

# FACT SHEET: Rhode Island Latino Arts v. National Endowment for the Arts

## EXCERPTS FROM THE COMPLAINT

### GRANTS FOR ARTS PROJECTS (“GAP”)

- ¶34: The Grants for Arts Projects (“GAP”) is the NEA’s “principal grants category.” GAP makes grants “available for arts projects of all sizes in a wide variety of artistic disciplines.”
- ¶35: GAP applicants may request an amount between \$10,000–\$100,000.
- ¶36: The NEA accepts GAP applications during two funding cycles each year. For fiscal year 2026, the NEA is accepting applications in the March Cycle and July Cycle.

### EXECUTIVE ORDER

- ¶4: [O]n the day he took office, President Trump issued Executive Order 14168, titled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” (“Gender Ideology EO”), directing that “federal funds shall not be used to promote gender ideology.” 90 Fed. Reg. 8615 (Jan. 30, 2025) at §2(f). The 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 that “includes the idea that there is a vast spectrum of genders that are disconnected from one’s sex.” *Id.* at §2(g).
- ¶5: Shortly thereafter, the NEA implemented the Gender Ideology EO by requiring all grant applicants to certify their understanding that “federal funds shall not be used to promote gender ideology,” pursuant to the EO. It also makes applications for projects that appear to “promote” what the government deems “gender ideology” ineligible for funding.
- ¶50: Section 2(f) of the Gender Ideology EO defines “gender ideology” as follows:

“Gender ideology” replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa, and requiring all institutions of society to regard this false claim as true. Gender ideology includes the idea that there is a vast spectrum of genders that are disconnected from one’s sex. Gender ideology is 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.

### SUBMISSION TIMELINE

- ¶37: For the March Cycle, the submission deadline is March 24, 2025, and the notification for acceptance or rejection is December 2025. Though the deadline had initially been set for February 13, 2025, the NEA extended it to March 24, 2025 when it amended the GAP application guidelines, including by newly requiring applicants to certify that they would not “promote gender ideology.” For the March Cycle, the earliest project start date is January 1, 2026.

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- ¶38: For the July Cycle, the submission deadline is July 22, 2025, and the notification for acceptance or rejection is April 2026. The earliest project start date is June 1, 2026.<sup>7</sup>

### NEW REQUIRED CERTIFICATION

- ¶6: Because they seek to affirm transgender and nonbinary identities and experiences in the projects for which they seek funding, Plaintiffs are effectively barred by the “gender ideology” certification and prohibition (together, “gender ideology prohibition”) from receiving NEA grants on artistic merit and excellence grounds. Some of their proposed work appears to be ineligible for NEA funding under the new “gender ideology” prohibition, even though similar work has been funded in the past. Moreover, the vagueness of the prohibition requires them to guess as to what if anything they can create, produce, or promote that addresses themes of gender, or that affirms the identities of all people regardless of their gender identity.
- ¶40: The GAP application process has two parts. 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. For the March Cycle, Part 1 is due March 11, 2025.
- ¶41: In Part 2, an applicant must complete the Grant Application Form, which constitutes the majority of the application material, including information about the organization, like history and budget; the project description, timeline, and budget information; and work samples, and submit it on the NEA’s applicant portal. For the March Cycle, Part 2 is due March 24, 2025.
- ¶42: Both Parts 1 and 2 require an applicant to agree to the following certification:

By signing this certification, 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).
- ¶43: In order to submit Parts 1 and 2 of the GAP application, an applicant must agree to the certification by checking a box labeled “I agree.”
- ¶45: The agency specific instructions for the GAP application are available in the GAP Grant Program Details for fiscal year 2026, which includes a detailed description of the grant program and eligibility information. The GAP Grant Program Details states that “[b]y signing and submitting the application form . . . , 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 . . . .”

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It also provides a hyperlink to the Assurance of Compliance, which is available on the NEA website.

- ¶46: Accordingly, by agreeing to the certification when submitting the GAP application, an applicant certifies their agreement with the Assurance of Compliance.

