

Free Expression In Arts Funding



A Public Policy Report

*Free Expression
Policy Project*

a think tank on artistic and intellectual freedom

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e TABLE OF CONTENTS e

EXECUTIVE SUMMARY.....	2
FOREWORD by Svetlana Mintcheva, National Coalition Against Censorship.....	4
INTRODUCTION	
Why We Undertook This Survey	6
How We Conducted the Research	8
I. BACKGROUND	
Challenges to Free Expression in Arts Funding: From Serrano and Mapplethorpe to the “Decency and Respect” Law.....	11
The Politics of Arts Funding: Accountability and Free Expression.....	14
State and Local Arts Funding	19
<i>The Growth of State and Local Agencies</i>	19
<i>Four Controversies of the 1990s</i>	
Cobb County, Georgia.....	20
Charlotte/Mecklenburg, North Carolina.....	21
San Antonio/Esperanza.....	22
The Brooklyn Museum and <i>Sensation</i>	24
II. FREE EXPRESSION POLICIES AMONG STATE AND LOCAL ARTS AGENCIES	
State Laws Recognizing Artistic Freedom	27
State and Local Agency Policies Relating to Artistic Freedom	28
<i>State Policies That Reinforce Statutory Language</i>	28
<i>States That Shy Away From Explicit Free-Expression Policies</i>	31
<i>States That Promote Artistic Freedom Absent Specific Statutory Language</i>	32
<i>Local Policies</i>	36
Policies Limiting Artistic Freedom	36
III. EXPERIENCES WITH FREE EXPRESSION POLICIES, AND PROCEDURES FOR HANDLING CONTROVERSY	
How Have Free Expression Policies Fared in Practice?	41
Procedures For Anticipating and Handling Controversy	45
CONCLUSION	51
RECOMMENDATIONS	52
ENDNOTES	53
INDEX	67
APPENDIX A: STATE AGENCIES	
APPENDIX B: SAMPLE OF 104 LOCAL AGENCIES	

e EXECUTIVE SUMMARY e

In 1989, government arts funding in the United States came under vitriolic political attack. In the wake of complaints about taxpayers' money being spent on offensive, "pornographic," or "blasphemous" works, and in the face of threatened cutoffs of funding, the National Endowment for the Arts began to retreat from supporting potentially controversial artwork. State and local funding agencies, although less vulnerable to attack, could not help but be aware of the political risks of supporting provocative art. As the crisis deepened, many leading arts organizations shied away from outspoken advocacy of free expression for artists and arts institutions that receive government grants.

Yet artistic freedom in the context of public funding remains a critical issue. The ability to make challenging art that can explore all facets of the human condition, including unpleasant ones, is essential to a vibrant culture and a healthy democracy. Neither private philanthropy nor the mass media conglomerates that dominate commercial entertainment can be counted upon to support the give-and-take of diverse viewpoints, reflected through literature, theater, music, film, and other visual art, or to provide visibility for the multi-layered, varied, and inventive cultures of America.

The question, more than a decade after the attacks on the NEA began, is whether government arts funding can maintain a commitment to free expression even when some funded works or artists are unconventional, or where political and moral entrepreneurs seek to sensationalize, distort, and drum up political opposition to provocative art. This report seeks answers to that question by surveying free expression policies among state and local arts agencies.

After an introduction providing background and analysis of the funding controversies of the 1990s, the survey section of the report begins by identifying language supportive of artistic freedom in state arts agencies' enabling statutes as well as state and local agencies' public pronouncements. But as the survey shows, a statement in support of free expression without policies to implement it may be ineffectual. Hence, the report goes on to investigate how different agencies interpret their policies; what experiences they have had in implementing them; what, if any, procedures are in place for anticipating and handling controversies; and whether – instead of supporting free expression – they impose any ideological or morality-based restrictions on grantees' work.

The survey reveals that the majority of state arts agencies (and some local ones) have free expression statements, though in many cases they are buried in the state

law books, not publicized, and not translated into live policies. A few agencies that announced free expression policies in the 1990s no longer publicize them. The vitality of such policies, and the agencies' commitment to defending them, vary widely, depending on many factors including the political atmosphere in the particular state or locality; the extent to which legislators are likely to seize on symbolic "culture war" issues; and the strength and character of leadership in the funding agency and the local arts community.

Some agencies with free expression policies nevertheless are politically cautious in their grant-making. A few have ambiguous policies that recognize both artistic freedom and the need for political accountability. Yet agencies that have weathered controversy and even experienced cutbacks or ideological restrictions on grant-making sometimes recoup their losses and emerge from the process stronger than before.

Only a few agencies have official procedures for anticipating and responding to arts funding controversies. Among those that do, philosophies vary, with one agency relying on a crisis manager and "ad hoc" rather than staff and arts leaders in the community. Whether this is the best strategy is open to question, but it is clear that procedures and preparation are crucially important in setting the terms of the debate and managing it effectively. The report concludes that strong, savvy leadership, proactive outreach campaigns, good communication with legislators, responsiveness to the media, and a refusal to compromise on basic principles are keys to defending free expression in government arts funding.



Hans Baldung Grien, *Aristotle and Phyllis*, 1513.

The ability to make challenging art that can explore all facets of the human condition is essential to a vibrant culture and a healthy democracy.

e FOREWORD e

By Svetlana Mintcheva

Arts Advocacy Coordinator, National Coalition Against Censorship

Creative art has traditionally enjoyed a conflicted relationship with money: art is always aspiring to be free of economic constraints, but artists can only be free of economic constraints if they have inherited wealth. One resolution of this conflict is the patronage system. With the development of modern democracies in Western Europe, the role of the patron passed from the wealthy individual to the state. As numerous studies point out, European countries spend a substantial amount of money in support of the arts. Though committees allocating funds surely have their politics and agendas, for all appearances, state patronage comes with full respect for artistic freedom. Art scandals occur with predictable regularity, but not under the banner – so familiar by now in the U.S. – of “not with my tax money.”

While American artists inherited the belief that art transcends money, few of their fellow countrymen agreed that art should not have to prove its worth in the marketplace. Government support for the arts began only at the end of the 19th century under the justification that art could be educational and morally ennobling. In the relative homogeneity of dominant values at that time, the fact that morally ennobling could mean different things to different cultural groups was not an issue.

In the mid-20th century, the Cold War made art useful in a new way: as a political weapon. The creative freedom of American artists demonstrated the superiority of the American system no less vividly than its consumer products. It was in this brief period that the NEA was founded, with its initial mandate to stimulate the “freedom of thought, imagination, and inquiry.”

With the end of the Cold War, demonstrating the freedom of American artists was no longer politically useful. In the meantime, government funding for the arts had grown and state and local art councils were supporting a wide range of creative production coming from underrepresented minorities. When religious groups singled out “offensive” art as a cause around which to mobilize their constituencies, they savvily protested not the art itself, but the public funds that went to its creators. Countering that line of attack with the First Amendment obligation of government not to discriminate against artwork based on the viewpoint it expresses can lead to Pyrrhic victories: under pressure an art program can be terminated; art councils can be defunded.

One very interesting finding in FEPP's report on art funding and free expression is that free expression policies have not had much occasion to be tested. That is certainly not because there is no controversial art: our experience at NCAC clearly indicates that art censorship did not end with Mapplethorpe and Serrano. Might it be that, when funding decisions are made, budget cuts and the attacks of conservative legislators loom larger than free expression policies?

And really, why should the public pay for art that criticizes its beliefs? If art was originally granted government support for its educational and morally elevating value, then art that challenges mainstream moral values might not qualify for that support. The problem here is that there is no consensus over what purpose government funding for the arts should serve. Should it reinforce the crumbling dominance of "traditional values" or reflect the real conflicts flashing across a diverse social fabric? Should it be limited to "uncontroversial" educational programs and leave hard-to-control artists to their own devices and the marketplace? Should it, on the contrary, unfold a dialogue between conflicting beliefs in the relatively safe space of symbolic expression? Under every answer given, there lingers the shadow of its opposite.

Legislators agree that funding for art is important because art serves an educational purpose and is good for local economies. Other benefits are mentioned, like its importance to the cultural image of a community, but the argument that art might be worthy of support precisely because it can open dialogue about sensitive and controversial issues is solely to be found when an art censorship incident flares up. Outside the hothouse of academia one can rarely hear a public defense of controversial art based on the importance of challenging set beliefs and dominant values. It seems that for art institutions concerned about their funding, the less said about the potential of art to be controversial, the better. Unfortunately, that leaves them vulnerable to attacks when some group decides to protest public funding for a work that could be seen as critical of their values.

It becomes clear from the FEPP report that a free expression policy is only the first step (however hard it is to make even that first step in some states). A policy not backed up by a procedure for anticipating and handling controversy at most declares a good intention. Funding cuts have put art councils in a precarious situation where they are particularly vulnerable to the attacks of religious groups and conservative legislators intent on gathering easy political points. To complicate matters further, artists are, more than ever, determined to question dominant values. The challenge for all art institutions is to take a principled position on free expression, while at the same time not alienating their audience and keeping their funding. The research, analysis and recommendations offered in the FEPP report provide both a map of the field and ways to negotiate its pitfalls.

e INTRODUCTION e

Why We Undertook This Survey

In April 1989, a small federal agency called the National Endowment for the Arts became front-page news. Reverend Donald Wildmon of the American Family Association learned that the agency had supported an exhibit of work by award-winning artists at a museum in North Carolina. Among the works exhibited was *Piss Christ*, by the Brooklyn artist Andres Serrano – a large, luminous photograph of a plastic crucifix immersed in a shimmering gold liquid. Only the title indicated that the liquid was urine.

Wildmon understood the public relations potential of this provocatively titled work, and on April 5, 1989, he sent a letter to his supporters that began, “we should have known it would come to this,” and went on to complain of *Piss Christ* and other instances of “anti-Christian bias and bigotry found in various parts of our society.”¹ Senator Alphonse D’Amato, too, realized the political capital to be gained by condemning the NEA’s use of tax money to support an award to Serrano; and he organized an outraged letter of protest, asserting that “this matter does not involve freedom of artistic expression – it does involve the question whether American taxpayers should be forced to support such trash.”² At a Senate debate on May 18, Jesse Helms eagerly joined D’Amato’s crusade. Serrano “is a jerk,” he said, but “let him be a jerk on his own time and with his own resources. Do not dishonor our Lord. I resent it and I think the vast majority of the American people do. And I also resent the National Endowment for the Arts spending the taxpayers’ money to honor this guy.”³

Thus began the arts funding wars that dominated headlines for much of the 1990s. Serrano’s explanation that his work was not meant to be blasphemous, but to explore the many meanings of bodily fluids and critique the cheapening of sacred symbols,⁴ was drowned out by a deluge of sensationalist attacks. From the much-maligned *Piss Christ* to the photographs of Robert Mapplethorpe, from the performance art of Karen Finley to gay and lesbian film festivals, politicians, religious-right leaders, and much of the mainstream media joined in condemning provocative, controversial, or “indecent” art, and questioning the propriety of government support. The issue was obviously symbolic, since the NEA’s actual expenditures on controversial art were small; but it was deeply resonant with many members of the public.

Underlying D’Amato’s and Helms’s rhetoric was the assumption that, because government provides funding to art, political leaders (or pressure groups that can produce voluminous mail from constituents) should have a veto over the subject, style, or viewpoint of work that is funded. Defenders of the NEA responded that where government supports a wide range of artistic expression and is looking for the best that our many-sided culture has to offer, it is not only unwise as a matter of public policy, but is a violation of the First Amendment, to impose moral or ideological restrictions on what grant recipients can create, exhibit, produce, or perform.

In other words, so these advocates argued, there is a distinction between government-commissioned art, which expresses an official viewpoint, and government support for diverse artistic expression by private individuals or groups. Awards from the NEA fit in the second

category because they support a variety of viewpoints, including perspectives of minorities and previously marginalized groups, and not just officially approved, politically correct, or “nice” art.⁵ In this sense, government arts funding is like government support for libraries, museums, and universities – institutions whose very purpose is to provide a mix of information and ideas. These institutions are society’s investment in culture, creativity, and the dialogue essential to democracy. Ideological or moralistic restrictions distort these purposes by allowing only expression that is conventional, inoffensive, unrepresentative of minority viewpoints, and otherwise unchallenging to the status quo.

But however persuasive these arguments for free expression in arts funding may be, they were drowned out in the political arena, where highly charged soundbites, and misrepresentations about the meaning of challenging works, continued to dominate the popular press. Legislators had only to brandish such provocative images as Robert Mapplethorpe’s photographs of leather-clad sadomasochists to garner headlines and foment outrage. In the course of the 1990s, the NEA was nearly eliminated even though its leaders tried to placate Congress and avoid controversial grants.

As the Endowment fought for survival, much of the arts establishment – major museums, foundations, and arts service groups – tried to stay below the radar and distance themselves from the artists under attack. The National Campaign for Freedom of Expression (NCFE), a now-defunct advocacy group that represented the more cutting-edge artists and venues, later described “the silence of mainstream

Legislators had only to brandish such provocative images as Robert Mapplethorpe’s photographs of leather-clad sadomasochists to garner headlines and foment outrage.

cultural organizations” as “deafening.”⁶ The chilly climate pervaded government arts funding even when grant denials were not overtly censorious: artists seeking grants, art and theater groups, and funding agencies began to shy away from potentially controversial work. By the mid-to-late 1990s, free expression in arts funding became an issue that was not frequently or eagerly discussed.



Joe, 1978 © The Robert Mapplethorpe Foundation.
Courtesy Art + Commerce Anthology.

But it is too important an issue to be buried. Within the mix of resources supporting culture – a mix that also includes for-profit investment, private foundation support, and individual philanthropy – it is government funding that has the capacity and obligation to represent all Americans. Public funding not only preserves the great art of the past and makes it accessible throughout the country, but it supports diverse and popular arts that may never be recognized by for-profit commercial culture. Both of these functions are threatened by restrictions on grant recipients’ free expression. As the National Assembly of State Arts

Agencies (NASAA) observed:

Attacks on artistic content encourage an environment in which hostility flourishes and creativity suffers. Restricting the range of images and ideas available to the public ultimately stifles the creativity and the “marketplace of ideas” that are basic requirements for a democratic society.⁷

How We Conducted the Research

Believing that free expression remains a critically important element of arts funding, the Free Expression Policy Project in 2001 began a survey of relevant state and local arts agency policies. The turmoil of the 1990s undoubtedly affected these agencies, which, even before the downsizing of the NEA, were responsible for the great bulk of government support for the arts in the U.S.⁸ Our purpose was to learn how many agencies have free expression policies, and to what extent such policies are incorporated into their decision-making process. Have state and local agencies been able to fund controversial art and respond successfully if protest ensued? Do they have procedures in place for anticipating and handling controversy? How many responded to the controversies of the '90s by incorporating

restrictions similar to a requirement that Congress imposed on the NEA in late 1990 – to consider “general standards of decency” and “respect for the diverse beliefs and values of the American public” in awarding grants?

We limited our survey to explicit free-expression statements and policies. Many state laws or agency policies refer to “encouraging” or “supporting” creative expression. (Indeed, these are the very purposes of arts funding.) But such general language is no substitute for an explicit policy supporting artistic freedom.

How do we define free expression or artistic freedom? The NCFE gave a good definition in 1998. “Freedom of artistic expression,” it said:

is the principle that an artist should be unrestrained by law or convention in the making of his or her art. ... Artistic freedom is threatened when art is challenged because of its content, message or viewpoint, rather than because of its aesthetic qualities or artistic merit.⁹

Such challenges can take place in any context, including public funding.

We began our survey by contacting regional arts groups such as the Mid-America Arts Alliance and Arts Midwest, as well as the national service organizations Americans for the Arts (which represents local agencies) and NASAA (which represents state agencies), to learn what information and suggestions they might have. Having determined that the data we sought were not available elsewhere, we scanned the Internet for state arts agency Web sites, and checked there for statements either promoting free expression or, conversely, restricting the content or viewpoint of funded art.

We then attempted to interview officials at each state agency that we found had a statement of either type, to learn how, if at all, the statements were reflected in agency policies. Agencies varied widely in their responses – some officials were eager to talk about the issue and gave in-depth interviews; others responded briefly to specific questions; still others did not respond at all.

In the interviews, we asked not only about the genesis and visibility of their free expression statements and policies, but about experiences applying them in actual funding controversies. We asked whether they had procedures in place for dealing with controversies over funded art; and what suggestions or recommendations they had for protecting free expression in the funding process.

As the research progressed, we discovered that many agencies have free expression statements in their enabling statutes, even though the statements are not found on the agencies’ Web sites. We expanded our pool of potential interviewees

to include these agencies as well. Appendix A lists all state agencies, the free-expression statements or policies we found, the interview attempts we made, and the actual interviews or e-mail correspondence that ensued.

We also surveyed 104 city and county arts agencies, out of the more than 2,500 listed in *Americans for the Arts' 2000-2001 Field Directory*. Our random sample of 100 included an approximately equal number of agencies in large urban areas, rural areas, and mid-sized localities. We added to the sample the arts councils in Cobb County, Georgia, Charlotte/Mecklenburg, North Carolina, San Antonio, Texas, and New York City, because of their particular experiences with funding controversies. (See below, pages 20-26.) As with the state agencies, we then conducted a Web search for statements either promoting or limiting artistic freedom in the funding process, and followed up with attempted interviews of those that either had an online free-expression statement, or that had no online presence.¹⁰ (Some of the local agencies are very small and lack office space; a few of them list the home phone numbers of their directors as their official contact information.) Appendix B lists the local agencies we surveyed, the statements we found, the calls we made requesting interviews, and the actual interviews or other communications that took place.

Our research was limited to arts funding. Questions about the display of controversial art in government exhibit spaces were not within the scope of our study. Disputes over such displays sometimes do merge with questions about funding, however, since many local arts agencies also operate exhibit spaces. And the policy issues are often similar as well – in particular, the dilemma that results when a legal rule prohibiting censorship at government venues results in a decision by public officials to end a public art program entirely.¹¹

We hope this report will be useful to artists, arts advocates, policymakers, scholars, arts institutions and service organizations, government and corporate funders, and all others interested in public arts funding, support of our diverse cultural heritage, or free expression.

e I. BACKGROUND e

Challenges to Free Expression in Arts Funding: From Serrano and Mapplethorpe to the “Decency and Respect” Law

Senators Helms and D’Amato were not the only political leaders excoriating the National Endowment for the Arts for supporting an exhibit that included Andres Serrano’s *Piss Christ* in the spring of 1989. Twenty-three senators signed an open letter to the NEA expressing outrage and urging that it “comprehensively review its procedures and determine what steps will be taken to prevent such abuses from recurring.”¹² Soon, close to 200 federal legislators, prodded by media sensationalism and constituent complaints, contacted the Endowment. Its acting chair, Hugh Southern, responded that the criticism was legitimate and that the agency would be reviewing its procedures.¹³

But before the NEA or the arts world could do much to regroup from the attack on Serrano or publicize the serious, non-blasphemous intent of his work, a second occasion for outrage presented itself. On June 8, 1989, Representative Dick Armey and 107 fellow congressmen wrote to the Endowment criticizing its support of *Robert Mapplethorpe: The Perfect Moment*, a traveling exhibit of works by the recently deceased photographer that included some highly provocative homoerotic images in a show that was predominantly elegant nudes, portraits, and flowers. Four days later, the Corcoran Gallery of Art in Washington, D.C., in an attempt to avert further public relations damage, cancelled its scheduled showing of *The Perfect Moment*.

The cancellation triggered angry protest from art lovers, which brought even more attention to Mapplethorpe. The Washington Project for the Arts presented *The Perfect Moment* at its own gallery space after the Corcoran cancellation. And, while Donald Wildmon and other religious-right leaders continued to capitalize on the situation through inflammatory public statements, press releases, and constituent fund appeals,¹⁴ Congress began to consider the first of many “legislative retaliations”¹⁵ against the NEA.

Later in 1989, Congress passed its first “content restrictions” on NEA decision-making. Commonly known as the Helms Amendment, this law prohibited grants to works that, “in the judgment of” the agency, “may be considered obscene,” including specifically depictions of “homoeroticism” or “individuals engaged in sex acts.” The NEA implemented the law by requiring grant recipients to sign a certification of compliance. The certification requirement was challenged and struck down by a federal court in 1991.¹⁶

By this time, Congress had supplemented the Helms Amendment with another proscription, the 1990 “decency and respect” law. This law was inspired by the report of a prestigious “Independent Commission” of cultural leaders and constitutional law scholars. The commission recommended an arts funding policy that would avoid the First Amendment pitfalls of denying funding to work because of a controversial viewpoint, but would nevertheless convey the need for



Karen Finley. Photo by Timothy Greenfield-Sanders, courtesy of Creative Time © 1998.

