiction and creative nonfiction).

The NEA will award **Translation Fellowships to 22 translators** ranging from \$10,000 to \$20,000 totaling \$325,000 to translate works from 17 languages and 21 countries into English, including books from Guinea, Mali, and the Philippines, countries not previously represented through an NEA fellowship. You can read

more about these translators and their projects in the Translation Fellowships <<https://www.arts.gov/impact/literary-arts/translation-fellows>> section of arts.gov.

Please note, there may be a delay in the distribution of awards as the NEA and all of the federal government are operating under a continuing budget resolution. For more information on all NEA's grant opportunities, including 2025 deadlines, and resources for applicants and awardees, including a guide for first-time applicants, visit the Grants section <<https://www.arts.gov/grants>> of arts.gov.

About the National Endowment for the Arts

About the National Endowment for the Arts

Established by Congress in 1965, the National Endowment for the Arts is an independent federal agency that is the largest funder of the arts and arts education in communities nationwide and a catalyst of public and private support for the arts. By advancing opportunities for arts participation and practice, the NEA fosters and sustains an environment in which the arts benefit everyone in the United States. To learn more, visit [arts.gov](https://www.arts.gov) <<https://www.arts.gov/>> or follow us on Facebook <<https://www.facebook.com/nationalendowmentforthearts>>, Instagram

<<https://www.instagram.com/neaarts/>>, X <<https://x.com/neaarts>>, LinkedIn <<https://www.linkedin.com/company/national-endowment-for-the-arts>>and YouTube <<https://www.youtube.com/user/neaarts>>.

Contact

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hilla@arts.gov
202-682-5037

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Mar 04, 2025



Feb 06, 2025

EXHIBIT 4



Menu

Updates on National Endowment for the Arts FY 2026 Grant Opportunities

Feb 06, 2025

The updated FY 2026 Grants for Arts Projects guidelines [<https://www.arts.gov/grants/grants-for-arts-projects>](https://www.arts.gov/grants/grants-for-arts-projects), **as well as accompanying Frequently Asked Questions** [<https://www.arts.gov/grants/grants-for-arts-projects/frequently-asked-questions-0>](https://www.arts.gov/grants/grants-for-arts-projects/frequently-asked-questions-0), **are now available on arts.gov.**

The National Endowment for the Arts is updating its FY 2026 grant guidelines, with deadlines in March and July 2025. These changes impact organizations applying in the Grants for Arts Projects or

Challenge America categories; please see below for pertinent details.

Challenge America

The Challenge America opportunity is canceled for FY 2026. Organizations that have applied or were planning to apply to the FY 2026 Challenge America grant opportunity are encouraged to apply to the Grants for Arts Projects category at the March or July deadlines instead.

This change is to focus NEA staff resources on the Grants for Arts Projects category.

Grants for Arts Projects

The National Endowment for the Arts is revising the FY 2026 Grants for Arts Projects guidelines and they will be available on [arts.gov/grants](https://www.arts.gov/grants) no later than Monday, February 10, 2025.

As part of these changes, the February 13, 2025, Grants for Arts Projects deadline has been canceled. The FY 2026 deadlines are now March 11, 2025, for GAP 1 and July 10, 2025, for GAP 2. Organizations that have already submitted an application must submit a new application under one of these deadlines.

Under the updated guidelines, the NEA continues to encourage projects that celebrate the nation's rich artistic heritage and creativity by honoring the semiquincentennial of the United States of

America (America250). This can include incorporating an America250-related component or focus within a larger project.

Additional changes to the Grants for Arts Projects guidelines include a requirement for applicants to have completed a five-year history of arts programming prior to the application deadline. If arts programming was suspended due to the pandemic, applicants may include examples that occurred in 2018 or 2019 to meet the five-year requirement. Do not include examples prior to 2018. Virtual programming is acceptable. Organizations may no longer submit applications in the same fiscal year for both Grants for Arts Projects and Our Town funding categories (a separate application in the Research Awards category is allowable).

A **webinar** covering the updated guidelines will take on Tuesday, February 18, 2025, at 2:00 p.m. (Free to attend

<<https://www.arts.gov/news/events/webinar-fy26-grants-arts-projects-application-guidelines>>. A recording will be posted shortly after the presentation in the Applicant Resources section of the Grants for Arts Projects webpage.) In addition, frequently asked questions will be available in the Applicant Resources section.

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

RHODE ISLAND LATINO ARTS,
NATIONAL QUEER THEATER,
THE THEATER OFFENSIVE, and
THEATRE COMMUNICATIONS GROUP,

Case No.

Plaintiffs,

v.