### PLAINTIFFS

- ¶10: Rhode Island Latino Arts (“RILA”) is a 501(c)(3) nonprofit corporation based in Rhode Island. Its mission is to promote, encourage, and preserve the art, history, heritage, and cultures of Latinos in Rhode Island. It is committed to supporting the equal dignity of all artists, including transgender and nonbinary artists, and its work often features such artists and themes. RILA offers programming of every genre of art, including visual art, dance, and music. It puts on theatrical and musical performances, Latin percussion sessions, dancing events, script readings, and storytelling events. It also has a gallery to showcase artwork, and operates literacy programs. RILA has previously received NEA funding in 2019, 2020, and 2022.
- ¶11: National Queer Theater, Inc. (“NQT”) is a 501(c)(3) nonprofit corporation based in New York. It is a theater collective dedicated to celebrating the brilliance of generations of LGBTQ+ artists and providing a home for unheard storytellers and activists. Its work regularly features transgender and nonbinary individuals and themes. NQT was awarded NEA grants in 2023 and 2024 for its Criminal Queerness Festiva (“CQF”). In addition, NQT was offered an NEA grant in 2025 for CQF, and that award is pending processing.
- ¶12: The Theater Offensive, Inc. (“TTO”) is a 501(c)(3) nonprofit corporation based in Massachusetts. It 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. 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. Its work regularly features transgender and nonbinary artists and themes. TTO has previously received six grants from the NEA, in 2016, 2017, twice in 2022, 2023, and 2025.
- ¶13: Theatre Communications Group (“TCG”) is a 501(c)(3) nonprofit corporation based in New York. It is a national theater organization with over 600 member theaters and affiliates and over 3,500 individual members. TCG offers networking and knowledge-building opportunities through research, communications, and events, and it publishes the nation’s only general-circulation magazine related to theater, *American Theatre*. TCG supports theater 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.

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### **LEGAL ARGUMENTS**

- ¶1: This lawsuit seeks to enjoin an unlawful and unconstitutional exercise of executive power that has sowed chaos in the funding of arts projects across the United States, causing grievous irreparable harm to Plaintiffs and other organizations.
- ¶7: The NEA’s “gender ideology” prohibition is contrary to the agency’s governing statute, arbitrary and capricious, and violates the First and Fifth Amendments by imposing a vague and viewpoint-based restriction on artists’ speech. Plaintiffs request that the Court declare the “gender ideology” prohibition unlawful, set it aside, and enjoin its application facially and as to Plaintiffs.

### **CLAIMS**

#### **First Claim for Relief, Violation of the Administrative Procedure Act— Exceeds Statutory Authority**

- ¶99: Defendants’ action exceeds the NEA’s statutory authority under its enabling statute, the National Endowment for the Arts and Humanities Act of 1965, codified at 20 U.S.C. § 951 *et seq.* The Act authorizes the NEA to “ensure that . . . 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.” *Id.* § 954(d)(1). The Act explicitly identifies one category of speech ineligible for funding—obscenity. *Id.* § 954(d)(2). The Act therefore does not authorize the NEA to render any other categories—or viewpoints—of speech ineligible for funding.

#### **Second Claim for Relief, Violation of the Administrative Procedure Act—Arbitrary and Capricious**

- ¶104: Defendants’ action is arbitrary and capricious. Defendants have failed to adequately justify their action; have relied on factors Congress did not authorize them to consider; have failed to consider important aspects of the problem; and have failed to acknowledge or justify their change of position. The Court must hold them unlawful and set them aside.

#### **Third Claim for Relief, Violation of the Administrative Procedure Act— Contrary to Constitutional Right**

- ¶108: For the reasons described in the Fourth and Fifth Claims for Relief, and incorporated here, Defendants’ actions are contrary to constitutional right, and the Court must hold them unlawful and set them aside.

#### **Fourth Claim for Relief, Violation of the First Amendment**

- ¶110: The Assurance of Compliance, as amended by Defendants to implement Executive Order 14168, violates the First Amendment by imposing a viewpoint-based bar on federal

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arts funding. In particular, the amendment requires GAP applicants to certify that NEA funds will “not be used to promote gender ideology,” which is defined to include the “false claim” “that there is a vast spectrum of genders that are disconnected from one’s sex.”

- ¶115: 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.
- ¶116: Yet the NEA’s “gender ideology” prohibition is a textbook example of viewpoint discrimination. It singles out messages and perspectives that the government does not like for
- worse treatment.

### **Fifth Claim for Relief, Violation of the Fifth Amendment**

- ¶119: The Due Process Clause of the Fifth Amendment prohibits laws that are unconstitutionally vague, and applies with particular force where government regulations affect speech, out of concern that vague regulations will chill protected speech by causing individuals to steer clear of the prohibited zone.