“accountability and sensitivity” in funding decisions.¹⁷ Many NEA supporters and others in the arts world felt that the resulting law was an acceptable compromise: it simply directed the agency to “take into consideration general standards of decency and respect for the diverse beliefs and values of the American public” in awarding grants.¹⁸ Others, however, felt the law clearly sent a message that any controversial art must be avoided. It was soon challenged in court, in the case of *National Endowment for the Arts v. Karen Finley et al.*

The case began in 1990 after journalists learned that an NEA peer panel had recommended small grants to four performance artists – John Fleck, Karen Finley, Holly Hughes, and Tim Miller – whose work dealt with gender and sexual politics in provocative, outspoken styles. Amid lurid press coverage that highlighted a powerful Finley performance piece called *We Keep Our Victims Ready*, which included the artist’s smearing her nude body with chocolate to symbolize society’s abuse of women, legislators began to pressure then-NEA chair John Frohnmayer to reject the grants. Frohnmayer eventually did so, and the four artists sued, claiming that the rejections were politically motivated, in violation of the agency’s standards and procedures as well as the First Amendment. Soon dubbed “the NEA Four,” they amended their lawsuit the following year to challenge the decency and respect law, and a new plaintiff, the National Association of Artists’ Organizations, joined the suit.¹⁹

Outside the courts, efforts to eliminate the Endowment accelerated after the election of 1994, which brought a conservative, “Contract With America”-dominated Congress to Washington. In 1995, Congress cut the NEA’s budget by 40% and outlawed most grants to individual artists. The actress Jane Alexander, who chaired the Endowment from 1993-97, restructured it to eliminate genre-specific grants for the visual arts, dance, theater, and other disciplines. She replaced them with generic categories: “creation and presentation,” “education and access,” “heritage and preservation,” “planning and stabilization.”²⁰

Alexander later wrote poignantly of her struggles to build appreciation for artistic freedom while simultaneously keeping the agency alive by restructuring it to eliminate possible points of political attack. By 1995, though, she was weary of the endless lobbying and strategizing among politicians whom she found opportunistic, hidebound, and homophobic.²¹ The rest of the arts community – with a few notable exceptions – tried to preserve funding by emphasizing the economic and social benefits of government support for the arts, encouraging more accountability, and avoiding any mention of the First Amendment.

In the courts, meanwhile, the federal government failed to get the *Finley* case dismissed, and finally agreed to settle with the four artist-plaintiffs. It paid them the amounts of the grants they would have received if not for political interference. The case continued as a First Amendment challenge to the decency and respect law.

The lower courts ruled that the law was unconstitutional – even in the provision of funds, they said, the First Amendment bars government from imposing conditions that are unduly vague or censorious.²² But in 1998, the Supreme Court reversed. It upheld the law largely by interpreting the decency and respect standard to be only advisory, and finding no evidence that it had actually harmed any applicant.

The decision made clear, however, that the First Amendment does apply to the arts funding process. “Even in the provision of subsidies,” Justice Sandra Day O’Connor wrote for the Court, “the Government may not ‘aim at the suppression of dangerous ideas.’” If the NEA “were to leverage its power to award subsidies on the basis of subjective criteria into a penalty on disfavored viewpoints, then we would confront a different case.”²³

Thus, the Supreme Court did not adopt the position of many NEA foes – that simply because a government agency funds art, it may impose any restrictions that it chooses, or that it feels compelled to apply because of pressure from Congress, the White House, or members of the public. As many observers have pointed out, however, this legal rule forbidding “viewpoint discrimination” in government grant-making does not do artists, arts institutions, or the public much good if those controlling the government funds, whether in Congress, state legislatures, or city councils, choose to eliminate support for the arts entirely because they are offended by some of the end results.²⁴

The Politics of Arts Funding: Accountability and Free Expression

From the beginning of the funding wars, members of the arts community differed on the best strategic response. Most agreed that however broadly the First Amendment protects sexually explicit or otherwise controversial art, there must be “accountability,” and an awareness of political realities, when it comes to government funds. Yet accountability is a broad and slippery term. If it means fiscal responsibility, adherence to high artistic standards, a well-structured grant-making process, and attention to the diverse cultures represented in a state or city, well and good. If it is meant as a euphemism for avoiding anything challenging or potentially offensive, then much of the purpose of public arts funding is undermined.

At the NEA’s creation in 1965, it was bathed in a halo of artistic freedom. The Senate committee that prepared the law which created both the NEA and the National Endowment for the Humanities wrote:

It is the intent of the committee that in the administration of this act there be given the fullest attention to freedom of artistic and humanistic expression. One of the artist’s and humanist’s great values to society is the mirror of self-examination which they raise so that society can become aware of its shortcomings as well as its strengths. ... Countless times in history artists and humanists who were vilified by their contemporaries because of their innovations in style or mode of expression have become prophets to a later age.²⁵

The NEA law itself announced that “it is necessary and appropriate for the Federal Government 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.”²⁶

In the 24 years that followed, occasional complaints from politicians about controversial grants – for example, a set of “blistering” letters from Jesse Helms to the NEA in 1975 regarding novelist Erica Jong’s sexually provocative bestseller *Fear of Flying* – were answered by NEA officials without extended sensationalist publicity or harm to its funding. And the agency survived the Reagan Administration’s attempts to cut it in half, thanks to “a firestorm of opposition, much of it from mainstream Republicans who sat on boards of directors of museums and symphonies around the country.”²⁷

Yet in 1989, as cultural scholar Kevin Mulcahy has observed, “what should have been a political side show that the NEA could have routinely survived developed

into a kind of Kulturkampf, that is, a struggle over the legitimacy of public support for the arts.” And “the range, intensity, and impact” of the attacks were “too great to be dismissed as solely a delusion of the ideological fringes. In the minds of many moderate citizens and their elected representatives, the NEA became labeled as one of the nation’s promoters of pornography.”²⁸

Many factors combined to create this crisis in 1989 and the decade that followed. First, the NEA had evolved from an agency devoted to stimulating “high culture” (in the words of Robert Brustein), to one that was at least equally interested in non-mainstream art that reflected the concerns of a multi-ethnic and diverse population, including feminists, gays and lesbians, and racial minorities. Brustein, a critic of this trend, attributes it to “growing pressure from rightwing legislators and leftwing levelers” which caused the agency to become “increasingly politicized, populist, and pop-oriented.”²⁹

In fact, the NEA supported both “elitist” and “populist” art, and, more important, spread what is commonly thought of as high culture to new communities. Moreover, Brustein’s dichotomy is simplistic: Shakespeare’s dramas, now considered elitist art, were popular with all classes of society in his time; Verdi’s operas were pop culture in 19th century Italy. But whether or not the relatively small amount of cutting-edge art that received NEA support in the late 1980s was “elitist” or “populist” (or neither), there is little question that some of it was more sexually explicit and confrontational than anything the agency had funded in the past.

It was also immediate, visceral, and visual, thus supplying more shock value than the written word. Even *Piss Christ*, though not a sexual image, combines a sacred religious symbol with an excretory substance, as sociologist Paul DiMaggio and his colleagues have noted, to produce “an immediacy that words or even music lack.”³⁰

“Congress abandoned 25 years of bipartisan support by pandering more cynically than ever to the anti-intellectualism that has always simmered below the surface of American society.”

But there is much more to the 1989 crisis than the NEA’s funding, in small amounts, of explicit or visceral works of art. Complaints about even as presumably inflammatory a work as *Piss Christ* would, in earlier times, have been met by a politically sophisticated defense of the NEA (all of the agency chairs before Frohnmayer had been insiders versed in Washington politics), combined with support for diversity and artistic freedom from arts-friendly legislators. Widespread outrage at the ugly homophobia expressed by Helms and others during their NEA attacks also might have been expected in a different political atmosphere. As one

museum director noted, the “heightened level of demagoguery” emanating from Congress and directed against the NEA in 1989 and 1990 really had no precedent. Congress “abandon[ed] 25 years of bipartisan support,” by “pandering more cynically than ever to the anti-intellectualism that has always simmered below the surface of American society.”³¹



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At bottom, there is no escaping the fact that the political climate by the late 1980s, after eight years of the Ronald Reagan presidency and major gains by the religious right, had much to do with the political vulnerability of the NEA. Arts funding became, for advocates and politicians on the newly powerful right, an ideal, even “juicy,” symbolic target³² that could be used in direct mail campaigns to swell the coffers of such groups as the Christian Coalition and Wildmon’s American Family Association. Their mailings included “scare packages” that hypocritically trafficked “in the very stuff they despise,”³³ combining titillation with outrage in a recipe for political success. And with a Washington insider no longer at the agency’s helm to protect it, “the increasing strength of the religious right proved ‘the perfect storm’ for the NEA-haters who had been there all along.”³⁴

Several additional elements contributed to the debacle. First, as critic Michael Brenson points out, the NEA was the product of Cold War efforts to promote American culture combined with respect for avant-garde artists as a breed of “prophetic outsiders.”³⁵ But the Cold War ideology that drove the Kennedy and Johnson Administrations in the 1960s to promote federal arts and humanities funding was ancient history by 1989. It was no longer politically useful to idealize artists and promote their works abroad; on the contrary, those in the *avant-garde* could now more conveniently be demonized. Anti-intellectualism, often a theme of the political right, could also now be used to stir resentment against outré artists: the American Family Association’s July 1989 press release protesting the Serrano and Mapplethorpe exhibits did this brilliantly by asking repeatedly why truckdrivers, factory workers, and sales clerks, who “are artists also,” do not receive government grants.³⁶

Second, media sensationalism fanned the flames. Consistently, works were inaccurately described and taken out of context; artistic ambiguity was lost in a media environment more interested in excitement and headlines than thoughtful analysis and critical explanation. The shrinking journalistic attention span and

preference for hot-button soundbites is a phenomenon that affects not just the arts, of course; and many arts reporters were conscientious and responsible. But overall, the mass media contributed substantially to the NEA's woes.³⁷

Third, the failure of most of the arts establishment to speak up loudly and unambiguously in defiance of the campaign against the NEA cannot be ignored. Although in 1989 and 1990, prestigious groups such as the American Assembly were confidently announcing that free expression is “of special importance to a thriving artistic culture” and that government arts programs “should support new work of promise that may prove risky or unpopular,”³⁸ they did little afterward to combat the rightward plunge of arts policy or persuade the NEA's critics that they were wrong. By the mid-'90s, many arts administrators and advocates had made a judgment that defending censorship-free government arts funding was political suicide; that, as Jane Alexander also eventually concluded, the only way to save the NEA was to restructure it dramatically and be extremely cautious about grants that might be used as further ammunition by the Endowment's enemies. Others no doubt felt that whatever the merits of a Mapplethorpe or Karen Finley, it was a mistake to support their work with tax dollars. It will never be known whether a more unified and assertive response from the art world as the crisis deepened would have made a difference.

By the mid-1990s, yet another explanation for the debacle was being heard. Scholars and analysts working in the new field of cultural policy studies argued that arts funders needed to pay more attention to their political base, and be better prepared to defend their decisions. Led by such advocates of political realism and accountability as Ohio State University's Margaret Jane Wyszomirski, cultural policy theorists stressed the need for more empirical research about public attitudes, and about the economic and social value of arts institutions.³⁹ In these efforts to build public-policy support for the arts, the issue of free expression – or, conversely, of moral or ideological restrictions on grants – was not often highlighted.

Yet some scholars working in the field began to make interesting discoveries. Professor Paul DiMaggio and his colleagues, for example, found that about 2/3 of American adults support government arts funding – a number that “has been remarkably stable throughout sharp fluctuations in the NEA's political fortunes.” This support is broad but shallow, though. In other words, arts funding is not all that urgent an issue for most of its supporters, in contrast to the 15%-20% of the public that opposes funding “with fierce conviction.” The distinction is important because “only citizens with strong convictions are likely to take the trouble to sign a petition or contact an elected representative about an arts-related subject.” Hence, a vociferous minority of the population can drive arts policy; and this is the case

even though the majority support arts funding despite years of misleading attacks. During the funding crises of the '90s, by “fusing a coalition of fiscal conservatives, Republican partisans, and Evangelical Christians, the NEA’s opponents constructed a potent pressure group whose relatively small size – less than 25% of the voting public – belied its visibility.”⁴⁰

In other studies of arts controversies, scholars at Princeton University found that the “culture wars,” so loudly trumpeted by the mass media and morality-promoters such as William Bennett and Patrick Buchanan, did not correspond to the facts. After a decade of arts funding controversies, for example, attitude surveys showed that “mass opinion is more moderate and in many ways more sophisticated than public rhetoric.” In the area of both arts funding and “political correctness” on college campuses, the cultural battles waged in the media and the political arena did not accurately reflect most Americans’ opinions. The researchers concluded that “mobilized social movements,” particularly on the political right, had been able to create the false impression of a nation deeply divided by a culture war.⁴¹ “Rather than representing an accurate diagnosis of the American political condition, the ‘culture wars’ account has served as an interpretive frame with an intrinsically conservative bias, generalizing to the American people as a whole a strident antagonism thus far visible mainly among political elites and well-financed social movement organizations.”⁴²

All this is not to say that the NEA had widespread popularity before 1989, or that it was paying adequate attention to politics and grassroots support. Margaret Wyszomirski has argued forcefully that political accountability is a fact of life for arts funders, and that even granted the importance of artistic freedom, this inevitably means that agencies cannot deviate too far from the cultural and moral norms of their communities.⁴³ NASAA notes that the attacks of the 1990s have caused state agencies to be better prepared to articulate their accomplishments and answer questions from legislators.⁴⁴

Roberto Bedoya, former director of the National Association of Artists’ Organizations, adds that the whole issue of accountability is a “two-way street.” Just as society expects artists, especially those who receive public funds, to be accountable, so artists “make a claim upon society, such as a claim for inclusion, that asks society to acknowledge a group like gays and lesbians, or art that asks us to address a societal problem such as racism – claims that are controversial because they challenge social systems.”⁴⁵

State and Local Arts Funding

The Growth of State and Local Agencies

A number of state and local arts agencies existed before the NEA. Utah is often credited with creating the first state agency, in 1899.⁴⁶ Minnesota began a State Arts Society in 1903,⁴⁷ and the New York State Council on the Arts says it was the “first agency of its kind in the nation” when it was established on a temporary basis in 1960.⁴⁸ Washington followed in 1961; South Carolina in 1962.⁴⁹

In the decade after the creation of the NEA, every state that did not already have an arts council established one in order to receive and disburse the federal block grants that were an integral part of the NEA law. Eventually, the District of Columbia, Puerto Rico, Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands also created arts councils. As these agencies grew, they began to challenge the Endowment’s control, “demanding more flexible guidelines for the funds they regranted, more influence in developing guidelines, and symbolic acceptance as partners, rather than subordinates, in the policy process.”⁵⁰

A community arts movement was also growing. With roots in the 1940s and arts councils starting at about the same time in Winston-Salem, North Carolina, Canon City, Colorado, and Quincy, Illinois, by the mid-50s the movement boasted about 55 community agencies. By 1967, the number had grown to 450, of which 70 employed paid staff.⁵¹ State and federal funding stimulated further growth, until by the late 1990s, there were more than 3,000 city and county arts councils, about 1/4 of which were agencies of local government, with the remainder organized as private nonprofits. Today, the local councils vary greatly in size and activity level – some sponsor cultural programs of their own, provide assistance to artists, operate exhibit spaces, and publish calendars and newsletters, as well as giving out grants.⁵²

In the area of both arts funding and “political correctness” on college campuses, the cultural battles waged in the media and the political arena did not accurately reflect most Americans’ opinions.

Expenditures by state and local arts agencies dwarfed the relatively small budget of the NEA even before Congress began shrinking the Endowment.⁵³ Despite the arts funding controversies of the 1990s, state agencies managed to increase their budgets overall, from \$211 million in 1992 to \$447 million in 2001. They did so by emphasizing the role of the arts in education, in helping “at risk” youth, and in stimulating economic development, tourism, and community life.⁵⁴

Although by 2003 several state agencies were facing severe budget cuts, these were due to worsening economic times rather than controversies over funded art.⁵⁵

This hardly means, however, that state and local agencies are immune from political attack. Four incidents, detailed below, provide insight into the dynamics of local arts funding controversies.

Four Controversies of the 1990s

e Cobb County, Georgia

In July 1993, the Theatre in the Square in Marietta, Cobb County, Georgia (just outside Atlanta), staged a production of Terrence McNally's play *Lips Together, Teeth Apart*, which centers around two straight couples spending a Fourth of July weekend at the vacation home of a friend whose gay brother has just died of AIDS. The theater received \$41,000 annually in county funds. Homophobic complaints from constituents were compounded when the Theatre in the Square also presented David Henry Hwang's *M. Butterfly*. In late July, County Commissioner Gordon Wysong proposed a resolution stating that "the traditional family structure" is Cobb County's community standard; that "lifestyles advocated by the gay community should not be endorsed by government policy makers"; and that no activities would be funded which violate "existing community standards." Along with this was a proposed amendment to the County Code deleting a guarantee of artistic freedom and replacing it with a statement that arts funds "should be expended primarily on programming which advances and supports strong community, family-oriented standards."⁵⁶

The American Civil Liberties Union and People for the American Way wrote letters of protest to Cobb officials, pointing out that the resolution, with its explicitly homophobic criterion for grants, was a clear example of unconstitutional "viewpoint discrimination" in arts funding. Shortly afterward, the commission eliminated the county's entire \$110,000 budget for arts grants. Nine organizations lost funding, including the Cobb Children's Theater, Cobb Youth Chorus, and Cobb Symphony Orchestra. Local businesses and gay rights groups organized protests, including a boycott of Cobb's new convention center, but the arts community was less unified in its response. As *The Nation* magazine reported: "while Cobb County's embattled gay and lesbian community organized a vigorous campaign in response to the resolutions, no such consensus exists in the arts community."⁵⁷

Although Cobb County today does support cultural programming through three arts centers and a theater, it has not reinstated arts grants.⁵⁸ The events in

Cobb County were a dramatic reminder of the fact that whatever artistic integrity, good public policy, or the First Amendment may require in the context of arts funding, the legislature that controls the purse strings can eliminate grant-making entirely if the arts do not have sufficient political support.

e Charlotte/Mecklenburg, North Carolina

In 1996, the Charlotte Repertory Theater, which received partial funding from the Charlotte/Mecklenburg Arts and Science Council, staged Tony Kushner's Pulitzer Prize-winning play, *Angels in America*. An epic dramatization of concerns about contemporary America at the approach of the millennium, *Angels* has gay as well as straight characters, and deals with AIDS, homophobia, and McCarthyism past and present. It has a very brief nude scene. Despite picketing from Christian right activists and pressure from the mayor, an "unrepentant" Charlotte Rep refused to "tone down" the show, and went on to stage John Guare's *Six Degrees of Separation*, which includes a gay leading character.⁵⁹

The following April, 1997, at a "circus-like six-hour meeting"⁶⁰ of the Mecklenburg County Commissioners, members of the public excoriated the "homosexual agenda," and the commissioners, by a 5-4 vote, passed a resolution supporting "the traditional American family," attacking "perverted forms of sexuality," and denouncing the Arts and Science Council for failing to abide by "any acceptable community standards." The resolution relieved the Council of "any further responsibility for the determination of where taxpayer dollars shall be spent," and required that henceforth every arts grant must be approved by the commissioners themselves.⁶¹

Interviewed by the *Charlotte Observer*, Commissioner Bill James remarked that "as far as I'm concerned, those guys [the Charlotte Rep] are dead on arrival. If they don't know they're the walking dead now, I suggest they get a clue pretty quick."⁶² Another commissioner, when asked about homosexuality, replied: "if I had my way, we'd shove these people off the face of the earth."⁶³

The majority of the county's population did not concur with this bigotry; and two years after what one critic calls "the infamous April Fools' Day meeting," all but one of the "gang of five" commissioners who reacted so combustibly to *Angels in America* had been voted out of office, thanks to the electoral efforts of a bipartisan citizens' group.⁶⁴ The Council was able to rally political support and retrieve its grant-making responsibilities. As its then-president Michael Marsicano explained,



Theatre Communications Group, Inc. Used with permission.