NATIONAL ENDOWMENT FOR THE
ARTS, and MARY ANNE CARTER, in
her official capacity as Acting Chair of the
National Endowment for the Arts,

Defendants.

DECLARATION OF MARTA V. MARTÍNEZ

I, Marta V. Martínez, declare as follows:

1. My name is Marta V. Martínez. I am the Executive Director and Founder of Rhode Island Latino Arts (“RILA”). The facts set forth in this declaration are based on my personal knowledge.
2. Founded in 1988 as the Hispanic Heritage Committee, RILA is the leading Latino arts nonprofit organization in Rhode Island. Its mission is to promote, encourage, and preserve the art, history, heritage, and cultures of Latinos in Rhode Island.
3. RILA offers programming of every genre of art, including visual art, dance, and music. It puts on theatrical and musical performances, Latin percussion/drumming sessions, dancing events, script readings, and storytelling events. RILA also has a gallery to showcase artwork, and operates literacy programs.

4. RILA has previously received funding from the National Endowment for the Arts (“NEA”).

5. In 2019, RILA received an NEA grant to support a youth bilingual performing arts program. Guest artists taught theater, dance, and Latin percussion/drumming workshops, and the program culminated in a public performance.

6. In 2020, RILA received an NEA grant to support operational costs in response to the COVID-19 pandemic.

7. In 2022, RILA received an NEA grant to support a performance tour through Latino neighborhoods.

8. RILA is in the process of applying for funding from the NEA’s Grants for Arts Projects in the March 2025 cycle to support programming in 2026.

9. The NEA’s Grants for Arts Projects application has two parts. Part 1 is submitted through Grants.gov and collects basic information about an organization. For the upcoming application cycle, Part 1 is due March 11, 2025. Part 2 of the application is submitted through the NEA’s applicant portal, and requires information about the organization, its history and budget, and information about the project. Part 2 is due March 24, 2025. We can submit only one application per calendar year.

10. In order to submit Parts 1 and 2 of the application, we must submit a certification that we agree to an Assurance of Compliance. For the March 2025 cycle, NEA amended the Assurance of Compliance to include a new requirement, which states that “[t]he applicant understands that federal funds shall not be used to promote gender ideology, pursuant to Executive Order No. 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”

11. The new Assurance of Compliance also states that the NEA “may conduct a review of your organization to ensure that the applicant is in compliance with these statutes, regulations, and executive orders. If the NEA determines that a recipient has failed to comply with any of these statutes, regulations, or executive orders, it may suspend or terminate the award, and/or recover the funds. The applicant’s assurance of compliance is subject to judicial enforcement.”

12. RILA originally planned to apply for funding in the March 2025 cycle to support a production of “Faust,” in which the lead character is gay and queer. One actor who we were considering to cast for that role is nonbinary and uses they/them pronouns. RILA is committed to affording them the artistic freedom to interpret the role as they choose. In the past, this actor has chosen to dress as a man during one performance and dress as a woman in the next performance, while performing the same role.

13. RILA also considered applying for an NEA grant in the March 2025 cycle to support its storytelling program. The storytelling program allows performing artists to tell their stories without restrictions, and they feel comfortable working with us because we give them the artistic freedom to say what they want. In the past, a storyteller told a story about their son coming out as queer. We intend to continue to keep this program open to all performers and allow others to speak about or interpret their art based on their personal lives on stage, including nonbinary and transgender performers, and we want them to feel free to affirm their identities in their performances as part of their expressive work. We will not tell our artists to stay away from topics that could be interpreted as “promoting” what the government deems as “gender ideology.”

14. RILA decided not to apply for a grant to support “Faust” or the storytelling program because of NEA’s new Assurance of Compliance, specifically the requirement that “[t]he applicant understands that federal funds shall not be used to promote gender ideology, pursuant to Executive

Order No. 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.” In the absence of judicial relief invalidating the “gender ideology” requirement, RILA is concerned that applying for funding to support “Faust” or its storytelling program might run afoul of this requirement and the certification we are required to make to apply for funding.

15. In the absence of judicial relief, RILA will apply for an NEA grant to support performance tours and an oral history performance highlighting the contributions of Latinos to American history and Rhode Island history. But were the “gender ideology” requirement invalidated, we would apply for a grant that would affirmatively include celebrating transgender, queer, and nonbinary identity and featuring artists with those identities.

16. The prohibition on “promoting” what the government deems to be “gender ideology” requires us to guess as to what we can apply for and what we can feature in any NEA-funded programming. The requirement forces us to guess as to the parameters of what constitutes “gender ideology,” and what constitutes the “promotion” of “gender ideology.” Is it prohibited to allow a transgender, queer, or nonbinary individual to participate in NEA-funded programming? To include any mention of these identities? To include any fictional characters who are trans, nonbinary, or queer? Indeed, I fear that even describing RILA as an organization that supports transgender, nonbinary, and queer artists might run afoul of the “gender ideology” restriction.

17. The “gender ideology” requirement’s vagueness also forces us to guess as to what constraints we must place on our arts programming. As a result, it denies us the ability to provide our artists the creative freedom to which we are committed as an organization, and it precludes us from expressing viewpoints affirming all identities, including those of trans, nonbinary, and queer individuals, even though we are committed to those views as an artistic organization.

18. If it were not for the “gender ideology” requirement, the scope of the project for which we would apply for NEA funding would be different. As we have done in the past, we would like to support artists who are transgender, queer, or nonbinary, and art that features trans, queer and nonbinary characters and themes. If we obtain judicial relief before March 24, 2025, the date when the substantive portion of the application is due, we will make clear that our project will do just that. Absent such relief, however, we will be compelled to apply for a more restricted program in order to avoid any programming that might violate the vague “gender ideology” prohibition.

19. We submitted Part 1 of our application on February 14, 2025, with the intention of proceeding not with our ideal project, but with a more restricted project to avoid violating the “gender ideology” requirement. But we would like to apply for a broader project, affirming transgender, nonbinary, and queer identities, and believe it is our right to do so. If the court were to enjoin the “gender ideology” requirement, we will expand the scope of the project in Part 2 of our application to reflect our intention to support trans, queer, and nonbinary artists, characters, and themes within the scope of the NEA-funded programming.

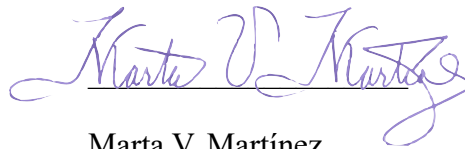
20. We believe that we have the right, as artists, to apply for NEA funding to promote art that meets the artistic merit requirements set out by Congress, whether or not it “promotes” what the government deems to be “gender ideology.” We seek to affirm all gender identities, including transgender, nonbinary, and queer identities. Yet any work that might be seen as promoting these identities risks violating the NEA restriction on using federal funding to “promote” what the government deems to be “gender ideology.” We therefore seek judicial relief declaring this requirement invalid, and freeing us to submit an application that is not restricted by the need to comply with the “gender ideology” requirement.

21. Being denied NEA funding will undermine our ability to fulfill our mission to promote Latino arts and cultural history.

22. As we have in the past, we also intend to apply for NEA grants in future grant cycles to support works of artistic merit that meet all the NEA's statutory requirements, and that affirm transgender, nonbinary, and queer identities through that art. But as long as the NEA requires that no funds can be used to support what the government deems to be "gender ideology," we are barred from seeking such support.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 2025.

A handwritten signature in blue ink, appearing to read "Marta V. Martínez", written over a horizontal line.

Marta V. Martínez

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

RHODE ISLAND LATINO ARTS,
NATIONAL QUEER THEATER, THE
THEATER OFFENSIVE, and
THEATRE COMMUNICATIONS GROUP,

Plaintiffs,

v.

NATIONAL ENDOWMENT FOR THE
ARTS, and MARY ANNE CARTER, in her
official capacity as Acting Chair of the
National Endowment for the Arts,

Defendants.

Case No.

DECLARATION OF ADAM ODSSESS-RUBIN

I, Adam Odsess-Rubin, declare as follows:

1. My name is Adam Odsess-Rubin. I am the Founding Artistic Director of National Queer Theater (“NQT”). The facts set forth in this declaration are based on my personal knowledge.

2. NQT is a theater collective dedicated to celebrating the brilliance of generations of LGBTQ+ artists and providing a home for unheard storytellers and activists. Through our art and free community programs, we create and organize together, working towards a more equitable vision of the world and celebrating the diversity of the American public, and in particular the most marginalized people in the queer community, including trans people, immigrants, and people of color.

3. NQT was awarded NEA grants in 2023 and 2024 for its Criminal Queerness Festival (“CQF”). In addition, NQT was offered an NEA grant in 2025 for CQF, and that award is pending processing. CQF has also received support from the New York City Department of Cultural Affairs in partnership with the City Council, the JKW Foundation, NYC Pride, and the Terrence McNally Foundation.