“gay people pay taxes too,” and the Council fought back with a public relations campaign. “Free nights, lower ticket prices for those who can’t afford to go otherwise, free dress rehearsals for students, raising diversity consciousness among arts organizations, integrating the arts into education. If you think about things like libraries and the arts – if those are not publicly supported, only the rich can afford them,” Marsicano said.⁶⁵ By 2000, the Council’s budget had grown to \$15.6 mil-

A Christian-right radio talk show host spearheaded a campaign of homophobia, while the local director of the Christian Pro-Life Foundation sent a flyer to about 1,200 supporters urging opposition to further funding for Esperanza.

lion, and combined city/county arts spending in Charlotte/Mecklenburg was more than \$9 million.⁶⁶

Grant decisions by the Arts and Science Council today are governed by a peer review process. Although the “traditional American family” and “community standards” provisions of the 1997 resolution are no longer in effect, North Carolina does have “some odd

ancient laws about nudity and sexual orientation,” says the Council’s chief operating officer, Bill Halbert. “And as long as we don’t break those laws, everybody’s happy.” His reference is to a prohibition on public nudity that prosecutors interpret to apply to theater productions, and to the fact that North Carolina’s civil rights laws do not protect against discrimination on the basis of sexual orientation. Hence, Halbert explains, the Council cannot fund productions that include nudity on stage; and it cannot insist that its grantees’ anti-discrimination policies protect gays. But he says there is no problem now in supporting art with gay or lesbian content – indeed, the Charlotte Rep presented *M. Butterfly* in 2003, and in neighboring Davidson, North Carolina, *Angels in America* was performed “without a hitch.”⁶⁷

e San Antonio/Esperanza

The Esperanza Peace and Justice Center is a multi-purpose nonprofit arts and cultural center in San Antonio, Texas. It offers music, film, video, and other cultural programming as well as space and assistance to local artists. It is explicitly political – its mission statement mentions civil rights, the environment, and economic justice, and proclaims the center’s intention to “advocate for those wounded by domination and inequality – women, people of color, lesbians and gay men, the working class and poor.”⁶⁸

Beginning in 1990, Esperanza received funding from the City of San Antonio through its Department of Arts and Cultural Affairs. Some grants were for operating expenses in connection with the center’s major programming, called

PazARTE; others were for specific projects, such as the “Out at the Movies” film festival, operated by a separate group for which Esperanza served as fiscal sponsor.⁶⁹

In 1997, as a federal court later found, Esperanza and other arts organizations “were targeted by certain conservative groups who opposed their perceived advocacy of the ‘gay and lesbian lifestyle,’” but “none were the target of a lobbying effort as extensive or as vicious as that leveled against Esperanza.” A Christian-right radio talk show host spearheaded a campaign of homophobia directed in particular at the “Out at the Movies” festival, while the local director of the Christian Pro-Life Foundation sent a flyer to about 1,200 supporters urging opposition to further funding for Esperanza. City Council members, some of them already sympathetic to the religious right’s goals, received calls, letters, and e-mails dwelling on the “homosexual agenda” and “deviant lifestyle.” In September 1997, the Council voted to discontinue more than \$62,000 annually in grants to Esperanza. This scenario was repeated the following year, when the Council, under continuing pressure, voted down all of Esperanza’s grant requests.⁷⁰

Esperanza sued the city and its then-mayor for damages and an injunction. After a lengthy litigation, the case was decided in Esperanza’s favor in 2001. The judge found that the city’s decision was clearly driven by unconstitutional viewpoint discrimination – antagonism to rights or recognition for gays and lesbians. He noted that although “of course, the government is not required to fund arts programs,” if it does so, “it must award grants in a scrupulously viewpoint-neutral manner.” In response to San Antonio’s argument that stigmatizing homosexuality is “neither novel nor new” and that therefore the city had cause to deny funding to an organization that promoted it, the judge wrote that “racial discrimination also has ‘ancient roots,’ but the antiquity of stupid beliefs does not make them constitutionally acceptable.”⁷¹

In contrast to Cobb County, San Antonio did not respond to the mandate of viewpoint neutrality by eliminating all arts grants. In part, this was because the city is culturally diverse, with a political complexion considerably less conservative than Cobb County’s. San Antonio is also a major urban center that thrives on tourism, in which arts and culture play a significant role. Finally, the Texas Commission on the Arts, which contributes to San Antonio’s arts budget, has a more inclusive approach to funding. As its then-executive director John-Paul Batiste said, the city behaved badly, and “ended up for three years in court. But the whole situation in San Antonio has changed; there are new people elected, and they’re off to a great start over there.”⁷²

In 2002, Esperanza reapplied for funding, was ranked first in its division, and was awarded a total of \$103,000 for 2003.⁷³

e The Brooklyn Museum and *Sensation*

With the largest budget of any government arts agency in America, the New York City Department of Cultural Affairs has long maintained “a de facto policy” of “not interfering in the rights of freedom of expression of the groups that it supports.”⁷⁴ In September 1999, however, then-mayor Rudolph Giuliani made headlines by expressing outrage over the upcoming exhibit *Sensation: Young British Artists from the Saatchi Collection*, at the Brooklyn Museum of Art. Giuliani announced that several works in the show were “sick” and “disgusting”; and he was infuriated, in particular, by Chris Ofili’s *The Holy Virgin Mary*, a glittering, icon-like painting of an African madonna with a dollop of dried elephant dung near one breast. The painting was not smeared with dung, as some reports had it, and dried elephant dung is not an insulting or blasphemous substance in African culture. Indeed, Ofili used it in works that were clearly respectful, including other works in the *Sensation* show.⁷⁵

Nevertheless, a week before *Sensation*’s scheduled opening, Giuliani ordered the Brooklyn Museum to cancel the show. He threatened that if the museum refused, he would freeze funds that the city had already allocated for general operating expenses (the city had not funded *Sensation* specifically), and would evict the institution from its public premises. On September 28, he stated that taxpayer money should not “be used to support the desecration of important national or religious symbols,” and a city press release the same day denounced “an exhibit which besmirches religion and is an insult to the community.”⁷⁶

Giuliani’s appeal to religious feelings – at a political moment when he was preparing to run for the U.S. Senate – and his refusal to entertain explanations of the context and meaning of Ofili’s work, were painfully reminiscent of the political grandstanding that surrounded the attacks on Serrano’s *Piss Christ* ten years before. It was frequently noted that Giuliani needed a high-profile political issue on which he could appeal to moral conservatives, particularly in view of his pro-choice record on abortion. *Sensation* was an opportunity to put his likely opponent, Hillary Clinton, on the spot. When Clinton expressed aversion for the show but disagreement with Giuliani’s desire to shut it down, he responded: “Well, then, she agrees with using public funds to attack and bash the Catholic religion.”⁷⁷

This appeal to Catholics was hardly subtle, but it did not have the outcome that Giuliani anticipated. Although *Sensation* remained controversial, with pickets for and against it appearing in front of the Brooklyn Museum during the first days of the show, New Yorkers seemed generally unimpressed with Giuliani’s rhetoric.⁷⁸ And although the arts community’s response was not uniform, the New York City Arts Coalition, consisting of more than 200 nonprofits, organized a protest state-

ment within days of Giuliani’s first comments, and within a week, 22 of the 33 members of the Cultural Institutions Group (private nonprofits that operate the city’s cultural landmarks) released a letter condemning his threats as a “dangerous precedent” that could cause “lasting damage” to New York’s cultural life. The signers ranged from the Metropolitan Museum of Art to the Staten Island Historical Society and the Bronx Zoo. Non-member institutions including the Museum of Modern Art (MOMA), the Frick Collection, and the Jewish Museum also signed.⁷⁹

This outpouring did not move Giuliani, and when city officials announced that they would withhold the Brooklyn Museum’s monthly payment of \$497,554, due on October 1, the museum filed a First Amendment lawsuit seeking to stop the retaliation and restore the funds. The city countered with an eviction suit in state court; then argued to the federal judge (unsuccessfully) that she must defer to the state court action.

Opposition to Giuliani’s concept of arts funding solidified during the brief but dramatic litigation. Dozens of major institutions joined in friend-of-the-court briefs opposing the mayor, including the Metropolitan Museum, MOMA, the American Association of Museums, the Whitney Museum, the New York Historical Society, the New York City Arts Coalition, the New York Foundation for the Arts, the Wildlife Conservation Society, the New York Hall of Science, the American Association of Museum Directors, and the Alliance of Resident Theaters/New York. Local political leaders also filed a brief supporting the museum; they included Manhattan Borough President C. Virginia Fields, Bronx Borough President Fernando Ferrer, City Council Speaker Peter Vallone, 26 other members of the Council, and seven members of the New York State Assembly.⁸⁰

In November 1999, Judge Nina Gershon released her decision. Following the Supreme Court’s reasoning in the *Finley* case, she explained that, even in the provision of subsidies, government cannot engage in viewpoint discrimination, and furthermore, that the city’s coercive actions amounted to an unconstitutional effort to penalize the museum and suppress the art being shown. Judge Gershon wrote: “there is no federal constitutional issue more grave than the effort by government



Yo Mama's Last Supper, 1996. © Renée Cox. Courtesy Robert Miller Gallery, New York.

officials to censor works of expression and to threaten the vitality of a major cultural institution as punishment for failing to abide by governmental demands for orthodoxy.”⁸¹

Giuliani described the court decision as “the usual knee-jerk reaction of some judges,” and vowed to appeal, but in March 2000, he settled the case and agreed to restore the museum’s funding.⁸² So matters stood until April 2001, when the mayor activated a largely dormant Cultural Affairs Advisory Commission and instructed it to establish “decency standards” for New York City’s public museums. The catalyst was another work by a black artist, Renée Cox’s nude *Yo Mama’s Last Supper*, again at the Brooklyn Museum, although this time the publicity and the level of sensationalism surrounding Giuliani’s disapproval of the work were more subdued.⁸³

Giuliani’s successor, Mayor Michael Bloomberg, had no interest in continuing the decency campaign. In February 2003, he appointed 21 new members to the Cultural Affairs Advisory Commission, including MOMA President-Emerita Agnes Gund and artist Chuck Close. The new members would provide assistance and advocacy for cultural groups, but would not screen for indecency.⁸⁴ Today, Department of Cultural Affairs program services director Len Detlor emphasizes: “these issues come up very infrequently, far less frequently than you would imagine. We just don’t get that many complaints.”⁸⁵

New York’s experience, like San Antonio’s and ultimately, Charlotte/Mecklenburg’s, suggests that efforts to censor art based on the “taxpayers’ money” rationale do not always succeed. While lawsuits were necessary in the short term to restore public funding for Esperanza and the Brooklyn Museum, in the long run, as the experience in Charlotte/Mecklenburg suggests, political support and good public relations are critical in maintaining censorship-free arts funding.

e II. FREE EXPRESSION POLICIES AMONG STATE AND LOCAL ARTS AGENCIES e

State Laws Recognizing Artistic Freedom

We found 32 state arts agencies with enabling legislation that explicitly recognizes artistic freedom. In establishing the Connecticut Commission on the Arts in 1965, for example, the state's General Assembly mandated "that all activities undertaken in carrying out the policies set forth in this chapter shall be directed toward encouraging and assisting, rather than in any way limiting, the freedom of artistic expression that is essential for the well-being of the arts."⁸⁶ Similar or identical declarations found their way into the 1965 laws establishing the Indiana, Maine, Missouri, New Hampshire, New York, and Oklahoma arts councils.⁸⁷ Colorado's law, with its origins in 1963, may have been the first to use this particular wording.⁸⁸ Similar language appears in the Kentucky, Michigan, and New Jersey laws passed in 1966;⁸⁹ the laws creating the Alabama, Arizona, Delaware, Idaho, Montana, Nevada, North Dakota, Rhode Island, South Carolina, Tennessee, and Wyoming arts councils in 1967;⁹⁰ and Mississippi's enabling legislation in 1968.⁹¹ Other state laws with similar or identical language "encouraging and assisting" the free expression "that is essential for the well-being of the arts" are found in Alaska, Florida, Georgia, Nebraska, and Wisconsin.⁹²

A few state laws expand on this general formula. Pennsylvania, instead of listing artistic freedom as one of several agency goals, devotes an entire statutory section to the subject. Titled "Interference With Artistic Expression or Cultural Programs," the law provides: "In the course of carrying out its powers and duties under this act, the council shall avoid any actions which would interfere with the freedom of artistic expression or with the established or contemplated cultural programs in any local community."⁹³

Minnesota, although without a separate code section, has a similar directive, clarifying that the board "shall insofar as reasonably possible," "avoid any actions which infringe on the freedom of artistic expression or which interfere with programs in the state which relate to the arts but which do not involve board assistance."⁹⁴

Maryland's 1967 law creating the State Arts Council has not one but two explicit references to artistic freedom. The first tracks the familiar language of many of the state laws: "All activities undertaken by the state" in promoting and funding the arts "shall be directed toward encouraging and assisting rather than in any way limiting the freedom of artistic expression which is essential for the well-

being of the arts.”⁹⁵ The second echoes the Pennsylvania and Minnesota laws: “In the course of exercising its powers and duties..., the Council shall avoid any actions which would interfere with the freedom of artistic expression or with the established or contemplated arts programs in any community.”⁹⁶

Finally, South Dakota’s 1966 law simply states that the arts, “in order to grow and flourish, depend upon freedom, imagination, and individual initiative.”⁹⁷ Although this is more ambiguous than the other enactments, we have classified it as a free-expression statement.

On the other hand, the closest that California’s law comes to mentioning free expression is its listing, as one of the arts council’s powers and duties, to “encourage artistic awareness, participation, and expression.”⁹⁸ This did not seem to us explicit enough to qualify as a statement in support of artistic freedom. (California’s 1975 amendment to its 1965 arts funding law also announced that the “legislature perceives that life in California is enriched by art,” and that the “source of art is in the natural flow of the human mind.”⁹⁹)

State and Local Agency Policies Relating to Artistic Freedom

State Policies That Reinforce Statutory Language

Of the 32 state agencies with free-expression language in their enabling laws, some back up the mandate with policies prominently featured on their Web sites or in other public documents; some do not advertise the policies at all; and a few, like Arizona and Tennessee, are governed by later legislation or policy statements that contradict artistic freedom. (For the Arizona and Tennessee experiences, see pages 38-39, below.)

Several states agencies’ free expression policies predate the nationwide controversies over government arts funding that erupted in 1989. The New York State Council on the Arts (NYSCA), for example, has since its founding counted “supporting ... artistic excellence and the creative freedom of artists without censure” among its missions.¹⁰⁰ According to Richard Schwartz, chair of the Council, this means supporting controversial art when it meets the agency’s standards of merit. “If our mission was only to fund things that were plain vanilla, I don’t know how we’d do it.”¹⁰¹

In Rhode Island, similarly, the State Council on the Arts lists on its Web site among its duties “to promote and protect freedom of artistic expression” in Rhode Island.¹⁰² RISCA executive director Randall Rosenbaum observes that “Rhode Island as a state has always been first and foremost a proponent of individual

freedom, religious and otherwise,” so that “a statement regarding intellectual freedom that’s inherent in the council’s enabling legislation would be a natural thing.”¹⁰³

In New Jersey, although there is no explicit free-expression language on the arts council’s Web site, its policy, according to Beth Vogel, program officer for the council’s Education and Artist Services, has been consistently to follow the statutory mandate to “encourage and assist freedom of expression in the performing and creative arts.”¹⁰⁴ In fellowship workshops throughout the state, Vogel says, staff assure potential grantees that decisions on funding “are not issue-driven,” and that the council will not reject proposals simply because the content may be sexual or religious. Nevertheless, she feels, the funding wars have taken their toll. Artists “are censoring themselves when they’re entering contests,” she says. Ten years ago, “you’d see a lot more nudes.” Artists have told her directly that they are now submitting “safer” work.¹⁰⁵

North Dakota has had a visible free expression policy since at least 1987, according to Janine Webb, executive director of the state’s arts council. The council augments the free expression language in its state legislation with a vision statement and strategic plan that include the goal of supporting individual artists’ “development, freedom of expression, and sustenance.”¹⁰⁶ Webb explains that North Dakota, a rural state with shrinking population, views the arts as a potential area for economic development. She and other North Dakota leaders believe that a welcoming climate for creativity will attract younger people, and that “freedom of expression is key to supporting artists.”¹⁰⁷

“If our mission was only to fund things that were plain vanilla, I don’t know how we’d do it.”

Several state agencies with free expression language sitting silently in their statute books adopted more public statements amid the galvanized climate of the arts funding wars. The Minnesota State Arts Board’s August 1989 resolution, for example, passed “in response to Congressional proposals to restrict the ability of the National Endowment for the Arts to make grants on the basis of free artistic expression,” articulated the Board’s “strong support of the original objectives of the Congress in the creating of the National Endowment for the Arts,” and expressed “its deep concern with any contemplated alteration in the landmark objectives of artistic freedom so clearly set forth in the legislation of 1965.” The resolution was to be conveyed “to the Minnesota Congressional delegation to indicate an undivided concern for prompt resolution of debate in favor of artistic freedom and an unwavering commitment by the federal government to support the arts and humanities.”¹⁰⁸ The resolution cannot currently be found on the board’s Web site, however.

The New Hampshire State Arts Council also reacted to the attacks on the NEA with a resolution recognizing its “great obligation and public responsibility in granting public funds,” while affirming that:

all activities supported with Council funds be directed toward encouraging the freedom of expression that is essential for the well-being of the arts and the people of New Hampshire. We fulfill our responsibility with the adoption of and adherence to a rigorous system of review by panels composed of arts professionals and New Hampshire citizens informed in the arts to recommend grants on the basis of artistic merit.¹⁰⁹

Again, the resolution is not now available on the council’s Web site.

When the Wisconsin Arts Board rewrote its mission statement in the early 1990s, it, too, incorporated free expression, declaring that the Board was “committed to creating an environment of free expression and open interpretation in which the arts can flourish.”¹¹⁰ However, the policy “doesn’t really enter in [our discussions]” during the grant application review process, according to Arts Board executive director George Tzougros. Tzougros says that the policy has had “not a big impact,” especially as the Board has made no controversial funding decisions to date.¹¹¹

Idaho provides another example of ambivalence. In this conservative mountain state, the free-expression policy articulated in the Arts Commission’s governing statute has become part of the Commission’s funding policies, and has evolved into a formal statement on “Freedom of Expression and Community Standards.” The

“Artists are censoring themselves when they’re entering contests. Ten years ago, you’d see a lot more nudes.”

statement begins: “The Commission is an advocate for and defender of the right of free speech for all citizens under the First Amendment of the Constitution of the United States”; but goes on to announce that “the Commission intends

that funded projects exhibit a sensitivity and responsiveness to community standards. The Commission recognizes the need for public support of the arts and understands the responsibilities that accompany the allocation of public funds.”¹¹²

The two most recent free expression statements come from Nevada and Georgia. The Nevada Arts Council incorporated artistic freedom in its guidelines beginning around 1998. (Its free-expression law has been on the books since 1967.) The policy reads: “Freedom of expression is paramount not only to a free society, but to the creation of art. The Nevada Arts Council bases its funding decisions on

the artistic quality of submitted artwork.”¹¹³ Once “an unspoken philosophy of the agency,” according to executive director Susan Boskoff, the official statement was not added to the guidelines in response to the funding debates of the 1990s. “We don’t like to respond to things like that – it gives them the weight they don’t deserve,” she says.¹¹⁴

Finally, in 2001 the Georgia Council for the Arts adopted a statement that the “freedom to create, view and interact with a diversity of artistic expression is essential to our democracy and fosters mutual respect for the beliefs and values expressed in the First Amendment.”¹¹⁵ “We wrote it, we put it in there, we completed a major strategic plan,” says the Council’s former executive director, Betsy Baker. That plan has involved sending the policy to each member of the Georgia legislature and participating in symposia on artistic freedom. “I think it’s very important for an agency to make its stand very clear on artistic expression,” Baker continues. “Obviously, you have to couch all this on freedom of expression in a very normal and natural tone. ... Agencies need to be very clear in their stand on that, at the same time realizing that you’re dealing with public dollars. Since it is public money you have an obligation to be respectful of those moneys at the same time [that] you’re educating the public; because I think there is a lot of educating to be done in this area.”¹¹⁶

States That Shy Away From Explicit Free-Expression Policies

If Idaho seeks to affirm artistic freedom while at the same time announcing its sensitivity to “community standards,” other states with legislation protecting free expression do not advertise the fact at all in their mission statements, grant guidelines, or other program materials. Of the 32 states with free expression statements in their enabling legislation, we found just 13 that include such language on their arts agencies’ Web sites or in other policies.¹¹⁷

Alaska is an example of the less assertive approach. Charlotte Fox, executive director of the Alaska State Council on the Arts, says that while the state law describing artistic freedom as “essential for the well being of the arts” is still on the books, “I don’t feel like it’s necessary to state it. It’s a little bit about stating the obvious.”¹¹⁸

The Missouri Arts Council takes a similar approach. Its 1965 enabling law lists among the Council’s duties “to encourage and assist freedom of artistic expression essential for the well-being of the arts.”¹¹⁹ This explicit language is omitted from the Council’s Web site, however, which instead lists more generally, among its eight guiding principles, the “vital role” that the arts play in “the life and well-being of the community,” the value of “innovation and creative expression in the arts,” and the

agency’s “commitment to the effective use of resources and to maintaining integrity and accountability in our distribution of public resources.”¹²⁰ When we asked Don Dyer, then program development specialist at the Council, about the discrepancy, he replied that he was not aware of the statute.



What Is the Proper Way to Display a U.S. Flag?
© “Dread” Scott Tyler. Courtesy of the artist.

He added that “a couple of years ago I put together a free expression policy, but then the director left, and a new director came in ... and it’s been sitting in a file in my cubicle.” He indicated that he would be submitting the draft to the new director and thanked us “for giving me that spark.”¹²¹

Other agencies candidly explain their reasons for not carrying over free expression legislative language into more visible materials. The Colorado Council on the Arts’ enabling law requires that all agency activities encourage and assist, “rather than in any way limiting,” artistic freedom, but when asked whether this policy appears in the Council’s more public documents, Fran Holden, executive director, exclaimed: “we wouldn’t dare put it in there!”

Holden explains that Colorado is an extremely conservative state, and while the free expression language was written in 1967, it is not a sentiment that would be broadly accepted by the legislature today. Holden notes that Council members, in making grant decisions, certainly recognize the importance of the legislation. However, the Council does not “beat our breasts about it.” “To be honest,” continues Holden, free expression “has not been an issue for us. So, we’re sort of just leaving things alone.”¹²²

States That Promote Artistic Freedom Absent Specific Statutory Language

We found four state agencies – Illinois, Iowa, Ohio, and Oregon – whose governing laws do not explicitly mention artistic freedom but that nevertheless have announced free-expression policies on their Web sites or in other public documents. In addition, the Washington State Arts Commission posts a mission statement that stresses cultivating “a thriving environment for creative expression,” but it does not explicitly embrace artistic freedom. Mary Frye, the Commission’s awards program manager, says “there has always been an internal unwritten perspective that freedom of speech is important.”¹²³ This seemed a bit too informal to qualify as a free-expression policy.

A high-profile battle over a student exhibit at the School of the Art Institute of Chicago in 1989 led the Illinois Arts Council to adopt a “Position on Freedom of Expression.” The controversial work, “Dread” Scott Tyler’s *What Is the Proper Way to Display a U.S. Flag?*, featured a flag on the floor and gave rise to outcry among legislators and veterans’ groups, as well as bomb threats to the Institute, which felt compelled to close the show.¹²⁴ Although the Illinois Arts Council did not fund the exhibit – it provided general funds to the School of the Art Institute for public programs, not for student shows – the Illinois legislature from that point on limited Council funding to the school to one dollar.¹²⁵

The Council’s position, while never formally published, was drafted after the Dread Scott incident, and is to be used by staff as a reference in the event of complaints about allegedly inappropriate funding decisions. It affirms that:

The Illinois Arts Council respects the integrity of an artist’s personal vision and his or her right to freedom of expression. The Council has respect as well for the public nature of the grants that we administer and we endeavor to ensure that these funds are used to support a wide variety of artistic viewpoints. Ensuring that all citizens have access to quality artistic programs is the Council’s primary goal.

In fulfilling that goal, the Council acknowledges that bold statement and challenging works may be at times troublesome to certain audience members. While our intention is not to insult or offend anyone, the meaning of an artist’s work is a matter about which responsible people can disagree. The activities, individual artists and other programs supported by the Council are judged on their aesthetic merits and presented as representative of the quality and diversity of the arts in Illinois.¹²⁶

Since the policy was written, the Council has not faced any controversies that would force the agency to test it.¹²⁷

The Iowa Arts Council also produced an artistic freedom policy in response to the crises of 1989 and the early 1990s. The Council sought the aid of Wayne Lawson, executive director of the Ohio Arts Council, which had been a focal point for controversy in 1990 when the Cincinnati Contemporary Arts Center and its director were criminally prosecuted for obscenity in connection with their showing of the traveling Mapplethorpe retrospective, *The Perfect Moment*. (A jury acquitted them, finding that the works had serious artistic value.¹²⁸) According to the Iowa Council’s community development coordinator, Julie Bailey, bringing in a peer with experience in the arts funding debate was “the best thing we could have done.”

Believing it was crucial that the statement be worded correctly to avoid potentially thorny differences in interpretation, the Council involved not only its staff, its board, and Lawson in its drafting; it also initiated public involvement in and awareness of the statement, and before finalizing it, the Council published a draft in its newsletter to give constituents “reaction time.”¹²⁹

The text that eventually emerged from this multifaceted discussion process is today a prominent part of the agency’s policy, and is highlighted on its Web site. It states:

The mission of the Iowa Arts Council is to support the arts for the benefit of all. Support of free speech is the centerpiece of this mission. The Council is an advocate for and defender of the right of free speech for all citizens under the First Amendment of the Constitution of the United States. The Council also recognizes the need for public support of the arts and understands the responsibilities that accompany the use of public funds. The Council seeks the advice of qualified Iowans through the use of review committees for funding recommendations. To uphold and maintain the highest artistic standards and to encourage excellence in the arts is a directive of the Council. The Council respects the integrity of an artist’s personal vision and right to freedom of expression. Attempts to control or censor the arts are rejected by the Council. The Council supports freedom of choice and access to the arts for all citizens.¹³⁰

In July 1990, the Oregon Arts Commission (OAC) also published a formal declaration on free expression. In conjunction with the (now defunct) Oregon Advocates for the Arts, it adopted “An Arts Policy for Oregon,” the announced goal of which was “to preserve and protect freedom of artistic expression in Oregon.” The Policy’s “Preamble” explains:

We recognize that art, by its very nature, must embrace risk if it is to succeed in reflecting, stimulating, and chronicling the rich, pluralistic fabric of ideas, experiences, passions, and commitments that mark and strengthen a free nation through freedom of expression. Though we expect that in our pluralistic society works of art will be created that offend certain groups, we are staunchly opposed to any measure that would inhibit free artistic expression in our society. In a fiercely independent democracy such as ours, we must ask ourselves which danger is greater – risking that someone might express themselves “offensively,” or risking the censoring of freedom of expression and the tyranny which could ensue from such a course.

The Policy itself states that:

because pluralism and basic freedoms are central to the American way of life, neither the State of Oregon nor any agency of general purpose government shall restrict or censor the free expression of any artist or artistic organization by any means. Considerations or actions of funding which the state, its counties, or municipalities render unto its citizenry shall be made on the basis of artistic quality, not on issues or matters of content.¹³¹

This statement, however, is “not something people really go back to and refer to at this point,” according to Christine D’Arcy, executive director of the Oregon commission. D’Arcy remarks that “it’s good policy stuff” but is essentially dormant; it has neither been officially re-affirmed nor repealed.¹³²

“A couple of years ago I put together a free expression policy, but then the director left, and a new director came in ... and it’s been sitting in a file in my cubicle.”

Finally, a policy written by the Ohio Arts Council in the early 1990s has also fallen away from the agency’s description of its mission. The statement notes “the responsibility that accompanies the allocation of public funds,” and the Council’s commitment to “the highest artistic standards.” It then asserts that:

freedom of expression is at the core of our social, cultural and political heritage. The Council rejects all attempts to control or censor the arts and supports the National Endowment for the Arts in its effort to create and sustain a climate where freedom of thought, imagination and inquiry are encouraged.¹³³

The policy is “something we’d have to have the current Council vote on before making it public again,” says Ohio Council communications manager Jami Goldstein.¹³⁴ As of 2002, there were no plans to bring it before the Council.¹³⁵ The Council’s Web site, however, does note among the “Public Purposes of the Arts”:

The arts help form an educated and aware citizenry – by promoting understanding in our diverse society, by developing competence in school and at work and by advancing freedom of inquiry and the open exchange of ideas and values.¹³⁶

Local Policies

In our sample of local agencies, we only found a few with publicized free-expression policies. (Many may be unstated, such as the “de facto” policy in New

“You’re entitled to your opinion, but so is the Arts Commission, and they decided to fund it.”

York City of “not interfering in the rights of freedom of expression of the groups that it supports.”¹³⁷) Chicago is one city with an explicit statement. As currently worded in the introduction to materials describing its Visual Arts Program, the city’s Department of Cultural Affairs “strives to foster freedom of

expression” as well as freedom of access.¹³⁸ According to DCA assistant commissioner Pat Matsumoto, the statement has been there since the early ’80s but has not been widely publicized or incorporated into the department’s other policies or program guidelines: “It’s a constitutional right, so we don’t feel the need to reestablish or reiterate it.”¹³⁹

Among less densely urban locales, the Arts Council of Winston-Salem and Forsyth County, North Carolina stands out for its 1995-96 “Value Statement,” featured prominently on its Web site, that “we stand in the belief ... that freedom of artistic expression is a fundamental human right.”¹⁴⁰ Similarly, the Web site for the Portland, Oregon Regional Arts & Culture Council states: “We value freedom of artistic and cultural expression as a fundamental human right.”¹⁴¹

In Santa Monica, California, the Arts Commission includes in its mission statement the belief that “it is our responsibility” to “honor and support artistic vision, artistic excellence and freedom of expression.”¹⁴² Cultural Affairs Coordinator Hamp Simmons says that if a constituent were to complain that one of Santa Monica’s funded projects was offensive, he would reply: “You’re entitled to your opinion, but so is the Arts Commission, and they decided to fund it.” The Commission “wouldn’t back off from a grant because somebody was offended by some odd element.”¹⁴³

Policies Limiting Artistic Freedom

We did not find any state or local arts agencies that have copied the “decency and respect” mandate that Congress imposed on the NEA in 1990, or a close equivalent. We did find a number of states that include “community standards” in their guidelines. For example, Louisiana, whose “Decentralized Arts Funding Program” disburses funds to eight regional agencies to ensure that each parish in the state receives arts support, includes among its “Evaluation Criteria” the application’s “objectives and community standards.”¹⁴⁴ The Ohio Arts Council’s

“Percent for Art” program, similarly, urges its advisory committee “to be sensitive to the immediate community” in decisions about the siting of public art.¹⁴⁵

We also found a handful of policies that were enacted in response to particular controversies, or that might be considered markers for restricting grants based on potentially controversial content. And we found one case, Georgia, in which the arts council reacted to the funding battles of the early 1990s by following the lead of Congress in its treatment of the NEA, and eliminating individual artists’ grants. It was “an unfortunate result of everything that was happening nationally and at the state level,” then-executive director Betsy Baker explains. But “we give money to organizations, and we’re hoping *they’re* funding individual artists, and of course they are.”¹⁴⁶

We do not include here restrictions on religious or sectarian events, which are found in a number of agency policies, since these seem to be aimed at avoiding violations of the First Amendment prohibition on “establishments of religion,” and not at disqualifying art because of objections to its content.¹⁴⁷ Similarly, we do not consider agency requirements that funded events be open to the public, or that grant recipients not engage in partisan political activity,¹⁴⁸ to threaten free expression in the same sense as moral or ideological restrictions such as “decency,” “community standards,” or hostility to “the gay lifestyle.” Of course, we recognize that in many cases, agencies’ restrictions on potentially controversial grants may be inexplicit, unofficial, and internalized.

In Texas, a restriction that inhibits the funding of art with sexual content arose from the NEA crises. In 1995, the state legislature added to the law governing the Texas Commission on the Arts a statement that “the commission shall not knowingly foster, encourage, promote, or fund any project which includes obscene material,” as defined in the state penal code.¹⁴⁹ The commission accordingly added an obscenity clause to its “Guide to Programs and Services” which repeats the terms of the new statute.¹⁵⁰ The provision is technically meaningless, because as a matter of law, any work that has serious artistic value and therefore is likely to receive funding cannot be legally obscene.¹⁵¹ But the legislature’s message seems clear enough – to avoid art with sexually explicit content.

The new wording was added “*absolutely* in the wake of the NEA case,” says former TCA executive director John-Paul Batiste. “It ended up in our strategy” in order to avoid being “mired” in the same kind of controversy. “The legislative codes were posed in much of the same language, and we thought, why do we need new laws? We will abide by what’s on the books. The laws have been on the books in Texas for well over fifty years.”¹⁵²

The Commission has not had occasion to test its obscenity provision. If a grant application seemed likely to involve “obscene” activities, Batiste says, the Commission would seek the advice of the state attorney general’s office: “We would write a small, simple letter asking the attorney general to review the matter, ... along with any [information on] the piece in question, or the attorney general would send a person out to any local community to review it.” According to Batiste, the agency would not be involved in this review process.¹⁵³

A variation on the theme of restrictive legislation comes from Arizona, which was the site of a passionate conflict over the exhibit *Old Glory: The American Flag in Contemporary Art*, at the Phoenix Art Museum in 1996. The show, which originated at the Cleveland Center for Contemporary Art, included such provocative works as Dread Scott’s *What is the Proper Way to Display a U.S. Flag?* and Kate Millett’s *The American Dream Goes to Pot*. The exhibit had caused no problem in Cleveland two years before, and the Phoenix museum did advance work to prepare the community; it even involved an American Legion representative to serve on the committee developing educational materials. Nevertheless, there were weeks of angry protests from veterans groups. The museum refused to dismantle the show, and continued to pursue a public relations strategy to explain its importance. Museum director Jim Ballinger commented: “What this exhibit celebrates is freedom in America. We have a story to tell and we’re not going to take away a crucial part of the story.”¹⁵⁴

The legislature responded, however, by inserting a provision in its 1998 legislation creating the Arizona Arts Endowment Fund, to be administered by the state Commission on the Arts. The provision states that no monies from the fund “may be spent for payment to any person or entity for use in desecrating, casting contempt on, mutilating, defacing, defiling, burning, trampling or otherwise dishonoring or causing to bring dishonor on religious objects, the flag of the United States, or the flag of this state.”¹⁵⁵ Arizona’s legislators were apparently unconcerned about the contradiction between this new provision and its 1967 law mandating that the commission “encourage and assist freedom of artistic and scholarly expression essential for the well-being of the arts.”¹⁵⁶ The new provision is probably unconstitutional because of its viewpoint bias (disqualifying from funding any art that expresses a disapproved viewpoint about religious objects or flags)¹⁵⁷; but like the “decency and respect” law that binds the NEA, it stands as a warning of the political vulnerability of free expression in arts funding.

The Tennessee Arts Commission (TAC) also has restrictions, or at least a ban on nudity in works exhibited in its gallery space. While preparing an exhibit of his work for the Commission’s gallery in 2002, artist Ernie Sandidge was told that TAC policy prohibited artworks featuring nude figures. When he protested on First

Amendment grounds, the Commission responded: “The TAC Gallery is not a designated public forum opened for exhibitions by all groups. Rather, the Gallery is a limited public forum with restrictions on the selection of works exhibited. One of the ... restrictions placed on all exhibits in the Gallery is no nude figures.”¹⁵⁸ Upon further inquiry from the National Coalition Against Censorship (NCAC), the TAC Gallery rescinded its invitation to Sandidge to show his work at all. The Commission said it had a no-nudes policy on file but would not fax or mail the document, telling the NCAC’s arts advocate that such records can only be read in person at the TAC offices by a Tennessee resident.¹⁵⁹

When we spoke with Rich Boyd, executive director of the TAC, he stated that the gallery space, like the agency’s headquarters, is in a state building, and is therefore governed by a policy which he referred to as “public act 1990, chapter 1092,” as amended, but did not describe.¹⁶⁰ The law in question prohibits obscenity and material that is deemed “harmful to minors,” however; it does not bar artworks depicting the human nude in state buildings or anywhere else.¹⁶¹ Hence, Boyd’s reliance on the statute was misplaced.

One of the local commissions we contacted, the Aspen-Snowmass Council for the Arts in Colorado, also restricts work in its gallery space. As explained by Cindy Bingham, director of the Red Brick Center for the Arts (which, she explains, is the arts council’s informal name), this small agency wants to ensure that the art it shows is appropriate for audiences that include toddlers through adults. She noted that nudity and violent content would probably be “inappropriate,” and that the gallery’s review committee ensures that displays are not “of a violent nature.” These policies are informal; Bingham is not aware of anything in writing. On the other hand, there are no restrictions relating to the council’s funding of other arts groups; “there is nothing in writing that would discriminate.” And the gallery has monthly artists’ receptions at which display rules are more relaxed; a recent exhibit, Bingham says, included a “full frontal nude.”¹⁶²



Las Siete Palabras, 2001. © Ernie Sandidge.
Courtesy of the artist.

The Arts Council of Greater Baton Rouge, Louisiana, operates in a similarly informal fashion. Grants director Martha Yancey knows of nothing in the council’s guidelines relating either to free expression or to explicit restrictions, but she notes that most funded programs “are community-based activities and in one way or another it is expected that the art would conform to whatever standards the community requires.” Among artists and nonprofits, she adds, there is a “general

understanding that things are done in propriety,” although she acknowledges that “there is no limit to the imagination.”¹⁶³

Some agencies have limitations that are not explicitly content-based but nevertheless may be used to restrict grantees’ artistic freedom. For example, JuDee Pettijohn, director of the Florida Division of Cultural Affairs, notes that free expression in arts funding is still the policy under state law, and that the agency “absolutely supports it.” However, because the funds are public, the agency’s mission is one of “access and inclusion.” Accordingly, the Division makes sure that all programs are accessible to children as well as adults. Art exhibits that are “open” are allowed, but if “anyone were to be barred from something, or an exhibit was members only, then that is not open.”¹⁶⁴

An example of this accessibility mission is detailed by a complaint that Florida faced ten years ago. According to Pettijohn, the Christian Coalition complained about an exhibit that was included in a general program the agency funded. The exhibit, at Valencia Community College, had “perceived religious themes with sexual overlays,” and was under lock and key in a private room. When addressing the complaint, the Division of Cultural Affairs did not deal with it as a free expression issue, but as an accessibility issue. Based on the exhibit’s inaccessibility, the agency determined that the state would not fund the exhibit. Valencia Community College was free to continue supporting it.¹⁶⁵

Another criterion that could be used to restrict controversial grants is “appropriateness.” For example, among the review criteria for its “Arts On Tour” program, the Kentucky Arts Council lists “the quality and appropriateness of artists and events presented in recent years in relation to the presenter’s community.”¹⁶⁶ Similarly, the Michigan Council for Arts and Cultural Affairs references appropriateness in its criteria for grant applications in the category of Community Services. The Council’s list of criteria poses the question: “Are the project activities appropriate for the community?”¹⁶⁷

In response to our inquiry about appropriateness, Lori Meadows, executive staff advisor with the Kentucky Arts Council, explained that this often relates to whether an artwork can be adequately displayed, or an event adequately performed, in a particular venue. In other situations, she said, the Council feels it is important to understand the local culture, so that touring works are evaluated based on their fit within a community. For example, “it wouldn’t do any good to bring in a group that would be so totally new to the community without doing some sort of community outreach, give it some kind of background or history to make sure it interests the community.”¹⁶⁸ Understood in this context, “appropriateness” is not necessarily a proxy for “decency and respect”-type restrictions, but it is vague enough to be used that way.

III. EXPERIENCE WITH FREE EXPRESSION POLICIES, AND PROCEDURES FOR HANDLING CONTROVERSY

How Have Free Expression Policies Fared in Practice?

Most agencies we interviewed reported that their free expression policies and funding decisions have not been tested in actual controversies. There are probably a number of reasons for this.

Agencies in some states, such as New York and California, seem to have solid political support. As Richard Schwartz of the New York State Council on the Arts reports, the agency has faced “nothing more than scattered” challenges to its funding decisions, including requests from one or two state legislators to stop providing general operating support to the Brooklyn Museum and Jewish Museum because of controversial shows.¹⁶⁹ Despite New York City Mayor Giuliani’s withholding of funds from the Brooklyn Museum because of its *Sensation* exhibit, the handful of state legislators’ complaints did not produce any serious threat to NYSCA. (The Jewish Museum issue involved a 2002 exhibit, *Mirroring Evil*, in which contemporary artists used Holocaust themes.)

Juan Carrillo, chief of grant programs for the California Arts Council, says that national arts funding controversies “have skipped across us like a stone on a lake; we’ve been slightly touched by it, but there’s not much effect.” The council, Carrillo points out, has funded such potentially controversial institutions as the Highways Performance Space and Gallery, which was co-founded by Tim Miller, one of the NEA Four. It has confronted no objections to that venue’s programming or any other council-funded projects aside from “sporadic letters from the Christian Right,” none of which have developed into more extensive or higher-profile complaints. The council even funded the installation of *Robert Mapplethorpe: The Perfect Moment* at the Berkeley Art Museum; and there was “NOTHING. It was disappointing,” Carrillo continues jokingly. “No controversy developed.”¹⁷⁰

In Rhode Island, similarly, arts council director Randall Rosenbaum attributes the lack of controversy to the state’s tradition of individual freedom and the strong stand of the agency. “We may have people that disagree with us on artistic reasons,” Rosenbaum says, “but no one has come after us on content restrictions.”¹⁷¹

Another reason for the relative lack of controversy is that agencies are doing their homework and reaching out to their communities in advance. In the late 1990s, for example, the Wisconsin Arts Board undertook public outreach programs



Tim Miller in *Glory Box*. Photo: Darrell Taylor.
Used with permission.

just as the board-funded Milwaukee Chamber Theater was preparing to mount a production of *Angels in America*, and when the play was generating controversy in Charlotte/Mecklenburg. “The way of dealing with it is to try to be preemptive of the controversy,” says George Tzougros, executive director of the board.¹⁷²

Similarly, when the Dallas Theater Center produced *Angels*, it launched an ambitious PR program six months in advance that included numerous meetings at Baptist churches, social service organizations, and ladies’ auxiliaries, among other groups. The production was a huge success.¹⁷³

The Ohio Arts Council also managed to anticipate controversy and avoid political damage in 1994 when it funded the *Old Glory* exhibit that later caused a firestorm in Arizona.¹⁷⁴ *Old Glory: The American Flag in Contemporary Art* was presented at the Cleveland Center for Contemporary Art, with no major repercussions. The council’s communication director, Jami Goldstein, writes that the visual arts program coordinator “believed that there weren’t problems in Cleveland because it was a less conservative community than the one in Arizona (which probably was demographically older – perhaps more veterans) and that in Cleveland they really emphasized the educational materials and opportunities. There was great signage accompanying the exhibition and the museum offered lectures which really helped frame the exhibition in an appropriate context. We know, as I’m sure you do, that how an organization chooses to educate the community can make all the difference in the world as to how the programming/exhibition is perceived by the community.”¹⁷⁵

Lisa Cordes of the Mid-America Arts Alliance notes that this sort of outreach – “tools to educate and contextualize” – are “most important free expression-wise.” The Alliance assists its affiliates with community outreach through study guides, programming assistance, and other educational tools. Because it runs a national touring exhibit service that has had its share of controversy, the MAAA has become expert in anticipating and managing political crises over confrontational art. (One potential crisis involved an exhibit of ceramics that included a Christ with Mickey Mouse ears, but it opened without a major incident.¹⁷⁶)

The New Jersey State Council on the Arts also reports an absence of challenges. Here, though, program officer Beth Vogel suggests another reason: applicants are submitting “safer” work.¹⁷⁷ And some funding agencies, likewise, are no doubt exercising caution. In addition to states like Colorado, whose agency head frankly asserts the need to avoid provoking a conservative legislature, Susan Boskoff of the Nevada Arts Council reports no serious problems – only a few complaints from legislators on behalf of constituents – but this is probably because the council is taking care to assure that the projects it funds are non-controversial. Boskoff says she “[doesn’t] want to call it self-censorship,” but adds: “there’s enough of an understanding regarding the fragility of our funding. If something comes down the pike that seems controversial, we might look into finding alternative funding sources for them.”¹⁷⁸

Boskoff adds that some potentially controversial works are legitimately denied funding on the basis of poor quality. She describes one recent submission for a visual arts fellowship that “could be defined as shock art. It was needlepoint of genitalia, and the level of artistry and quality was minimal.” The councilperson facilitating the discussion, however, focused on the subject rather than the quality, and described the work as “pornographic.” “I had to inform the chair that we don’t fund pornography,” Boskoff says.¹⁷⁹ This incident illustrates how easily judgments about offensive content may blend into judgments about lack of artistic merit.