4. In January 2025, NQT received an Obie Award for CQF in the “Theatre Grants” category. The prestigious Obie Awards, established in 1955, honor the highest caliber of off-Broadway and off-off Broadway theater to recognize brave work, champion new material, and advance careers in theater.¹

5. NQT first produced the CQF festival in 2019. CQF has featured works from emerging artists from countries that criminalize homosexuality, such as Syria, Venezuela, Uganda, Kenya, Iraq, China, Pakistan, Tanzania, Egypt, Mexico, India, Lebanon, and Poland. The plays are accompanied by talkback discussions facilitated by the playwrights, human rights advocates, and other subject matter experts.

6. CQF is devoted to freedom of expression and to fighting censorship and criminalization of sexuality and gender identity in other countries. It is meant to be a beacon for the queer community here and abroad, by affirming the equal dignity of people to be who they are, without being compelled to adhere to traditional heterosexual stereotypes.

7. The plays featured in the festival are chosen by a curatorial committee of prior CQF playwrights. Supporting trans writers and trans themes has always been a part of the festival, including in the years that it received NEA funding. In 2023, the festival featured one play about intersex identity. In 2024, two plays were written by transgender writers and about trans identity.

¹ <https://www.obieawards.com/about>.

For 2025, all three playwrights identify as nonbinary or gender queer, and one play has nonbinary characters.

8. NQT intends to apply for funding from the NEA's Grants for Arts Projects in the March 2025 cycle to support CQF 2026, the eighth annual CQF. The NEA funds would be used for artist and production expenses.

9. We intend to apply for the March 2025 cycle and not the July 2025 cycle so that we can receive the grant notification in December, which is also when we pass NQT's budget. Because we operate on a calendar year, receiving the grant notification in December gives us six months to plan, budget, and fundraise for CQF 2026. If we were to wait until the July 2025 cycle, that would force us to wait until April 2026 for the grant notification, leaving us with only two months before CQF 2026, which is not enough time for the necessary planning.

10. The NEA's Grants for Arts Projects application has two parts. Part 1 is submitted through Grants.gov and collects basic information about an organization. For the upcoming application cycle, Part 1 is due March 11, 2025. Part 2 of the application is submitted through the NEA's applicant portal, and requires information about the organization, its history and budget, and information about the project. Part 2 is due March 24, 2025. Both parts must be submitted online.

11. In order to submit Parts 1 and 2 of the application, we must submit a certification that we agree to an Assurance of Compliance. For the March 2025 cycle, NEA amended the Assurance of Compliance to include a new requirement, which states that "[t]he applicant understands that federal funds shall not be used to promote gender ideology, pursuant to Executive Order No. 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government."

12. An applicant agrees to the certification by checking a box labeled “I agree.” There is no other option for the certification. Parts 1 and 2 of the application cannot be submitted without this box checked. A screenshot of this portion of Part 1 is attached as Exhibit A to this declaration.

13. The new Assurance of Compliance also states that the NEA “may conduct a review of your organization to ensure that the applicant is in compliance with these statutes, regulations, and executive orders. If the NEA determines that a recipient has failed to comply with any of these statutes, regulations, or executive orders, it may suspend or terminate the award, and/or recover the funds. The applicant’s assurance of compliance is subject to judicial enforcement.”

14. While it is clear that the new restriction is aimed at suppressing speech that affirms transgender, queer and nonbinary identity, the restriction remains unclear in substantial respects, forcing us to guess as to what if anything we could do that would avoid its open-ended prohibition. For example, it is not clear whether “promoting” what the government deems to be “gender ideology” includes merely working with actors, playwrights, and other artists who identify as trans, nonbinary, or queer, regardless of the content of the art they produce. It is also unclear whether the mere existence of a trans, nonbinary, or queer character in a piece constitutes “promoting” what the government deems to be “gender ideology.” We fear that NQT’s very mission as an organization dedicated to celebrating LGBTQ+ artists might also run afoul of the “gender ideology” restriction.

15. We believe that we have the right, as artists, to apply for NEA funding to promote art that meets the merit requirements set out by Congress, whether or not it “promotes” what the government deems to be “gender ideology.” And we believe that restriction is invalid as contrary to statute, the Constitution, and the Administrative Procedures Act. The NEA certification and restriction, however, forbid the use of any NEA funding to “promote” what the government deems

to be “gender ideology.” And the Executive Order No. 14168 defines “gender ideology” as any effort to affirm that gender is not determined biologically by anatomy at birth. We seek to affirm all gender identities, including transgender, nonbinary, and queer identities. Yet any work that promotes these identities risks violating the NEA restriction on using federal funding to “promote” what the government deems to be “gender ideology.” We have to agree to this requirement in order to submit an application. But we believe that condition is invalid and that it is our right, under the First Amendment, not to be so restricted.

16. In the absence of this funding restriction, we would seek NEA funding, as we have received in the past, to support CQF 2026, which is expressly intended to support and celebrate artists who explore LGBTQ+ stories, including work that expressly affirms the equal dignity and genuine experience of trans artists and explores and celebrates stories of and about transgender people that affirm their identity, and rejects the notion that people’s identities are determined by their biological anatomy at birth. Affirming LGBTQ+ rights is at the heart of everything we do and our mission; it is the reason for existing as an organization. We stand by our values.

17. Only because one cannot register to apply for NEA funding without checking the box agreeing to the certification in the application, we intend to check that box. But we will simultaneously make clear in writing on the application that we are not agreeing to the “gender ideology” restriction because we believe it is legally invalid, and we are seeking judicial relief to declare it invalid, enjoin its application, and allow our application to be considered on equal terms with all other applications in the March 2025 cycle.

18. We seek injunctive relief invalidating the “gender ideology” restriction so that we are not rendered ineligible from competing for NEA funding because of the viewpoints our NEA-funded work will express.

19. We also intend to apply for NEA funding in the future, as we have consistently done in the past, to support our work affirming transgender, queer, and nonbinary identities. We therefore seek a permanent injunction against enforcement of the provision and a declaration that it shall be set aside as contrary to law and arbitrary and capricious under the APA. Without this relief, our right to compete equally for funding for work of artistic merit will be denied.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 2025.

A handwritten signature in black ink, appearing to read "Adam Odsess-Rubin", written over a horizontal line.

Adam Odsess-Rubin

EXHIBIT A

SECTIONS:

- 1. Name of Federal Agency
- 2. Assistance Listing Number
- 3. Date Received
- 4. Funding Opportunity Number
- 5. Applicant Information
- 6. Project Information
- 7. Project Director
- 8. Primary Contact/Grants Administrator
- 9. Application Certification
- 10. Authorized Representative
- 11. Burden Statement

County / Parish:

State: * ↓

Country: * ↓

ZIP / Postal Code: *

9. APPLICATION CERTIFICATION:

By signing this application, I certify (1) to the statements contained in the list of certifications* and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances* and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 18, Section 1001):

I agree* *

*The list of certifications and assurances, or an Internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

10. AUTHORIZED REPRESENTATIVE:

Prefix:

First Name: *

Middle Name:

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

RHODE ISLAND LATINO ARTS,
NATIONAL QUEER THEATER,
THE THEATER OFFENSIVE, and
THEATRE COMMUNICATIONS GROUP,

Plaintiffs,

v.

NATIONAL ENDOWMENT FOR THE
ARTS, and MARY ANNE CARTER, in
her official capacity as Acting Chair of the
National Endowment for the Arts,

Defendants.

Case No.

DECLARATION OF GISELLE BYRD

I, Giselle Byrd, declare as follows:

1. My name is Giselle Byrd. I am the Executive Director of The Theater Offensive (“TTO”). The facts set forth in this declaration are based on my personal knowledge.
2. TTO is a theatrical organization, founded in 1989, that presents liberating art by, for, and about queer and trans people of color, that transcends artistic boundaries, celebrates cultural abundance, and dismantles oppression. Although TTO is open to all without regard to race, sex, or other identifying characteristics, it seeks in particular to support the voices of trans, nonbinary, and queer people, including people of color, who are often the most underserved in the theatrical community both on and offstage. I joined TTO as its Executive Director in December 2023.
3. TTO has previously received six grants from the NEA.

4. In 2016, TTO received an NEA grant to support its youth theater program, True Colors, which is the longest running LGBTQIA2S+ youth theater program in the country. That year, TTO was also awarded the National Arts and Humanities Youth Programs Award.

5. In 2017, TTO received an NEA grant to support the development and production of an original production titled “They, Them, Theirs: Showcasing Trans Lives.”

6. In 2022, TTO received an NEA grant to support the production of “Amm(i)gone,” an original piece that explored the intersections of Islamophobia, sexism, ageism, racism, immigration, and queerness.

7. In 2022, TTO received an NEA grant to support operational costs in response to the COVID-19 pandemic.

8. In 2023, TTO received an NEA grant to support the development of “Fly,” an original work that featured a transmasculine narrative and trans actors.

9. In 2025, TTO received an NEA grant to support artist and personnel costs for its Queer Republic Festival. The festival is focused on supporting and producing multidisciplinary works by queer and trans artists that promote wellbeing and resilience and affirm the equal dignity and lived experiences of trans, queer, and nonbinary people.

10. TTO intends to apply for funding from the NEA’s Grants for Arts Projects in the March 2025 cycle to support the production of a new play titled “Smoke,” written by a trans playwright. A play which is set against the backdrop of 1960’s D.C., “Smoke” explores love, found family, motherhood, and healing and reveals the complexities of trans life in a time where trans people were at the turning point in the fight for their human rights. The production will feature two trans actors in the leading roles. The NEA funds would be used to support the artists in the play, which would begin rehearsals in May 2026.