On the other hand, the Nevada council has funded a Las Vegas theater company that presents “gay, lesbian, bisexual, and transgender plays,” Boskoff reports. “They’ve received funding and we haven’t heard anything. I think they’re advertising to a specific community. ... Nevada is a very bizarre state; there’s a lot of nudity in the casinos, but it’s also a very conservative state.”¹⁸⁰

In Iowa also, agency officials shrink from an assertive use of their statement on free expression. According to the community development coordinator, Julie Bailey, Iowa, like many other states, is going through “some pretty severe budget situations, so we have a lot of things to think about,” in terms of possibly troublesome grants. On the other hand, Bailey reports that the council has only once in recent years rejected a potentially controversial application – a project by dancer/choreographer Bill T. Jones – and in that instance, she says the grant denial was the result, in the end, of the applicant’s failure to provide sufficient detail on his project.¹⁸¹ Whether or not this was a pretext for denying funds to a potentially controversial grant would be difficult to determine.

The Chicago Department of Cultural Affairs also tries to avoid political repercussions. Assistant Commissioner Pat Matsumoto implies that funding for controversial art is provided at the expense of less volatile projects: “There are two issues

there: whether or not it's valid for taxpayers to provide funding for projects that challenge freedom of expression for an artist who wishes to do whatever he wishes to do – I would question that. And there's the issue of taste and pornography; by protecting those artists, we diminish the rights of the majority of artists." On the other hand, Matsumoto acknowledges that "what someone might describe as pornography, ... someone else [would describe] as artistic license." Once a work is on display, "the presumption is that the exhibitions team and the curator have looked at it from the point of view of the policy, and it's been approved."¹⁸²

Not only do some arts officials feel that controversial grants diminish the opportunities for less provocative artists; in some instances, they fear for the survival of funding itself. The director of one state agency whose enabling statute supports artistic freedom says: "We're strapped here, not fully staffed. In 1997, we fought the most horrific battle for our life, and we're still trying to move from being on the defensive to the offensive. ... Holding up the First Amendment is not the best way to deal with a conservative legislature. Our legislature is very conservative, and dealing with First Amendment issues, they'll immediately close up and vote against you." The agency would be eliminated, this director continues, "if we had to go through Karen Finley. There's absolutely no doubt; our legislature just wouldn't put up with it. ... At the time of the NEA controversy there were all these lies that were out there, and they're still out there now. ... Out here in grassroots America, they still think of the NEA that way. It's really sick – they *still* talk about Serrano and Mapplethorpe."¹⁸³

Yet another reason for the relative lack of controversy reported by the state agencies we contacted may be that protests over controversial art, when they occur, are usually focused at the local level, so that the organization presenting the work and, as in Cobb County and Charlotte/Mecklenburg, the local funding agency become the targets. Many state legislators who might otherwise be inclined to make an issue out of tax funding for a "pornographic" or "blasphemous" artwork may not see the issue as close enough to home to warrant attention. State legislators may also appreciate the economic benefits that a vigorous arts sector brings to the state.

Sometimes, agencies become involved in controversies that don't involve their own funding decisions. Washington's Mary Frye reports that the state arts council has received no complaints about funding, but it did, briefly, become embroiled in a 1981 battle over two murals in the state's legislative chambers when it defended the artists in the midst of legislators' efforts to remove the works. "At one point, the Governor's Office instructed us to have no further involvement in the controversy," writes Frye. "There was an attempt to cast an 'inappropriate' label on one work, but it was smoke and mirrors to disguise a lack of appreciation for the art."¹⁸⁴

Finally, of course, we did not contact every state agency – for the most part, only those with free expression statements or public policies; and of this group, several did not respond to our interview requests. Among local agencies, we selected a random sample and sought to interview only the 27 within the sample that either had free expression statements on their Web sites or that did not have Web sites at all.¹⁸⁵ Other local agencies have faced funding controversies, but they were not part of our random sample.

In Anchorage, Alaska, for example, controversy raged for several years in the 1990s over local funding for the Out North Theater, which presented gay-themed works by such groups as “Pomo Afro Homo.”¹⁸⁶ In Los Angeles, the County Arts Commission, which was part of our sample, indicated that it had not been involved in any controversies, but sent us to Mark Greenfield, director of the city-owned Watts Towers Arts Center, which is operated by the Los Angeles Cultural Affairs Department, an agency not on our list. Greenfield described a 2001 incident in which satiric paintings by Alex Donis that depicted police officers dancing with gang members inspired such turmoil that he and the city decided to close the show within three days of its opening.

“Our legislature is very conservative, and dealing with First Amendment issues, they’ll immediately close up and vote against you.”

Greenfield says he was “told in no uncertain terms that if I did not take the work down, it would be taken down for me. ... When you start dealing with something like this, it becomes a consideration of public safety. ... People on the west side [of Los Angeles] said, ‘why don’t you call in the police to protect the exhibition,’ but I didn’t want to call the police in, to cause *another* situation with a confrontation between the police and the community.” Looking back, Greenfield says: “My big mistake was, for a show that clearly dealt with community issues, that maybe I hadn’t read the community well enough to know they wouldn’t accept these things.”¹⁸⁷

Procedures For Anticipating and Handling Controversy

How prepared are state and local agencies to handle the next *Angels in America*, *Piss Christ*, or exhibit of artwork using the American flag? According to Lawrence Rothfield of the University of Chicago’s Cultural Policy Center, “careful crisis-management thinking before the fact about the array of interests and sensibilities within the public” is critically important. Without it, “the very communities that should be drawn into discussion will either reject it altogether or enter it enraged.”¹⁸⁸ Yet, although many agencies have free expression statements, relatively

few have specific procedures in place for anticipating and handling political attacks that may arise from challenging art.

For example, Susan Rothschild, deputy commissioner of the New York City Department of Cultural Affairs, feels that “the Brooklyn Museum controversy was so unique” that it cannot provide useful lessons for future conduct; “these are issues that have to be dealt with on a case-by-case basis.”¹⁸⁹ California, not having experienced serious political threats to arts funding, also takes a *laissez-faire* approach.

What would the California Arts Council do if controversy did erupt? “At one time we had tucked under our arms the Americans for the Arts or NASAA what-to-do-in-case kind of thing,” Juan Carrillo says. “We carried that around for a while, but now we don’t know where it is – nothing has happened.” Carrillo added that in case of crisis, “I *think* we’re well prepared. But I assume we’d run to the NEA and NASAA and probably some colleagues who have faced the same kind of thing.” Among them would be Ohio Arts Council director Wayne Lawson, who weathered the Mapplethorpe controversy and emerged with a free expression policy, although not one that is currently on the front burner.¹⁹⁰



Shadow and Sergeant Kooney, 2001 © Alex Donis.
From the collection of Armando Duron.

Oregon is another state without official procedures for handling controversy. “I’m not even sure what our first step would be,” says executive director Christine D’Arcy. But “we believe in artistic freedom. We don’t get many complaints. Oregon is, I don’t want to say polarized ... is equally balanced between people who really value freedom of expression and people who think projects funded with public funds should be subject to content restrictions.”¹⁹¹

Indiana, too, lacks a crisis communications policy. It is “something we’ve thought about doing,” says Indiana Arts Commission director Dorothy Ilgen, but unfortunately, no actual plan has been developed. In states like hers, Ilgen says, the government contribution to arts organizations is relatively small. “People vote with their feet. You can’t offend community standards very long and continue to survive.”¹⁹²

Another state official similarly lamented his agency’s ill-preparedness: “I wish we did have a protocol for dealing with [controversial] grants; that would make me comfortable. But we just keep our fingers crossed – it’s probably not a smart way.” He added that in his state, alliances with non-arts groups such as libraries and churches have been helpful in addressing controversies. “When you’re going up

against the Christian Coalition, which we usually are, having a church group behind us is very advantageous.”¹⁹³

We found four states – Minnesota, Idaho, Virginia, and Ohio – with specific procedures for anticipating and handling controversy. They range from rudimentary to extensive.

Minnesota’s are the most informal. Communications director Sue Gens reports that the agency expects whichever staff member is monitoring a peer panel review to “alert the executive director that something is coming up that could raise questions.” “It’s not that it would affect whether or not the activity is funded,” Gens assured us; “it’s just good to be ready with whatever rationale, responses, justifications – not to be surprised, I guess, is the thing.”¹⁹⁴

Idaho’s procedures are more detailed, though still relatively brief. The agency’s “Suggested Procedures in Event of a Censorship Challenge” are:

- 1) Have an official statement or policy that focuses on the process rather than the content.
- 2) Get the facts.
- 3) Collect materials that identify the artist, the exhibition, and the context of the material.
- 4) Involve the Board and key staff in the communication plan.
- 5) Use only a designated spokesperson.
- 6) If necessary, schedule a press conference and press release.
- 7) Send material to appropriate legislators.
- 8) Tell the whole story; use a straightforward, rather than a combative, approach.
- 9) Form coalitions with other arts organizations; activate networks.
- 10) Link the public benefit of the arts, accountability, and the free expression of ideas with the ICA mission and with those of other arts organizations.¹⁹⁵

The Virginia Commission for the Arts’ formalized procedure is divided into four stages: “First Steps,” “Preparation,” “Response,” and “Long Term.” “First Steps” include immediately alerting the executive director when reporters or “organizations with political agendas” call to inquire about particular grants. “Preparation” includes collecting information about a potentially controversial project (including its artistic significance); preparing talking points; and notifying the chair of the commission, the press secretary in the state office of education, the governor’s press office, and the director and lobbyist of Virginians for the Arts.

The “Response” portion of the policy involves disseminating the talking points to all members of the commission, keeping the secretary of education and the governor’s press office informed of press contacts, touching base with legislators in the affected districts, and responding to all published criticism of the commission or a grantee with letters to the editor. Finally, the “Long Term” section provides:

- e If the controversy lasts more than a few days, the Commission will send a letter to the directors of the arts organizations in the state that receive operating support from the Commission. The letter will explain the controversy and include the talking points for the directors to use if contacted by the media.
- e The Director will identify people with strong interviewing skills to appear on local television talk shows.
- e The Director will work with the administrator of the affected grantee to identify an appropriate person to sign an op-ed piece for the local newspaper.¹⁹⁶

Unlike the Idaho plan, which proposes the use of one designated spokesperson, the Virginia procedure contemplates that a number of people will be prepared to defend and explain the funding decision and the artwork at issue.

Peggy Baggett, executive director of the Virginia Commission, comments that agencies should “think about free expression and diversity in the arts ahead of time, so that you’re not making policy on the fly when a reporter is placing a microphone in your face.” Everyone should be in agreement on the agency’s response: “It’s important that if I go out to defend a decision, my board is backing me up.” She stresses the need to get out “ahead of the curve,” and “to have confidence in your decision-making process.”¹⁹⁷

Mary Frye of Washington agrees: “once a grant program has been publicly labeled by the press as pornographic [how they love these stories], even the strongest of your political supporters are going to shy away from making public statements in defense of the arts. How to re-spin the media is a highly desirable talent and would need to work hand-in-hand with the political strategy.”¹⁹⁸

The fourth state with formal procedures, Ohio, has the most detailed plan. The Ohio Arts Council’s “Crisis Communications Plan” is a six-page document containing four “General Principles,” eight “Crisis Management Principles,” and eleven “Crisis Communications Principles,” followed by two “Next Steps.” It was adapted

from a plan prepared by The Success Group, a management consultant, for the North Market Development Authority, an agency that manages a historical public marketplace in Columbus, Ohio.

Among the “General Principles” are that the executive director be the sole spokesperson assigned to handle inquiries; that a “crisis manager” be appointed along with an “ad hococracy” that is “best equipped” to deal with the situation; and that “all OAC board members defer to the spokesperson and rigorously refrain from *all* comment in *all* public places or circumstances.” The document specifies that the council should brainstorm to anticipate possible crises, prepare notification lists and notebooks for every person with a possible role in handling the crisis, “be wary of ‘emergency macho’” responses, and, “when an emergency does strike,” trust the “ad hococracy” rather than “an entrenched or untested bureaucracy” within the agency. It notes that this “ad hococracy” principle was “articulated by former Governor of Pennsylvania Dick Thornburgh in a paper on his management of the Three Mile Island crisis,” and adds: “It is also a good idea, in an emotionally charged crisis for the organization, to consult with outsiders who have no emotional investment in the outcome; perspective is often skewed by intense feelings.”¹⁹⁹

The Ohio plan goes on, under “Crisis Communications Principles,” to emphasize that “a media crisis plan is as important as a business plan.” It advises: “when a crisis hits, do not circle the wagons: Deal with the media head-on. ... Do not duck the press. Do not have the spokesperson’s calls screened. Make sure the spokesperson is always available. Nothing will influence the press negatively faster than if they sense you are hiding something. Work *with* them on the story they are going to write anyway.” In addition:

“When a crisis hits, do not circle the wagons: Deal with the media head-on. ... Nothing will influence the press negatively faster than if they sense you are hiding something.”

“if you have a bad story, tell it to the media before they discover it”; “do not use jargon”; use simple concepts and repeat them; do not be defensive; and “get everything out at once” (“omission can be more damaging than admission, and nothing is more certain to increase the shelf life of a story than slow, steady leaking of truths”).²⁰⁰

According to Ohio Arts Council communications manager Jami Goldstein, the agency’s procedures also involve assembling a fact sheet describing “what the situation is” and “what monies the individual or organization received. ... We send the fact sheet to the entire legislature; they’re our first and foremost priority – so they’re not blindsided by one of their angry constituents. That’s the primary step.

We make sure the legislators have no questions; then we basically field media calls.”²⁰¹

Sociologist Bethany Bryson criticizes the Ohio plan’s basic message that the agency’s current structure will be useless or even harmful. “If the plan is to scuttle the council out the back door while ‘experts’ distract the crowd, then they will abandon the very structure that they hope to preserve at the moment when it is most important to defend their goals and methods – when the public is watching. If their current structure really is harmful, they should change it,” she writes.²⁰²

Summarizing what has been learned over the difficult years of funding battles, NASAA provides several pointers for handling controversy. Most important, it says, is to develop a message that “links benefits, accountability, and freedom of expression” – in other words, to integrate free expression as an intrinsic part of the arts funding mission. NASAA also advises using only designated spokespersons; creating messages targeted to different audiences; framing the debate through accurate information without getting combative; establishing press strategies that include quick reaction time; and building strong relationships with allies and constituents well before the crisis hits.²⁰³



Caravaggio, *Madonna di Loreto*, Sant’Agostino, Rome

e CONCLUSION e

Official statements supporting free expression in arts funding can be helpful, especially if they are publicized on agencies' Web sites and in other materials, and not hidden in statute books. But free expression depends less on official statements than on the political situation in a particular locale, on the strength and commitment of leadership within the funding agency and local arts community, and on the ability to build alliances, set the terms of debate, and lay the groundwork for public understanding and support.

Many arts officials have very real concerns about their vulnerability to controversy – their lack of preparation, the fate of their already tenuous funding – and for some of them, artistic freedom is still too hot a subject to be discussed without risk of adverse consequences. On the other hand, there is an emerging sense that the traumas of the 1990s are behind us, that religious-right objections to art with feminist, gay, or allegedly blasphemous content do not represent a majority viewpoint, and that a proactive stance in favor of artistic freedom is not only politically viable but a necessary element of public arts funding.

As one NEA staffer commented during the attacks on *Piss Christ*: “Controversy has always been endemic to art. ... Even as far back as Caravaggio, people complained because he painted the Virgin too naturalistically with dirty feet.”²⁰⁴

e RECOMMENDATIONS* e

- e Create a free expression policy – or dust off one that is already on the books.
- e Undertake educational campaigns about artistic freedom. Involve the community.
- e Create opportunities for non-polarizing dialogue about controversial art.
- e Anticipate and prepare for controversies – if necessary, months in advance – through education and outreach.
- e Build alliances both within and outside the arts community.
- e Keep legislators and others in the power structure informed. Invite them to openings, and thank them for coming.
- e Have procedures in place for handling controversies, including a media communications plan.

* In addition to suggestions from those interviewed, these recommendations also draw on the *NCFE Handbook*, on NASAA's publication, "Facing Controversy," on communications from FEPP advisory board member Nan Levinson, and on discussion at the April 26, 2003 conference at Columbia University, *The Future Is Us: Arts Advocates of Tomorrow*.

ENDNOTES

1. Rev. Donald Wildmon, letter concerning Serrano's *Piss Christ*, Apr. 5, 1989, reprinted in *Culture Wars: Documents From the Recent Controversies in the Arts* (Richard Bolton, ed.) (NY: New Press, 1992), p.27.
2. *Congressional Record*, Vol. 135, No. 64, S5594 (May 18, 1989), reprinted in *Culture Wars*, *supra* n.1, p.29.
3. *Id.*, p.30.
4. See Lucy Lippard, "Andres Serrano: The Spirit and the Letter," *Art in America*, Apr. 1990, p.242. For details on the Serrano controversy, see Steven Dubin, *Arresting Images: Impolitic Art and Uncivil Actions* (NY: Routledge, 1992), pp.96-101; Michael Brenson, *Visionaries and Outcasts: The NEA, Congress, and the Place of the Visual Artist in America* (NY: New Press, 2001), pp.92-97; and other documents, including the Chronology, collected in *Culture Wars*, *supra* n.1.
5. See Steven Weil, "Tax Policy and Private Giving," in *Public Money and the Muse: Essays on Government Funding for the Arts* (Stephen Benedict, ed.) (NY: Norton, 1991), p.180 (quoting NEA Acting Chair Hugh Southern's concern that the NEA could become the "National Endowment for Nice Art").
6. National Campaign for Freedom of Expression, *NCFE Handbook to Understanding, Preparing for, and Responding to Challenges to Your Freedom of Artistic Expression* (Washington, DC: NCFE, 1998), p.ix.
7. National Assembly of State Arts Agencies, "Facing Controversy: Arts Issues and Crisis Communications," *The NASAA Advocate*, Vol. 4, No. 1, n.d.
8. See Kevin Mulcahy, "The Government and Cultural Patronage: A Comparative Analysis of Cultural Patronage in the United States, France, Norway, and Canada," in *The Public Life of the Arts in America* (Joni Cherbo & Margaret Wyszomirski, eds.) (E. Brunswick, NJ: Rutgers U. Press, 2000), pp.145-48.
9. *NCFE Handbook*, *supra* n.6, p.1.
10. Because of logistical and staff constraints, we were not able to search city and county ordinances for possible free-expression policies at the local level if such policies were not found through our Web searches or other leads.
11. This was evidently the result in *Hopper v. City of Pasco*, 241 F.3d 1067 (9th Cir. 2001), after a federal court of appeals ruled that city officials had created a "public forum" at city hall for the display of art; hence, they could not censor works based on perceived controversial content. For other court decisions on government exhibit spaces, see *Lebron v. National RR Passenger Corp.*, 69 F.3d 650, modified, 89 F.3d 39 (2d Cir. 1995) (rejecting an artist's claim that Amtrak's refusal to accept a political advertisement for its large display space in New York's Pennsylvania Station violated the First Amendment); *Henderson v. City of Murfreesboro*, 960 F. Supp. 1292 (M.D.Tenn. 1997) (holding that city officials' removal of a painting of a partial nude from city hall exhibit space that had been designated as a public forum violated the First Amendment); *Claudio v United States*, 836 F. Supp. 1219 (E.D.N.C. 1993), affirmed without opinion, 28 F.3d 1208 (4th Cir. 1994) (rejecting a First Amendment challenge to the removal of a painting displayed in a federal building lobby as part of the Public Buildings Cooperative Use Act).
12. *Congressional Record*, *supra* n.2, pp.29-30.
13. Milton Cummings, Jr., "Government and the Arts: An Overview," in *Public Money and the Muse*,

supra n.5, p.63; Elizabeth Kastor, "NEA Under Fire Over Controversial Photo," *Washington Post*, June 7, 1989, C1.

14. See the American Family Association's press release on the NEA, July 25, 1989, reprinted in *Culture Wars*, *supra* n.1, pp.71-72, and the Chronology and other documents collected in *Culture Wars*. See also Judith Tannenbaum, "Robert Mapplethorpe – The Philadelphia Story," 50(4) *Art Journal* 71 (winter 1991); Arthur Danto, *Playing With the Edge: The Photographic Achievement of Robert Mapplethorpe* (Berkeley: U.Cal. Press, 1996); Elizabeth Kastor, "Corcoran Cancels Photo Exhibit; Director Cites Fear of Political Uproar over Mapplethorpe Show," *Washington Post*, June 13, 1989, C1; Barbara Gamarekian, "Corcoran, to Foil Dispute, Drops Mapplethorpe Show," *New York Times*, June 14, 1989, C22.

15. Cummings, *supra* n.13, p.64.

16. *Bella Lewitzky Dance Foundation v. Frohnmayer*, 754 F. Supp. 774 (C.D.Cal. 1991).

17. *National Endowment for the Arts v. Finley*, 524 U.S. 569, 575-76 (1998); "The Independent Commission, Recommendations on the Issue of Obscenity and Other Content Restrictions," excerpt, in *Culture Wars*, *supra* n.1, p.261.

18. Amendment to the National Foundation on the Arts & the Humanities Act, 20 U.S.C. §954(d)(1); see *NEA v. Finley*, *supra* n.17.

19. See *Finley v. National Endowment for the Arts*, 795 F. Supp. 1457 (C.D. Cal. 1992), affirmed, 100 F.3d 671 (9th Cir. 1996), reversed (with the name switched to *NEA v. Finley*), 524 U.S. 569 (1998).

20. See Brenson, *supra* n.4, p.89; Mulcahy, "The Government and Cultural Patronage," *supra* n.8, p.164; Thomas Peter Kimbis, "Surviving the Storm: How the National Endowment for the Arts Restructured Itself to Serve a New Constituency," 27 *Journal of Arts Management, Law & Society* 139 (summer 1997); Jacqueline Trescott, "A Shrinking Canvas; NEA Chairman Plans Huge Staff Cuts at Arts Agency," *Washington Post*, Aug. 5, 1995, F3. Individual grants for jazz, literature, and traditional arts and crafts survived the 1995 legislation. "Why the exceptions?" one columnist asked. An NEA spokesperson explained that writers' groups "had banded together and hired a lobbyist, and that Melanie Griffith (who as an actress needs screenplays) had made a big hit in her meeting with Newt Gingrich." Walter Robinson, "Axe about to fall on the NEA," *Art in America*, Nov. 1995, p.27.

21. Jane Alexander, *Command Performance: An Actress in the Theater of Politics* (NY: Public Affairs, 2000). On the NEA's struggles during the 1990s, see Brenson, *supra* n.4; Cummings, *supra* n.13; the Chronology and documents collected in *Culture Wars*, *supra* n.1; Robinson, "Axe about to fall on the NEA," *supra* n.20; Carole Vance, "Reagan's Revenge: Restructuring the NEA," *Art in America*, Nov. 1990, pp.49-55; and the essays collected in *The Cultural Battlefield: Art Censorship and Public Funding* (Jennifer Peter & Louis Crosier, eds.) (Gilsum, NH: Avocus, 1995).

22. See the lower court decisions in *Finley v. NEA*, *supra* n.19.

23. *NEA v. Finley*, *supra* n.17, 524 U.S. at 587, quoting *Regan v. Taxation With Representation*, 461 U.S. 540, 548 (1983) and *Cammarano v. U.S.*, 358 U.S. 498, 513 (1959). Justice Antonin Scalia agreed with the result in *Finley*, but disagreed with the reasoning. The Court's decision sustained the constitutionality of the decency and respect law by "gutting it," Scalia asserted in a concurring opinion. Scalia said that it was perfectly constitutional to discriminate against artists on the basis of their political or cultural viewpoint when handing out government grants. *Id.*, 590 (Scalia, concurring). Justice David Souter was the only dissenter in *Finley*: he argued that the law clearly, and unconstitutionally, discriminated against "indecent" or "disrespectful" viewpoints. *Id.*, 600.

24. See, e.g., David Strauss, "The False Promise of the First Amendment," in *Unsettling "Sensation": Arts-Policy Lessons From the Brooklyn Museum of Art Controversy* (Lawrence Rothfield, ed.) (New Brunswick, NJ: Rutgers U. Press, 2001), p.44.
25. Senate Report No. 300, 89th Congress, 1st Session (Committee on Labor and Human Resources, 1965), pp.3-4.
26. National Foundation on the Arts & the Humanities Act, 20 U.S.C. §951(5) (original statute), now 20 U.S.C. §951(7). The new subsections (5) and (6), added in 1990, state that the government "must be sensitive to the nature of public sponsorship," that public funding "should contribute to public support and confidence in the use of taxpayer funds," and that the arts and humanities should foster "mutual respect for the diverse beliefs and values of all persons and groups." See Julie Van Camp, "Freedom of Expression at the National Endowment for the Arts: An Opportunity for Interdisciplinary Education," 30 *Journal of Aesthetics* 43, 56-57 (fall 1996).
27. Julie Van Camp, "National Endowment for the Arts," in *Encyclopedia of Aesthetics*, Vol. 3 (NY: Oxford U. Press, 1998), pp.333-34 (despite the Reagan Administration's recommendation for a 50% cut, the NEA budget was reduced by only 10%); see also Dubin, *supra* n.4, p.282; Livingston Biddle, *Our Government and the Arts* (NY: American Council on the Arts, 1988), p.316.
28. Mulcahy, "The Government and Cultural Patronage," *supra* n.8, p.163.
29. Robert Brustein, "Requiem," *The New Republic*, Mar. 27, 2000, pp.27-29. Brustein sarcastically placed ceramics, adobe church preservation, lacemaking, and "raven and eagle drumming" in the populist category.
30. Paul DiMaggio *et al.*, "The Role of Religion in Public Conflicts Over the Arts in the Philadelphia Area, 1965-1997," in *Crossroads: Art and Religion in American Life* (Alberta Arthurs & Glenn Wallach, eds.) (NY: New Press, 2001), p.119; see also Julie Van Camp, "Indecency on the Internet: Lessons From the Art World," in *1996-97 Entertainment, Publishing and the Arts Handbook* (Stephen Breimer *et al.*, eds.) (NY: Clark Boardman & Callaghan, 1996), pp. 255-75 (noting Congress's focus on visual depictions).
31. David Levy, president and director of the Corcoran Gallery, quoted in Kimbis, *supra* n.20.
32. Arthur Levitt, Jr., "Introduction," *Public Money and the Muse*, *supra* n.5, p.24.
33. Dubin, *supra* n.4, pp.11, 231; see also William Honan, "Congressional Anger Threatens Arts Endowment," *New York Times*, June 20, 1989, C15 (quoting former NEA chair Livingston Biddle as noting "a confluence of factors" contributing to the "worst firestorm" in the agency's existence, and noting especially the new "religious element").
34. E-mail from Professor Julie Van Camp, California State University, Mar. 15, 2003.
35. See Brenson, *supra* n.4, p.90.
36. AFA press release, *supra* n.14; see also Cummings, *supra* n.13, p.67 (describing Congressman Dana Rohrabacher's characterization of the 1989 debates as "us against a bunch of smug Ph.D types telling us what art is"); Kimbis, "Surviving the Storm," *supra* n.20.
37. On the other hand, by the mid-1990s, the NEA's press department had developed good relationships with many arts reporters and was able, by correcting misstatements, to forestall some attacks. E-mail from Jennifer Dowley, former director of NEA Museums and Visual Arts Program, Mar. 19, 2003.
38. *Final Report of the American Assembly*, in *Public Money and the Muse*, *supra* n.5, p.259.

39. See, for example, the essays in *The Politics of Culture* (NY: New Press, 2000) (Gigi Bradford et al eds.); *Public Money and the Muse*, supra n.5; and *The Public Life of the Arts in America*, supra n.8.
40. Paul DiMaggio & Becky Pettit, "Surveys of Public Attitudes Toward the Arts: What Surveys Tell Us About the Arts' Political Trials – and How They Might Tell Us Even More," *Arts Education Policy Review*, Vol.100, No.4 (Mar./Apr. 1999).
41. Paul DiMaggio & Bethany Bryson, "Public Attitudes Toward Cultural Authority and Cultural Diversity in Higher Education and the Arts," paper prepared for *The Arts of Democracy: The State, Civil Society and Culture* (Casey Blake, ed.) (Princeton, NJ: Woodrow Wilson Center Press, forthcoming); see also Paul DiMaggio, "Social Division in the United States: The Disparity Between Private Opinion and Public Politics," paper prepared for *The Fractious Nation: Unity and Division in Contemporary American Life* (Jonathan Rieder, ed.) (Berkeley: U. Cal. Press, forthcoming), p.1 (reports of a "culture war" that has created "polarization, fragmentation, and division in American society" may be consistent with what we see on television and in the press, but are not borne out by the facts).
42. Paul DiMaggio, "Social Division in the United States," supra n.41, p.2; see also Paul DiMaggio et al., "Have Americans' Social Attitudes Become More Polarized?" 102 *American Journal of Sociology* 690-755 (1966); Steven Tepper, "The Culture Wars: A Reassessment," background essay for Center for Arts & Culture conference, *Art, Culture, and the National Agenda* (1999), prepared as an occasional paper for the Center for Arts and Cultural Policy Studies, Princeton University (forthcoming) (examination of cultural conflicts in American cities suggests that "brushfires" are more common than "strident battles"; the "vast majority took place without name calling and attempts to discredit opponents").
43. See Margaret Wyszomirski, "Raison d'Etat, Raisons des Arts: Thinking About Public Purposes," in *The Public Life of the Arts*, supra n.8, p.50; and Joni Cherbo & Margaret Wyszomirski, "Introduction," in the same volume, p.16; Margaret Wyszomirski, "Policy Communities and Policy Influence: Securing a Government Role in Cultural Policy for the Twenty-First Century," in *The Politics of Culture*, supra n.39, p.94 (it can be argued that "many arts advocates have been unwittingly complicitous" in the travails of the NEA "because they have neglected key elements of what might be called the intellectual and political infrastructure of cultural policy").
44. "Facing Controversy," supra n.7.
45. E-mail from Roberto Bedoya, former director, National Association of Artists' Organizations, Apr. 8, 2003.
46. Utah Arts Council Mission/Goals, www.arts.utah.gov/goals.html (accessed 3/5/02); e-mails from Maryo Ewell, associate director, Colorado Council on the Arts, Mar. 24, 2003, Mar. 28, 2003; e-mail from Robert Lynch, director, Americans for the Arts, Mar. 24, 2003; e-mail from Kelly Barsdate, director of research, NASAA, Mar. 24, 2003.
47. Minnesota State Arts Board, *About the Arts Board*, www.arts.state.mn.us/about/aab2.html (accessed 4/10/03) (State Arts Society established in 1903; name changed to State Arts Council in 1963; renamed Minnesota State Arts Board in 1976); Minn. Stat. §129D.04.
48. New York State Council on the Arts, "About NYSCA," www.nysca.org/aboutnysca.html (accessed 2/20/02).
49. Washington Arts Commission, *Fiscal Year 2002 Annual Report*, p.4 (commission established in 1961); Washington Rev. Code §43.46; South Carolina Code Ann. §60-15-10 (1962; revised 1967).

50. Paul DiMaggio, "Decentralization of Arts Funding From the Federal Government to the States," in *Public Money and the Muse*, *supra* n.5, p.219; John Kreidler, "Leverage Lost: Evolution in the Nonprofit Arts Ecosystem," in *The Politics of Culture*, *supra* n.39, p.152.
51. Maryo Ewell, "Community Arts Councils: Where They Came From," paper prepared for Americans for the Arts and the Kenan Institute (fall 1999); e-mail from Maryo Ewell, Mar. 24, 2003.
52. DiMaggio, *supra* n.50, p.219; Kreidler, *supra* n.50, p.152; Mulcahy, "The Government and Cultural Patronage," *supra* n.8, p.146.
53. The NEA's congressional appropriation in 2003 was \$116.5 million, down from \$176 million in 1992. Bruce Weber, "Stratford-Upon-Main Street: Shakespeare on Tour, Thanks to N.E.A.," *New York Times*, Apr. 23, 2003, E1. Federal legislation in 1990 increased the percentage of NEA funds that must go to the states as direct grants, up from 20% in the original law, to a total of 35% by 1993. The states receive additional NEA funds for separate programs such as challenge grants. See Mulcahy, "The Government and Cultural Patronage," *supra* n.8, p.148; Cummings, "Government and the Arts," *supra* n.13, pp.74-75. Thanks to Julie Van Camp for explaining the intricacies of the state funding formulas.
54. Statement by Jonathan Katz, executive director of NASAA, at *The Future is Us: Arts Advocates of Tomorrow* conference, Columbia University, Apr. 26, 2003.
55. In early 2003, New Jersey Governor James McGreevey proposed to cut the entire \$18 million budget of the state arts council. A similar plan was offered in Missouri, and a committee of the Arizona legislature recommended zero funding as well. The previous year, California cut its support for arts and cultural programs by 41%; Massachusetts cut 62%. Arts advocates pointed out that eliminating arts funding was not only socially but economically destructive because of its adverse impact on businesses that rely on cultural patrons, for example, restaurants in downtown areas. Stephen Kinzer, "Some States Propose End to Arts Spending," *New York Times*, Feb. 20, 2003, E1; Jason Edward Kaufman, "U.S. Arts Funding in Crisis," *Forbes*, Apr. 15, 2003, www.forbes.com/lifestyle2003/04/15/cx_0415hot.html (accessed 4/18/03); National Assembly of State Arts Agencies, *Legislative Appropriations Annual Report: FY 2003*, summary, www.nasaa-arts.org/publications/legapp.shtml (accessed 2/25/03).
56. Cobb County Board of Commissioners, Resolution, Aug. 10, 1993; Proposed Amendment to Section 3-2-15.1 of the Code of Cobb County, Georgia, July 23, 1993 (on file at the Free Expression Policy Project).
57. Brian Britt, "Religious Right Runs Rampant: State of the Arts in Cobb County," *The Nation*, Feb. 14, 1994, pp.196, 198; Kathy Alexander, "Plan Would Cut Groups Supporting Gay Lifestyle," *Atlanta Journal & Constitution*, July 22, 1993, D3; Peter Applebome, "Vote in Atlanta Suburb Condemns Homosexuality," *New York Times*, Aug. 12, 1993, A16; Applebome, "Avoiding a Values Test, County Cuts All Arts Funds," *New York Times*, Aug. 26, 1993, A16; letter to Cobb County Commission Chairman Bill Byrne from state and national ACLU staff and local attorneys representing several arts organizations, Aug. 6, 1993 (on file at the Free Expression Policy Project).
58. Telephone interview with Elizabeth Whitlock, cultural affairs manager, Cobb County Parks, Recreation and Cultural Affairs Dept., Feb. 27, 2003. Whitlock adds that "the grants funding would have fizzled out on its own. Then, they had a complaint and that just led to funding being eliminated earlier."
59. "Money for the Arts: No Gays, Please, We're Carolinian," *The Economist*, Apr. 26, 1997, p.26; Tony Brown, "Charlotte Emerges Stronger From Anti-Gay Upheaval," *Plain Dealer*, May 7, 2000, p.51; see also "Arts Funding Generates Controversy in Charlotte, NC," *Artswire Current*, Apr. 8, 1997, www.nyfa.org/current_archive/1997/cur040897.html (accessed 3/4/03).

60. *The Economist*, *supra* n.59.
61. Resolution of the Mecklenburg County Board of County Commissioners in Support of Traditional Family Values and Further, A Resolution of Support of the Arts and Sciences, Where the Arts and Sciences Promote a Wholesome Family Agenda and Further, a Resolution Relieving the Arts & Science Council of the Distribution of County Taxpayer Dollars to the Arts, Mar. 27, 1997 (on file at the Free Expression Policy Project). The resolution had the effect of revoking \$2.5 million in funding to the Council – about ¼ of its \$11 million budget. “Money for the Arts,,” *The Economist*, *supra* n.59. Nineteen arts organizations that relied on Council grants for general operating support now had to petition the commissioners directly, among them the arts education center Spirit Square and an elementary school literacy program. Geoff Edgers, “The Arts Under Attack,” *Charlotte Observer*, Apr. 20, 1997, G1; *Artswire Current*, *supra* n.59.
62. *Artswire Current*, *supra* n.59.
63. Edgers, *supra* n.61; quoted in Barry Yeoman, “Art and States’ Rights,” *The Nation*, June 29, 1998, p.31.
64. Brown, *supra* n.59; telephone interview with Donna Drew Sawyer, vice president of communications, Arts and Science Council of Charlotte/Mecklenburg, Feb. 27, 2003; e-mail from Norma Munn, chair, New York City Arts Coalition, Apr. 28, 2003.
65. Quoted in Brown, *supra* n.59.
66. *Id.*
67. Telephone interviews with Bill Halbert, chief operating officer, Arts and Science Council of Charlotte/Mecklenburg, Aug. 14, 2002; Apr. 24, 2003. It is questionable whether the First Amendment would permit government officials to apply a general law against public nudity to prohibit nudity in a theatrical production. “Everybody would love to see a test case,” Halbert says; but “who can afford to do it?”
68. Quoted in *Esperanza Peace and Justice Center v. City of San Antonio*, 2001 U.S. Dist. LEXIS 6259 *3-4 (W.D. Tex. 2001).
69. *Id.*, *11-13.
70. *Id.*, *15-25.
71. *Id.*, *35-36, 59 n.92.
72. Telephone interview with John-Paul Batiste, then-executive director, Texas Commission on the Arts, Apr. 4, 2002.
73. Telephone interview with Graciela Sanchez, executive director, Esperanza Peace and Justice Center, Feb. 27, 2003.
74. Telephone interview with Len Detlor, director of program services, New York City Department of Cultural Affairs, June 3, 2002. To Detlor’s knowledge, the policy is not in writing.
75. *The Holy Virgin Mary* also had a background of floating cherub-like images that, on close inspection, were cut-outs of female buttocks. Other works that offended the mayor included Damien Hirst’s cross-sectioned animals in formaldehyde. See *Brooklyn Institute of Arts & Sciences v. City of New York*, 64 F. Supp. 2d 184, 191 (E.D.N.Y 1999); and the essays in *Unsettling “Sensation,” supra* n.24.
76. Quoted in *Brooklyn Institute of Arts & Sciences*, *supra* n.75, 64 F. Supp.2d at 191.
77. See David Halle, “The Controversy Over the Show *Sensation* at the Brooklyn Museum, 1999-

2000,” in *Crossroads*, *supra* n.30, pp.149, 151. The controversy was not entirely created by Giuliani: the museum publicized *Sensation* with a tongue-in-cheek “Health Warning” that it might cause “shock, vomiting, confusion, panic, euphoria and anxiety,” and an announcement (later rescinded) that nobody under 17 would be admitted unless accompanied by an adult. See Marjorie Heins, *Not in Front of the Children: “Indecency,” Censorship, and the Innocence of Youth* (NY: Hill & Wang, 2001), pp.254-55. The museum’s position was also compromised by revelations of ethically questionable arrangements with the show’s sponsor, Charles Saatchi. See James Cuno, “‘Sensation’ and the Ethics of Funding Exhibitions,” and Gilbert Edelson, “Some Sensational Reflections,” in *Unsettling “Sensation,” supra* n.24, pp.162, 171; David Barstow, “Biggest Donors Stood to Gain From Brooklyn Museum Show,” *New York Times*, Oct. 31, 1999, Metro, 1; David Barstow, “Art, Money and Control: Elements of an Exhibition,” *New York Times*, Dec. 6, 1999, A1.

78. One commentator wrote that few New Yorkers “were deceived by Giuliani’s theatrics.” Carol Becker, “The Brooklyn Controversy: A View From the Bridge,” in *Unsettling “Sensation,” supra* n.24, p.19. Giuliani later dropped out of the senatorial race for personal reasons.

79. Dinitia Smith, “A Scientist Rallies Allies for Besieged Art Museum,” *New York Times*, Oct. 4, 1999, E1; Barbara Stewart, “Some Arts Groups Silent on Museum Dispute,” *New York Times*, Oct. 11, 1999, E3.