11. We intend to apply for the March 2025 cycle and not the July 2025 cycle in order to have enough planning time for “Smoke.” Every production requires significant lead time in order to ensure that proper funding is in place as we begin the production process. This process includes securing a venue, actors, creative and production team members, security, and more. This is instrumental in order to successfully execute productions that continue to grow our audience and donor bases simultaneously. Having a year to adequately plan and secure the necessary funding is best practice for organizations such as ours, where we often face the ever-present threat of limited capacity. This is due to the ongoing discrimination towards the livelihood of queer and trans people, requiring them to find multiple methods of employment that, in turn, do not allow them the abilities to create artistic work.

12. The importance of applying in the March cycle for “Smoke” is also due to the NEA’s timeline, pursuant to which applicants do not know if their application was recommended or rejected for funding until December 2025 for the March cycle, making the earliest start date for any funded project January 2026. If we were to apply in the second cycle of funding, it would not allow the project to start until June 1, 2026, which would be too late for our production timeline.

13. The NEA’s Grants for Arts Projects application has two parts. Part 1 is submitted through Grants.gov and collects basic information about an organization. For the upcoming application cycle, Part 1 is due March 11, 2025. Part 2 of the application is submitted through the NEA’s applicant portal, and requires information about the organization, its history and budget, and information about the project. Part 2 is due March 24, 2025.

14. In order to submit Parts 1 and 2 of the application, we must submit a certification that we agree to an Assurance of Compliance. An applicant agrees to the certification by checking

a box labeled “I agree.” There is no other option for the certification. Parts 1 and 2 of the application cannot be submitted without this box checked.

15. For the March 2025 cycle, NEA amended the Assurance of Compliance to include a new requirement, which states that “[t]he applicant understands that federal funds shall not be used to promote gender ideology, pursuant to Executive Order No. 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”

16. The new Assurance of Compliance also states that the NEA “may conduct a review of your organization to ensure that the applicant is in compliance with these statutes, regulations, and executive orders. If the NEA determines that a recipient has failed to comply with any of these statutes, regulations, or executive orders, it may suspend or terminate the award, and/or recover the funds. The applicant’s assurance of compliance is subject to judicial enforcement.”

17. The certification requirement poses an obstacle for us, because we want to apply for funding, but believe we have a right to be considered without regard to whether the views our project expresses “promote” what the government deems to be “gender ideology.” Accordingly, we intend to check the box agreeing to the certification in the application only because doing so is necessary to submit an application, but we will simultaneously include a statement in the application making clear that we are not agreeing to abide by the “gender ideology” provision because we believe it is unconstitutional and otherwise invalid, and will seek judicial relief invalidating that provision to ensure that our application can be considered fairly without regard to the invalid “gender ideology” provision.

18. The certification requirement is unclear as to what constitutes “promoting” what the government deems to be “gender ideology” and thereby forces us to guess as to what we can and cannot do with an NEA grant. For example, it does not make clear whether “promoting” what

the government deems to be “gender ideology” includes working with actors, playwrights, and other artists who identify as trans and/or nonbinary, without more, or whether they prohibit only certain messages, themes, or views. The requirement is also unclear as to whether the existence of a trans and/or nonbinary character in a piece constitutes “promoting” what the government deems to be “gender ideology.” Nor is it clear what views are proscribed. Is any discussion of trans and/or nonbinary identity prohibited, or only expression that might be seen to “promote” those identities? What messages fall within the prohibited “ideology”? We fear that TTO’s very mission as an organization dedicated to queer and trans people might run afoul of the “gender ideology” requirement. Our work aims to provide this country’s trans and nonbinary community with narratives that reflect their lives, when their very existence is facing erasure due to the principles of the “gender ideology” executive order.

19. The “gender ideology” prohibition does not only affect stories with trans and/or nonbinary discussion, but censors the artistic freedoms that our donor base expects and requires from TTO, which has the potential to lead to a loss of financial support. This is further compounded by the prestige of receiving an NEA grant, which can provide opportunities for new funding possibilities. With this lack of support, many theater companies will cease their productivity as they will no longer have access to these opportunities.

20. TTO seeks injunctive relief invalidating the “gender ideology” restriction so that TTO is not rendered ineligible from competing for NEA funding because of the viewpoints our NEA-funded work will express.

21. We also intend to apply for NEA grants in future grant cycles to support works of artistic merit that meet all the NEA’s statutory requirements, and that affirm transgender and/or

nonbinary identities through their artistic expression. But as long as the NEA requires that no funds can be used to support “gender ideology,” we are barred from seeking such support.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 2025.

Giselle Byrd

Giselle Byrd

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

RHODE ISLAND LATINO ARTS,
NATIONAL QUEER THEATER,
THE THEATER OFFENSIVE, and
THEATRE COMMUNICATIONS GROUP,

Case No.

Plaintiffs,

v.

NATIONAL ENDOWMENT FOR THE
ARTS, and MARY ANNE CARTER, in her
official capacity as Acting Chair of the
National Endowment for the Arts,

Defendants.

DECLARATION OF EMILYA CACHAPERO

I, Emilya Cachapero, declare as follows:

1. My name is Emilya Cachapero. I am the Co-Executive Director: National and Global Programming of Theatre Communications Group (“TCG”). I reviewed this with LaTeshia Ellerson, who is the Co-Executive Director: National Engagement of TCG, and Alisha Tonsic, who is the Co-Executive Director: National Operations and Business Development of TCG. The facts set forth in this declaration are based on our personal knowledge and reflect our collective views.

2. TCG is a national theatre organization with over 600 member theatres and affiliates and over 3,500 individual members. TCG offers networking and knowledge-building opportunities for theatre professionals through annual convenings, industry reports, workshops, webinars, and the publication of *American Theatre* magazine and TCG Books, while also awarding \$43 million

in funding and professional development support to more than 900 organizations and 1,300 individuals over its history of grantmaking. TCG also engages in federal and regional advocacy. In addition, TCG conducts research about the fiscal health of the field by surveying its members, both organizational and individual; this data includes demographic information such as gender identities of individual artists.

3. TCG's mission is to lead for a just and thriving theatre ecology. It is committed to modeling and advocating for the structural, cultural, and equitable environments that a just and thriving theatre ecology requires. TCG believes that a better world for the theatre requires greater equity, visibility, and funding. We envision a thriving theatre ecology that has the investments, commitments, and participants it needs to create, produce, and present diverse stories; encourage, engage, and financially sustain theatre makers and practitioners; abundantly serve multifaceted communities; advance values and practices of equity and justice; and sustain theatre as a viable industry. At the core of our work is ensuring equitable participation in all areas of practice and that all populations in our community have access to our services, including those of Black, Indigenous and all People of Color (BIPOC), LGBTQ+, transgender/gender-nonconforming (TGNC), and disability identities.

4. Though the NEA is a defendant in this lawsuit, the NEA is not TCG's adversary. We stand in full support of the NEA's mission to create art that sustains, strengthens, and nurtures the diverse fabric of our country. However, we fundamentally object to the Trump administration's imposition of an ideological viewpoint-based screen on NEA funding, by barring grants that in any way "promote" what the administration deems to be "gender ideology." We believe the "gender ideology" restriction unlawfully suppresses the speech of all artists, including transgender, nonbinary, and queer artists.

5. TCG has received 42 NEA grants since 1998 to support fieldwide convenings, research, and other programming.

6. Many of our members apply for and receive funding from the NEA to support their artistic endeavors. Many of them want to apply for funding from the NEA's Grants for Arts Projects in the March 2025 cycle.

7. For the March 2025 cycle, the NEA amended the Assurance of Compliance that applicants must agree to in order to seek NEA funding to include a new requirement, which states that "[t]he applicant understands that federal funds shall not be used to promote gender ideology, pursuant to Executive Order No. 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government."

8. The new Assurance of Compliance also states that the NEA "may conduct a review of your organization to ensure that the applicant is in compliance with these statutes, regulations, and executive orders. If the NEA determines that a recipient has failed to comply with any of these statutes, regulations, or executive orders, it may suspend or terminate the award, and/or recover the funds. The applicant's assurance of compliance is subject to judicial enforcement."

9. Because of the new certification requirement, many of our members have been deterred from applying for funding in the March 2025 cycle, though they had otherwise planned to and would like to. These members object to having to make such a certification, and fear the penalties that could flow to them if they are deemed to have falsely certified. If the certification requirement and funding restriction were lifted, these members would apply for NEA funding in the March 2025 cycle. And many of our members fear that the ban on "promot[ing]" what the government deems to be "gender ideology" would bar them even from being considered for

funding because they work with, or are, transgender, nonbinary, or queer artists, and are committed to treating all their artists with equal dignity.