80. These *amicus curiae* briefs are on file at the Free Expression Policy Project.

81. *Brooklyn Institute of Arts & Sciences*, *supra* n.75, 64 F. Supp. 2d at 193, 199-203. The decision also relied in part on *Cuban Museum of Arts & Culture v. City of Miami*, 766 F. Supp. 1121 (S.D.Fla. 1991), which found unconstitutional the City of Miami’s refusal to renew a museum’s lease in retaliation for exhibiting works by Cuban artists.

82. David Barstow, “Giuliani Ordered to Restore Funds to Art Museum,” *New York Times*, Nov. 2, 1999, A1; Alan Feuer, “Giuliani Dropping His Bitter Battle With Art Museum,” *New York Times*, Mar. 28, 2000, A1.

83. Elisabeth Bumiller, “Giuliani Names His Panel to Monitor Art at Museums,” *New York Times*, Apr. 4, 2001, B3; Elisabeth Bumiller, “Affronted by Nude ‘Last Supper,’ Giuliani Calls for Decency Panel,” *New York Times*, Feb. 16, 2001, A1.

84. “Manhattan: Mayor Names Cultural Advisers,” *New York Times*, Feb. 25, 2003, B4; David Saltonstall, “New City Art Panel Drawn Up,” *Daily News*, Feb. 25, 2003, www.nydailynews.com/news/local/story/62296p-58136c.html (accessed 3/4/03).

85. Telephone interview with Len Detlor, program services director, NYC Dept. of Cultural Affairs, June 3, 2002.

86. Connecticut Gen. Stat. §10-370.

87. Indiana Code Ann. §4-23-2-2(d); 27 Maine Rev. Stat. §404; Missouri Code §185.040.1(4); New Hampshire Code, §19-A; New York C.L.S. §301; 53 Oklahoma Stats. §162.

88. Colorado Rev. Stats. §23-9-102(1)(h). The historical note to the Colorado law refers to a 1967 enactment that had its source in Colorado Rev. Stats. 1963, §§3-18-10 and 3-18-11.

89. Kentucky Stats. §153.220(3); Michigan Code §2.124(4)(4); New Jersey Code §52:16A-26(c).

90. Alabama Code §41-9-45(4); Arizona Rev. Stats. §41-982(B)(4); Delaware Code §29-8727(2); Idaho Stats. §67-5605(4); Montana Code Ann. §22-2-106(4); Nevada Rev. Stats. §233C.090(1); North Dakota Code §54-54-05(4); Rhode Island Gen. Laws §42-75-7(4); South Carolina Code Ann.

§60-15-10 (established 1962; statute revised 1967); Tennessee Code §4-20-104(4); Wyoming Stat. §9-2-903(a)(v).

91. Mississippi Code Ann. §39-11-7(4).

92. Alaska Stat. §44.27.050(4); Florida Stat. §265.285(2)(f); Official Code of Georgia Ann., §50-12-23(4); Nebraska Code §82-312(4); Wisconsin Stat. §44.53(1)(d).

93. Pennsylvania Code §71-1530.7.

94. Minnesota Stat. §129D.04(2)(a).

95. Maryland Ann. Code art. 83A, §4-603.

96. Maryland Ann. Code art. 83A, §4-609.

97. South Dakota Code §1-22-1.

98. California Gov. Code §8753(a).

99. California Gov. Code §8750. According to Professor Monroe Price, this was a retreat from the language of the original 1965 law which grandly announced the “paramount” position of California as a cultural center “in the nation and the world.” Monroe Price, “State Arts Councils,” 27 *Hastings Law Journal* 1183, 1183-84 n.4 (1976).

100. New York State Council on the Arts, “About NYSCA,” www.nysca.org/aboutnysca.html (accessed 11/6/02).

101. Telephone interview with Richard Schwartz, chair, New York State Council on the Arts, Mar. 20, 2002.

102. Rhode Island State Council on the Arts, “About RISCA: General Information on the Rhode Island State Council on the Arts,” www.risca.state.ri.us/about.htm (accessed 5/19/03) (quoting Rhode Island Gen. Laws §42-75-7(4)).

103. Telephone interview with Randall Rosenbaum, executive director, Rhode Island State Council on the Arts, Mar. 20, 2002.

104. New Jersey Code §52:16A-26(c).

105. Telephone interview with Beth Vogel, program officer, Education and Artist Services, New Jersey State Council on the Arts, Mar. 10, 2003.

106. North Dakota Strategic Plan, www.state.nd.us/arts/new_on_site.htm (accessed 3/6/03).

107. E-mail from Janine Webb, executive director, North Dakota Council on the Arts, Mar. 6, 2003; telephone interview with Janine Webb, Feb. 6, 2003; see also Saving North Dakota, www.inforum.com/specials/savingnd/index2.cfm (accessed 4/26/03).

108. Minnesota State Arts Board, Resolution (Aug. 25, 1989) (on file at the Free Expression Policy Project).

109. New Hampshire State Council on the Arts, Resolution (Apr. 6, 1990) (on file at the Free Expression Policy Project); e-mail from Rebecca Lawrence, director, New Hampshire State Council on the Arts, Dec. 19, 2002.

110. Wisconsin Arts Board, “Our Mission,” arts.state.wi.us/static/general.htm (accessed 4/17/02).

The same Web page includes the statutory language (“encourage and assist freedom of artistic expression,” Wisconsin Stat. §44.53(1)(d)); and the Wisconsin Arts Board’s informational brochure repeats the “Mission Statement” language. *Wisconsin Arts Board* (2001), p.2.

111. Telephone interview with George Tzougros, executive director, Wisconsin Arts Board, Apr. 4, 2002.

112. “Use of Funds: Policies,” Idaho Commission on the Arts, www2.state.id.us/arts/grants.htm#policies (accessed 11/6/02). Even the NEA, although bound by the decency and respect law, highlights artistic freedom in its 2003-2008 *Strategic Plan*, which prominently states that “artistic work and freedom of expression are a vital part of any democratic society,” and also excerpts the “freedom of thought, imagination, and inquiry” language from its enabling law. National Endowment for the Arts, *Strategic Plan 2003-2008*, pp.3, 4, www.nea.gov/learn/Strategic/FY2003-2008StrategicPlan.pdf (accessed 4/18/03).

113. Nevada Arts Council, Artists’ Fellowship Guidelines (1999-2002) (on file at the Free Expression Policy Project).

114. Telephone interview with Susan Boskoff, executive director, Nevada Arts Council, Mar. 25, 2002.

115. Georgia Council for the Arts, *Grant Guidelines: Fiscal Year 2003* (2002), p.2, www.gaarts.org/pdfdocs/guides03.pdf (accessed 11/6/02).

116. Telephone interview with Betsy Baker, then-executive director, Georgia Council for the Arts, Mar. 20, 2002.

117. In addition to the states mentioned in the text – New York, Rhode Island, North Dakota, New Jersey, Minnesota, New Hampshire, Wisconsin, Idaho, Nevada, and Georgia – these are: Indiana (which simply reproduces, as an appendix to the *Indiana Arts Commission Policy Manual*, the 1965 law outlining the Council’s “Purposes and Duties,” among them “to encourage and assist freedom of artistic expression essential for the well-being of the arts”); Maine (whose Web site notes, as part of the Maine Arts Commission’s mission, to “encourage and assist freedom of artistic expression for the well-being of the arts,” www.mainearts.com/about/mission.shtml (accessed 4/25/03)); and Montana (whose Web site reproduces the statutory language listing among the duties of the Montana Arts Council “to encourage and assist freedom of artistic expression essential for the well-being of the arts,” www.art.state.mt.us/about/about_mission.htm (accessed 4/25/03)). It is possible that despite our searches, we overlooked free expression statements on some agency sites.

118. Telephone interview with Charlotte Fox, executive director, Alaska State Council on the Arts, Dec. 11, 2002.

119. Missouri Code §185.040.1(4).

120. Missouri Arts Council, “What is the Missouri Arts Council: A Brief Overview,” www.missouriartscouncil.org/html/about.shtml (accessed 4/17/03).

121. Telephone interview with Don Dyer, former program development specialist, Missouri Arts Council, Dec. 17, 2002; telephone message from Don Dyer, Dec. 18, 2002. When we tried to determine what happened to Dyer’s draft, we learned that he had resigned from the agency and that nothing had been done regarding the proposed policy. Telephone interview with Joan White, grants manager, Missouri Arts Council, Apr. 24, 2003; e-mail from William Meerbott, assistant director for administration, Missouri Arts Council, Apr. 28, 2003.

122. Telephone interview with Fran Holden, executive director, Colorado Council on the Arts, Dec. 18, 2002.

123. "About WSAC," www.arts.wa.gov (accessed 5/12/03); e-mail from Mary Frye, awards program manager, Washington State Arts Commission, Feb. 26, 2003. Similarly, the District of Columbia's arts agency told us that it follows a free-expression policy (telephone interview with Lionell Thomas, legislative and grants officer, D.C Commission on the Arts & Humanities, Mar. 10, 2003), but this was not reflected in the documents they faxed us, or on the commission's Web site.
124. Marja Mills, "Art Show Closed Amid Threats," *Chicago Tribune*, Feb. 28, 1989, 7.
125. Telephone interview with Rose Parisi, director, artists' services, local arts agencies, and technical assistance programs, Illinois Arts Council, Mar. 28, 2002.
126. Illinois Arts Council, *Illinois Arts Council Position on Freedom of Expression* (1989) (on file at the Free Expression Policy Project).
127. Telephone interview with Rose Parisi, Mar. 28, 2002.
128. Isabel Wilkerson, "Cincinnati Jury Acquits Museum in Mapplethorpe Obscenity Case," *New York Times*, Oct. 6, 1990, 1. For the legal definition of "obscenity," see n.151.
129. Telephone interview with Julie Bailey, community development coordinator, Iowa Arts Council, May 2, 2002.
130. Iowa Arts Council, General Policies and Priorities, www.culturalaffairs.org/iac/guidebook/gb05.htm (accessed 11/6/02). An earlier, and longer, version of this statement is found in NASAA's "Facing Controversy," *supra* n.7.
131. Oregon Arts Commission/Oregon Advocates for the Arts, *An Arts Policy for Oregon* (July 1990) (on file at the Free Expression Policy Project).
132. Telephone interviews with Christine D'Arcy, executive director, Oregon Arts Commission, Apr. 2, 2002, and Apr. 29, 2002.
133. *Ohio Arts Council: Guiding Principles*, n.d. (on file at the Free Expression Policy Project); also found in NASAA's "Facing Controversy," *supra* n.7.
134. Telephone interview with Jami Goldstein, communications manager, Ohio Arts Council, Mar. 20, 2002.
135. Telephone interview with Sue Newman, deputy director, Ohio Arts Council, Mar. 22, 2002.
136. Ohio Arts Council, *Guidelines*, www.oac.state.oh.us/guidelines/guide_intro.html (accessed 2/23/02).
137. Telephone interview with Len Detlor, June 3, 2002; see p.24.
138. City of Chicago, "Visual Arts," Department of Cultural Affairs, www.ci.chi.il.us/CulturalAffairs/VisualArts (accessed 11/6/02).
139. Telephone interview with Pat Matsumoto, assistant commissioner, Department of Cultural Affairs, City of Chicago, May 2, 2002.
140. Arts Council of Winston-Salem and Forsyth County, "Value Statement," www.intothearts.org/valStat.html (accessed 11/6/02); e-mail from Stephanie Nelson, Director of Marketing and Grants, Arts Council of Winston-Salem and Forsyth County, Mar. 13, 2003.
141. Portland, Oregon Regional Arts & Culture Council, "About Us – Core Values," www.racc.org (accessed 4/18/03).

142. Santa Monica Arts Commission, "About Us: Mission Statement," arts.santa-monica.org/sea/about (accessed 5/19/03).
143. Telephone interview with Hamp Simmons, cultural affairs coordinator, Santa Monica Cultural Affairs Division, June 7, 2002.
144. Louisiana Decentralized Arts Funding Program, www.crt.state.la.us/arts/decentrl.htm (accessed 3/5/02).
145. Ohio Arts Council Percent for Art Program Guidelines, www.oac.state.oh.us/percentforart/percent/pcntgl.htm (accessed 2/23/02).
146. Telephone interview with Betsy Baker, Mar. 20, 2002.
147. See, for example, Vermont Arts Council, *Opportunity Grants Guidelines, 2001-2003*, p.4 (no funding for events that are "predominantly religious or sectarian"); Washington State Arts Commission, *General Guidelines: Policies and Procedures, FY 2002*, p.3 (no funding for events "not commonly recognized as a general public event, that are an integral part of a specific religion or promote a religious observance").
148. E.g., Kansas Arts Commission, *Regulations and Policies for All Grant Contracts* (July 2, 2001) (no use of public funds for "lobbying, religious services, private functions, or any other non-public service function"); *West Virginia Commission on the Arts Grants Book*, www.wvculture.org/arts/grantsbk.html (accessed 4/14/03) (no funding for, among other things, dances, fundraisers, "country, pop or rock bands," and "magic acts").
149. Texas Gov't Code §444.021(b), as amended, Acts 1995, ch. 323.
150. Texas Commission on the Arts, *A Guide to Programs and Services*, www2.arts.state.tx.us/tcagrant/TXArtsPlan/Responsibilities.htm (accessed 11/6/02); telephone interview with John-Paul Batiste, then-executive director, Texas Commission on the Arts, Apr. 4, 2002.
151. For expression to be legally suppressible because obscene (and therefore without First Amendment protection), it must: (1) taken as a whole, depict or describe specific sexual or excretory activities in a manner that is "patently offensive as measured by contemporary community standards"; (2) taken as a whole, appeal to a "prurient" – i.e., a "shameful or morbid" – interest in sex or excretion; and (3) in the judgment of a reasonable person, lack "serious literary, artistic, political, or scientific value." *Miller v. California*, 413 U.S. 15, 24 (1973); *Brockett v. Spokane Arcades*, 472 U.S. 491 (1985); *Pope v. Illinois*, 481 U.S. 497 (1987).
152. Telephone interview with John-Paul Batiste, Apr. 4, 2002.
153. *Id.*
154. Quoted in Associated Press, "Veterans Protest Flag Exhibit," Mar. 26, 1996, artscenecal.com/ArticlesFile/PhoenixMsmFile/PAMAP0396.html (accessed 3/13/03); see also Michael Kiefer, "Legionnaire's Disease," *Phoenix New Times*, Mar. 4, 1996, www.phoenixnewtimes.com/issues/1996-04-04/news3.html/1/index.html (accessed 3/13/03); NASAA, "Facing Controversy," *supra* n.7; *Old Glory: The American Flag in Contemporary Art* (Cleveland: Cleveland Center for Contemporary Art, 1994) (the catalog for the exhibit, which was funded in part by the Ohio Arts Council).
155. Arizona Rev. Stats. §41-986(G).
156. Arizona Rev. Stats. §41-982(B)(4).

157. See the discussion of *NEA v. Finley*, pp.12-13; *Texas v. Johnson*, 491 U.S. 397 (1989) (prohibition on flag desecration is unconstitutional).
158. Quoted in e-mail from Hedy Weinberg, executive director, ACLU of Tennessee, Mar. 12, 2002.
159. Conversation with Svetlana Mintcheva, Arts Advocacy Coordinator, National Coalition Against Censorship, July 3, 2002; see also Press Release, "National Coalition Against Censorship Slams Tennessee Arts Commission's 'No Nudes' Policy," Mar. 21, 2002, www.freeexpression.org/newswire/0321_2002.htm (accessed 4/17/03).
160. Telephone interviews with Rich Boyd, executive director, Tennessee Arts Commission, Oct. 28, 2002; Mar. 5, 2003.
161. Tennessee Code Ann. §39-17-01; e-mail exchanges with Hedy Weinberg, executive director, Tennessee ACLU; Barry Friedman, Professor of Law, New York University, Feb.-Mar. 2003.
162. Telephone interviews with Cindy Bingham, director of Aspen-Snowmass Council for the Arts, doing business as the Red Brick Center for the Arts, Feb. 27, 2003, Mar. 21, 2003.
163. Telephone interview with Martha Yancey, grants director, Arts Council of Greater Baton Rouge, Mar. 21, 2003.
164. Telephone interviews with JuDee Pettijohn, director, Florida Division of Cultural Affairs, Dec. 11, 2002; Mar. 6, 2003.
165. *Id.* Another Florida incident, in 2001, involved threats by a few state legislators to cut funding to Florida Atlantic University because its theater department had staged Terrence McNally's play *Corpus Christi*, which features a gay Christ figure. The incident evidently did not involve the Division of Cultural Affairs, and the school refused to cancel the remaining performances. Associated Press, "Florida College Could Lose State Funding Over Gay Christ Play," Mar. 30, 2001, www.freedomforum.org/templates/document.asp?documentID=13564 (accessed 4/17/03).
166. Kentucky Arts Council, *Guidelines for FY2003: Kentucky Arts On Tour Grant Program*, www.kyarts.org/guide/prog3/aot_gdl.htm (accessed 3/3/03).
167. Michigan Council for Arts and Cultural Affairs, *Review Criteria*, [www.michigan.gov/documents/ HAL_MCACA_AP_Gdlns04_58101_7.pdf](http://www.michigan.gov/documents/HAL_MCACA_AP_Gdlns04_58101_7.pdf) (accessed 3/6/03). Similarly, Illinois' Short Term Artists Residency Program notes "quality and appropriateness of the activity planned" among its evaluation criteria. Illinois Arts Council, Short Term Artists Residency Program, [www.state.il.us/agency/iac/ Guidelines/opendeadlines/STAR.pdf](http://www.state.il.us/agency/iac/Guidelines/opendeadlines/STAR.pdf) (accessed 4/28/03). Other examples are Ohio's "Percent for Art" program, which bars works "that would be inappropriate or out of place in or on the building," Ohio Arts Council Percent for Art Program Guidelines, [www.oac.state.oh.us/percentforart/percent/ pctngl.htm](http://www.oac.state.oh.us/percentforart/percent/pctngl.htm) (accessed 2/23/02); and the Oregon Arts Commission's "Percent for Art" program, which directs its selection committee "to select artwork appropriate for each building." Oregon Arts Commission, Percent for Public Art Program, [www.oregonartscommission.org/public_art/ ?r=17&acc=0](http://www.oregonartscommission.org/public_art/?r=17&acc=0) art.econ.state.or.us/programs/percent.htm (accessed 2/29/03).
168. Telephone interview with Lori Meadows, executive staff advisor, Kentucky Arts Council, Apr. 2, 2002.
169. Telephone interview with Richard Schwartz, Mar. 20, 2002.
170. Telephone interview with Juan Carrillo, chief of grant programs, California Arts Council, Mar. 26, 2002.
171. Telephone interview with Randall Rosenbaum, Mar. 20, 2002.

172. Telephone interview with George Tzougros, Apr. 4, 2002.
173. Statement by Robert Yesselman, director, Dance/NYC, at *The Future is Us: Arts Advocates of Tomorrow* conference, Columbia University, Apr. 26, 2003.
174. *Old Glory: The American Flag in Contemporary Art*, *supra* n.154. See the description of the controversy over *Old Glory* in Phoenix, Arizona, p.38.
175. E-mail from Jami Goldstein, Mar. 14, 2003.
176. Telephone interview with Lisa Cordes, director of development and communications, Mid-America Arts Alliance, Feb. 28, 2002.
177. Telephone interview with Beth Vogel, Mar. 10, 2003. Vogel did note a 2001-02 brouhaha over the state's poet laureate, Amiri Baraka (formerly, Leroi Jones), who wrote a poem about the September 11, 2001 terrorist attacks on the World Trade Center which suggested that Jews knew in advance of the attacks. The arts council received many phone calls after Governor McGreevey called for Baraka's resignation, but the poet laureate was actually a program of the state's Council for the Humanities.
178. Telephone interview with Susan Boskoff, Mar. 25, 2002.
179. *Id.*
180. *Id.*
181. Telephone interview with Julie Bailey, May 2, 2002.
182. Telephone interview with Pat Matsumoto, May 2, 2002.
183. Telephone interview with executive director of a state arts agency who asked to be unnamed, May 3, 2002.
184. E-mail from Mary Frye, Feb. 26, 2003.
185. Appendix B shows which local agencies we contacted.
186. See "New York Audiences Get a Choice ... Will San Antonio and Anchorage Be So Lucky?" *Censorship News Online* (summer 1998), www.ncac.org/cen_news/cn70corpuschristi.html (accessed 4/24/03) (reporting that in 1997, the Anchorage Assembly stripped Out North of municipal funds for failing to produce only art that is "strictly mainstream ... that you would take your whole family to").
187. Telephone interview with Mark Greenfield, director, Watts Towers Arts Center, June 7, 2002. Greenfield said the Arts Center suggested that after the show was taken down, a dialogue might be arranged between the artist and the members of the community who had proved so closed to his work, but Donis declined. See also Press Release, Sept. 27, 2001, www.alexdonis.com/war/press2.htm (accessed 4/24/03); "Free Speech Groups, Artists, Protest Removal of Exhibit," Oct. 11, 2001, www.ncac.org/issues/alexdonis.html (accessed 4/24/03).
188. Lawrence Rothfield, "Introduction," in *Unsettling "Sensation," supra* n.24, p.8.
189. Telephone interview with Susan Rothschild, deputy commissioner, New York City Department of Cultural Affairs, June 3, 2002.
190. Telephone interview with Juan Carrillo, Mar. 26, 2002.
191. Telephone interviews with Christine D'Arcy, Apr. 2, 2002, and Apr. 29, 2002.