10. For example, one member theatre, which has received several NEA grants and whose mission includes presenting “diverse” stories of the American identity, had planned to apply in March, but cannot and will not sign the Assurance of Compliance because the theatre fundamentally disagrees with the “gender ideology” requirement. Transgender people are part of this member theatre’s workforce, audience, and arts education programs, and the theatre recognizes all gender identities. It believes that not acknowledging those under the transgender umbrella is discriminatory. As a result, the theatre is unable to apply for an NEA grant that would otherwise cover 25 percent of their production cost.

11. The “gender ideology” requirement also bars many of our members from being considered without regard to whether their projects express views that “promote” what the government deems to be “gender ideology.” The Theater Offensive (“TTO”) is one such member of TCG. TTO intends to apply for funding from the NEA’s Grants for Arts Projects in the March 2025 cycle to support a new play written by a trans playwright. The certification requirement on the NEA application poses an obstacle for TTO because of the “gender ideology” requirement. TTO intends to check the box agreeing to the certification while simultaneously including a statement in the application making clear that it is not agreeing to abide by the “gender ideology” requirement because it believes the requirement is unconstitutional and otherwise invalid.

12. Many of our members, including TTO, find the certification requirement unclear as to what constitutes “promoting gender ideology” and thereby forces them to guess as to what is and is not permitted with an NEA grant. For example, it does not make clear whether “promoting gender ideology” includes merely working with actors, playwrights, and other artists who identify

as trans, nonbinary, or queer, or whether it prohibits only certain messages, themes, or views. The requirement is also unclear as to whether the existence of a trans, nonbinary, or queer character in a piece constitutes “promoting gender ideology.” Nor is it clear what views are proscribed. Is any discussion of trans, nonbinary, or queer identity prohibited, or only expression that might be seen to “promote” those identities? What messages fall within the prohibited “ideology”?

13. We have heard from members that they are uncertain about how to proceed, unsure of whether to apply knowing they will be barred from eligibility because their project may express views that “promote” what the government deems to be “gender ideology,” apply with a different project, or forego applying for NEA funding altogether. These members feel that they require legal advice to understand how to handle the uncertainty that has been imposed on them, and many are unable to access it in time. In addition, many members, especially smaller theatres do not have existing relationships with lawyers or the money to support access to legal counsel, particularly on such a quick timeline.

14. We seek judicial relief so that our members can apply and compete for NEA funding without regard to whether their programs in some ways “promote” what the government deems to be “gender ideology.” Because many members would like to apply in the March cycle of funding, we seek preliminary injunctive relief that would allow them to do so.

15. Many members have expressed dismay at being forced to compromise on their commitment to free artistic expression and their ideals in order to seek NEA funding. These organizations seek to affirm all gender identities, including transgender, nonbinary, and queer identities. Some members have also told us about the financial impact of losing NEA funding. For example, for one small theatre, an NEA grant would cover their entire design team’s wages, pension, and health. These members would like to apply for NEA funding but for the ban on

“promoting” what the government deems to be “gender ideology,” and would do so in the March 2025 cycle if this Court provides relief invalidating that restriction while this case is pending.

16. The ban on “promoting” what the government deems to be “gender ideology” requirement has also caused us to divert a great deal of our time and resources. For example, we have diverted some of our research into polling members about how the requirement has affected their plans to apply, or not apply, for NEA funding. In addition, our programming team has had to quickly pivot to provide our members and the larger field with informational webinars, federal action updates, and resource materials to help them assess their level of risk and guide their choices.


17. We seek judicial relief invalidating the “gender ideology” prohibition so that our members can apply and be considered for NEA funding fairly without regard to whether their work or organization or projects “promote” what the government deems to be “gender ideology.” This is core to our mission to lead for a just and thriving theatre ecology that celebrates free artistic expression. A just and thriving theatre ecology is one that financially sustains all theatre makers and practitioners and serves multifaceted communities, including trans, nonbinary, and queer theatre communities, and that produces works of artistic merit and excellence, without being disadvantaged because a work is deemed to promote a viewpoint the administration opposes.

18. Many of our members, including TTO, intend to apply for NEA grants in future grant cycles as well to support works of artistic merit that meet all the NEA’s statutory requirements, and that affirm transgender, nonbinary, and queer identities through their artistic expression. But as long as the NEA requires that no funds can be used to support “gender ideology,” they are barred from seeking such support. This is true for TCG as well.

19. If the Court invalidates the “gender ideology” prohibition, TCG intends to apply for an NEA grant during the July 2025 cycle to support fieldwide convenings and research. Last year, TCG’s national conference, supported in part by the NEA, included a panel on gender identity and a presentation by a trans woman. TCG is in preliminary planning stages for the next conference in 2026, and TCG is committed to including in the conference discussion about gender identity, affirming trans, nonbinary, and queer members of the community.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 2025.



Emily Cachapero