192. Telephone interview with Dorothy Ilgen, director, Indiana Arts Commission, Mar. 10, 2003.
193. Telephone interview with an agency official who asked to be unnamed, May 3, 2002.
194. Telephone interview with Sue Gens, communications director, Minnesota State Arts Board, Apr. 1, 2002.
195. Idaho Commission on the Arts, "Suggested Procedures in Event of a Censorship Challenge" (on file at the Free Expression Policy Project).
196. Virginia Commission for the Arts, "Response to Controversies about Commission Grantees" (on file at the Free Expression Policy Project).
197. Telephone interview with Peggy Baggett, executive director, Virginia Commission for the Arts, Dec. 12, 2002.
198. E-mail from Mary Frye, Feb. 26, 2003.
199. Ohio Arts Council, "Crisis Management and Communications" (Feb. 10, 1998) (on file at the Free Expression Policy Project).
200. *Id.* (italics in the original).
201. Telephone interview with Jami Goldstein, Mar. 20, 2002.
202. E-mails from Professor Bethany Bryson, University of Virginia, Mar.-Apr. 2003.
203. "Facing Controversy," *supra* n.7.
204. Susan Lubowsky, then-director of the NEA Visual Arts Program, quoted in Kastor, "NEA Under Fire," *supra* n.13.

INDEX

- Accountability, 3, 12, 14-19, 50
“Ad hococracy,” 3, 49-50
Alabama, 27
Alaska, 27, 31
Alaska State Council on the Arts, 31
Alexander, Jane, 12-13, 17
Alliance of Resident Theaters/New York, 25
American Assembly, 17
American Association of Museum Directors, 25
American Association of Museums, 25
American Civil Liberties Union, 20, 57n
American Dream Goes to Pot, The, 38
American Family Association, 6, 16, 54n
American Legion, 38
Americans for the Arts, 9, 10, 46
Anchorage, Alaska, 45
Angels in America, 21, 22, 42, 45
Anti-intellectualism, 15-16, 55n
“Appropriateness,” 39, 40, 44, 64n
Arizona, 27, 28, 38, 42, 57n
Arizona Arts Endowment Fund, 38
Arizona Commission on the Arts, 38
Armey, Dick, 11
Art Institute of Chicago, 33
Arts Midwest, 9
Aspen-Snowmass Council for the Arts, 39
- Baggett, Peggy, 48
Bailey, Julie, 33-34, 43
Baker, Betsy, 31, 37
Ballinger, Jim, 38
Baraka, Amiri (Leroi Jones), 65n
Batiste, John-Paul, 23, 37-38
Baton Rouge, Louisiana Arts Council, 39-40
Bedoya, Roberto, 18
Bella Lewitzky Dance Foundation v. Frohnmayer, 54n
Bennett, William, 18
Berkeley Art Museum, 41
Biddle, Livingston, 55n
Bingham, Cindy, 39
Bloomberg, Michael, 26
Boskoff, Susan, 31, 43
Boyd, Rich, 39
Brenson, Michael, 16
Bronx Zoo, 25
Brooklyn Museum of Art, 24-26, 41, 46, 58-59n
Brooklyn Institute of Arts & Sciences v. City of New York, 25-26, 58n, 59n
Brustein, Robert, 15, 55n
Bryson, Bethany, 50
Buchanan, Patrick, 18
- California, 28, 41, 57n, 60n
California Arts Council, 28, 41, 46
Canon City, Colorado, 19
Caravaggio, 50-51
Carrillo, Juan, 41, 46
Catholics, 24
Charlotte Observer, 21
Charlotte Repertory Theater, 21-22
Charlotte/Mecklenburg Arts and Science Council, 21-22, 58n
Charlotte/Mecklenburg, North Carolina, 10, 21-22, 26, 42, 44
Chicago, 36
Chicago Dep’t of Cultural Affairs, 36, 43-44
Christian Coalition, 16, 40, 47
Christian right, 18, 21-23; see also *Religious right*
Cincinnati Contemporary Arts Center, 33
Claudio v. United States, 53n
Cleveland Center for Contemporary Art, 38, 42, 63n
Clinton, Hillary, 24
Close, Chuck, 26
Cobb Children’s Theater, 20
Cobb County, Georgia, 10, 20-21, 23, 44, 57n
Cobb Symphony Orchestra, 20
Cobb Youth Chorus, 20
Cold War, 4, 16
Colorado, 27, 32, 43
Colorado Council on the Arts, 32
“Community standards,” 20, 21-22, 36, 39-40
Congress, U.S., 6-7, 9, 11-13, 16, 19, 29, 37
Connecticut Commission on the Arts, 27
“Contract With America,” 12
Corcoran Gallery of Art, 11
Cordes, Lisa, 42
Corpus Christi, 64n
Cox, Renee, 25-26
Cuban Museum of Arts & Culture v. City of Miami, 59n
“Culture wars,” 18, 56n
- Dallas Theater Center, 42
D’Amato, Alphonse, 6-7, 11
D’Arcy, Christine, 35, 46

Davidson, North Carolina, 22
 “Decency and respect” law, 9, 12, 36, 54n, 61n;
 see also *National Endowment for the Arts v. Finley*
 Delaware, 27
 Detlor, Len, 26, 58n
 DiMaggio, Paul, 15, 17, 56n
 District of Columbia, 19, 62n
 D.C. Commission on the Arts & Humanities,
 62n
 Donis, Alex, 45-46
 Dowley, Jennifer, 55n
 Dyer, Don, 32, 61n

Esperanza Peace and Justice Center, 22-23
Esperanza Peace and Justice Center v. City of San
Antonio, 23, 58n

Fear of Flying, 14
 Feminism, 15, 51
 Ferrer, Fernando, 25
 Fields, C. Virginia, 25
 Finley, Karen, 6, 12, 17, 44
Finley case, 12-13, 25; see also *National Endowment*
for the Arts v. Finley
 First Amendment, 4, 5, 12-13, 25-26, 30, 31, 34,
 38-39, 44-45, 53n, 58n
 Flag desecration, 38
 Fleck, John, 12
 Florida, 27, 64n
 Florida Atlantic University, 64n
 Florida Division of Cultural Affairs, 40, 64n
 Fox, Charlotte, 31
 Frick Collection, 25
 Frohnmayer, John, 12, 15
 Frye, Mary, 32, 44, 48

Gays and lesbians, 6, 15, 20, 22-23, 43, 51
 “General standards of decency,” 9, 12-13; see
 also “Decency and respect” law
 Gens, Sue, 47
 Georgia, 27, 30, 37, 61n
 Georgia Council for the Arts, 31
 Gershon, Nina, 25-26
 Gingrich, Newt, 54n
 Giuliani, Rudolph, 24-26, 41
 Goldstein, Jami, 35, 42, 49-50
 Greenfield, Mark, 45, 65n
 Griffith, Melanie, 54n

Guam, 19
 Guare, John, 21
 Gund, Agnes, 26

Halbert, Bill, 22, 58n
 “Harmful to minors,” 39
 Helms, Jesse, 6-7, 11, 14, 15
 “Helms Amendment,” 11-12
Henderson v. City of Murfreesboro, 53n
 Highways Performance Space and Gallery, 41
 Hirst, Damien, 58n
 Holden, Fran, 32
Holy Virgin Mary, The, 24, 58n
 Homophobia, 13, 15, 20-23
Hopper v. City of Pasco, 53n
 Hughes, Holly, 12, 16
 Hwang, David Henry, 20

Idaho, 27, 31, 47, 61n
 Idaho Arts Commission, 30, 47, 48
 Ilgen, Dorothy, 46
 Illinois, 32
 Illinois Arts Council, 33, 64n
 Indiana, 27, 46, 61n
 Indiana Arts Commission, 46, 61n
 “Independent Commission,” 12, 54n
 Iowa, 32, 43
 Iowa Arts Council, 33-34

James, Bill, 21
 Jewish Museum, 25, 41
 Johnson Administration, 16
 Jones, Bill T., 43
 Jong, Erica, 14

Kansas Arts Commission, 63n
 Kennedy Administration, 16
 Kentucky, 27
 Kentucky Arts Council, 40
 Kushner, Tony, 21

Las Siete Palabras, 39
 Las Vegas, Nevada, 43
 Lawson, Wayne, 33-34, 46
Lebron v. National RR Passenger Corp., 53n
Lips Together, Teeth Apart, 20
 Los Angeles County Arts Commission, 45
 Los Angeles Cultural Affairs Dep’t, 45
 Louisiana, 36

M. *Butterfly*, 20, 22
 Maine, 27, 61n
 Maine Arts Commission, 61n
 Mapplethorpe, Robert, 3, 6-8, 11, 16, 17, 33, 44, 46
 Marsicano, Michael, 21-22
 Maryland, 27
 Maryland State Arts Council, 27
 Massachusetts, 57n
 Matsumoto, Pat, 36, 43-44
 McCarthyism, 21
 McGreevey, James, 57n, 65n
 McNally, Terrence, 20, 64n
 Meadows, Lori, 40
 Mecklenburg County Commissioners, 21, 58n;
 see also *Charlotte/Mecklenburg Arts and Science Council*
 Media, 6, 16, 47-50, 52, 55n
 Metropolitan Museum of Art, 25
 Michigan, 27
 Michigan Council for Arts & Cultural Affairs, 40
 Mickey Mouse, 42
 Mid-America Arts Alliance, 9, 42
 Miller, Tim, 12, 41-42
Miller v. California, 63n; see also *Obscenity*
 Millett, Kate, 38
 Milwaukee Chamber Theater, 42
 Minnesota, 19, 27, 28, 47, 61n
 Minnesota State Arts Board, 29, 56n
 Mississippi, 27
 Missouri, 27, 57n
 Missouri Arts Council, 31-32, 61n
 Montana, 27, 61n
 Montana Arts Council, 61n
 Mulcahy, Kevin, 14-15
 Museum of Modern Art, 25, 26

Nation Magazine, 20
 National Assembly of State Arts Agencies (NASAA), 8, 18, 46, 50
 National Association of Artists' Organizations, 12, 18
 National Campaign for Freedom of Expression (NCFE), 7-8
 National Coalition Against Censorship, 4-5, 39
 National Endowment for the Arts, 2, 4, 6-8, 9, 11-18, 19, 29, 35-37, 51, 53n, 54n, 57n, 61n
National Endowment for the Arts v. Finley, 12-13, 54n, 64n

 National Endowment for the Humanities, 14
 National Foundation on the Arts & Humanities Act, 14, 54n, 55n
 "NEA Four," 12
 Nebraska, 27
 Nevada, 27, 30, 43, 61n
 Nevada Arts Council, 30-31, 43
 New Hampshire, 27, 61n
 New Hampshire State Arts Council, 30
 New Jersey, 27, 29, 57n, 61n
 New Jersey Council on the Humanities, 65n
 New Jersey State Council on the Arts, 29, 43, 65n
 New York City, 10, 24-26, 36, 41
 New York City Arts Coalition, 24, 25
 New York City Council, 25
 New York City Cultural Affairs Advisory Comm'n, 26
 New York City Cultural Institutions Group, 25
 New York City Dep't of Cultural Affairs, 24, 46, 58n
 New York Foundation for the Arts, 25
 New York Hall of Science, 25
 New York Historical Society, 24
 New York State, 27, 41, 61n
 New York State Assembly, 25
 New York State Council on the Arts, 19, 28, 41
 North Dakota, 27, 29, 61n
 Northern Mariana Islands, 19
 Nudity, 21-21, 29-30, 38-39, 53n, 58n

 Obscenity, 11, 33, 37, 39, 63n
 O'Connor, Sandra Day, 13
 Ofili, Chris, 24
 Ohio, 32, 47
 Ohio Arts Council, 35, 36-37, 42, 46, 48-50, 63n, 64n
 Ohio State University, 17
 Oklahoma, 27
Old Glory: The American Flag in Contemporary Art, 38, 42, 63n
 Oregon, 32, 46
 Oregon Advocates for the Arts, 34
 Oregon Arts Commission, 34-35, 64n
 "Out at the Movies" film festival, 23
 Out North Theater, 45

PazArte, 22-23
 Pennsylvania, 27, 28
 People for the American Way, 20
 Pettijohn, JuDee, 40

Phoenix Art Museum, 38
Piss Christ, 6, 11, 15, 45, 51
 "Political correctness," 18
 Pomo Afro Homo, 45
 Portland, Oregon Regional Arts & Culture Council, 36
 Procedures (for handling controversy), 5, 9, 45-50
 "Public forum," 53n
 Puerto Rico, 19

Quincy, Illinois, 19

Racial minorities, 15, 22
 Reagan Administration, 14, 55n
 Reagan, Ronald, 16
 Red Brick Center for the Arts, 39
 Religious right, 6, 11, 16, 21, 51, 55n
 Rhode Island, 27, 28-29, 41, 61n
 Rhode Island State Council on the Arts, 28-29, 41
Robert Mapplethorpe: The Perfect Moment, 11, 33, 41
 Rohrabacher, Dana, 55n
 Rosenbaum, Randall, 28-29, 41
 Rothfield, Lawrence, 45
 Rothschild, Susan, 46

Saatchi, Charles, 59n
 Saatchi Collection, 24-25, 59n; see also *Sensation*
 Samoa, 19
 San Antonio, Texas, 10, 22-23, 26
 San Antonio Dep't of Arts and Cultural Affairs, 22-23
 Sandidge, Ernie, 38-39
 Santa Monica Arts Comm'n, 36
 Scalia, Antonin, 54n
 Schwartz, Richard, 28, 41
 Senate, U.S., 6, 11, 24
Sensation: Young British Artists from the Saatchi Collection, 24-25, 41, 58-59n
 Serrano, Andres, 5, 6, 11, 16, 44
 Shakespeare, William, 15
 Simmons, Hamp, 36
Six Degrees of Separation, 21
 Souter, David, 44n
 South Carolina, 19, 27
 South Dakota, 28
 Southern, Hugh, 11, 53n
 Staten Island Historical Society, 25
 Success Group, The, 49
 Supreme Court, U.S., 13

Texas Commission on the Arts, 22, 36-37
 Tennessee, 27, 28
 Tennessee Arts Commission, 38-39
 Tepper, Steven, 56n
 Theatre in the Square, 20
 Thomas, Lionell, 62n
 Thornburgh, Dick, 49
 Tzougros, George, 30, 42
 Tyler, "Dread" Scott, 32, 33, 38

U.S. Virgin Islands, 19
 University of Chicago Cultural Policy Center, 45
 Utah, 19

Valencia Community College, 40
 Vallone, Peter, 25
 Van Camp, Julie, 55n, 57n
 Verdi, Giuseppe, 15
 Vermont Arts Council, 63n
 "Viewpoint discrimination," 13, 38, 54n
 Virginia, 47
 Virginia Commission for the Arts, 47-48
 Virginians for the Arts, 47
 Vogel, Beth, 29, 43, 65n

Washington, 19, 44, 48
 Washington Project for the Arts, 11
 Washington State Arts Comm'n, 32, 56n, 63n
 Watts Towers Arts Center, 45
We Keep Our Victims Ready, 12
 Webb, Janine, 29
 West Virginia Commission on the Arts, 63n
What is the Proper Way to Display a U.S. Flag?, 32, 33, 38
 White House, 13
 Whitlock, Elizabeth, 57n
 Whitney Museum, 25
 Wildlife Conservation Society, 25
 Wildmon, Donald, 6, 11, 16
 Winston-Salem, North Carolina, 19
 Winston-Salem and Forsyth County Arts Council, 36
 Wisconsin, 27, 61n
 Wisconsin Arts Board, 30, 42, 61n
 Wyoming, 27
 Wysong, Gordon, 20
 Wyszormirski, Margaret, 17, 18, 56n

Yancey, Martha, 39-40
Yo Mama's Last Supper, 25-26

**APPENDIX A
STATE AGENCIES**

Agency	Free Expression Policy	Explicit Restrictions	Where Found (Council Web site, Statute or Other)	Interviewed (Y/N/Attempted)
Alabama State Council on the Arts www.arts.state.al.us	Yes	No	Statute	Attempted
Alaska State Council on the Arts www.aksca.org	Yes	No	Statute	Yes
Arizona Commission on the Arts www.arizonaarts.org/index.htm	Yes	Yes ¹	Statute	Yes
Arkansas Arts Council www.arkansasarts.com	No	No	None found	Yes
California Arts Council www.cac.ca.gov	No	No	None found	Yes
Colorado Council on the Arts www.colorarts.state.co.us	Yes	No	Statute	Yes
Connecticut Commission on the Arts www.ctarts.org/Index.htm	Yes	No	Statute	Attempted
Delaware Division of the Arts www.artsdel.org	Yes	No	Statute	Yes (via email)
D.C. Commission on the Arts & Humanities dcarts.dc.gov/main.shtm	No ²	No	None found	Yes

¹ Restriction not in Commission’s enabling statute but in legislation passed establishing an endowment and forbidding use of funds for work that desecrates “religious objects, the flag of the United States,” or the Arizona flag.

² Legislative and grants officer said that Commission supports artistic freedom; no written policy found.

**APPENDIX A
STATE AGENCIES**

Agency	Free Expression Policy	Explicit Restrictions	Where Found (Council Web site, Statute or Other)	Interviewed (Y/N/Attempted)
Division of Cultural Affairs, Florida www.florida-arts.org	Yes	Unclear ³	Statute	Yes
Georgia Council for the Arts www.gaarts.org	Yes	No	Web site; Statute	Yes
State Foundation on Culture and the Arts, Hawaii www.state.hi.us/sfca	No	No	None found	No
Idaho Commission on the Arts www2.state.id.us/arts	Yes	Unclear ⁴	Web site; Statute	Yes
Illinois Arts Council www.state.il.us/agency/iac	Yes	Unclear ⁵	Position statement faxed by Council; Web site criteria	Yes
Indiana Arts Commission www.in.gov/arts	Yes	No	Statute; Policy manual provided by Commission	Yes
Iowa Arts Council www.culturalaffairs.org/iac	Yes	No	Web site	Yes
Kansas Arts Commission arts.state.ks.us	No	No	None found	No
Kentucky Arts Council www.kyarts.org	Yes	Unclear ⁶	Statute; Web site guidelines	Yes

³ Agency requires “accessibility.”

⁴ Web site policy mentions both free speech and “responsiveness to community standards.”

⁵ Web site criteria for Artists Residency Program include “appropriateness” of activity planned.

⁸ Guidelines for Arts on Tour program include “appropriateness.”

**APPENDIX A
STATE AGENCIES**

Agency	Free Expression Policy	Explicit Restrictions	Where Found (Council Web site, Statute or Other)	Interviewed (Y/N/Attempted)
Louisiana Division of the Arts www.crt.state.la.us/arts	No	Yes ⁷	Web site criteria	Yes
Maine Arts Commission www.mainearts.com	Yes	No	Web site; Statute	Yes (via email)
Maryland State Arts Council www.msac.org	Yes	No	Statute	Attempted
Massachusetts Cultural Council www.massculturalcouncil.org/index.htm	No	No	None found	No
Michigan Council for Arts & Cultural Affairs www.cis.state.mi.us/arts	Yes	Unclear ⁸	Statute; Web site criteria	Attempted
Minnesota State Arts Board www.arts.state.mn.us	Yes	No	1989 Resolution received direct from agency; Statute	Yes
Mississippi Arts Commission www.arts.state.ms.us	Yes	No	Statute	Attempted
Missouri Arts Council www.missouriartscouncil.org	Yes	No	Web site; Statute	Yes
Montana Arts Council www.art.state.mt.us	Yes	No	Web site; Statute	Yes
Nebraska Arts Council www.nebraskaartscouncil.org	Yes	No	Statute	Attempted

⁷ Web site criteria include “community standards.”

⁸ Criteria for grant applications in category of community services include “appropriateness.”

**APPENDIX A
STATE AGENCIES**

Agency	Free Expression Policy	Explicit Restrictions	Where Found (Council Web site, Statute or Other)	Interviewed (Y/N/Attempted)
Nevada Arts Council dmla.clan.lib.nv.us/docs/arts	Yes	No	Web site; Statute	Yes
New Hampshire State Council on the Arts www.state.nh.us/nharts	Yes	No	Statute; resolution received via e-mail	Yes (via email)
New Jersey State Council on the Arts www.njartscouncil.org	Yes	No	Statute; policy as described in interview	Yes
New Mexico Arts www.nmarts.org	No	No	None found	No
New York State Council on the Arts www.nysca.org/home.html	Yes	No	Web site; Statute	Yes
North Carolina Arts Council www.ncarts.org	No	No	None found	No
North Dakota Council on the Arts www.state.nd.us/arts	Yes	No	Web site; Statute	Yes
Ohio Arts Council www.oac.state.oh.us	Yes ⁹	Unclear ¹⁰	Web site; former free expression policy direct from agency	Yes
Oklahoma Arts Council www.state.ok.us/~arts	Yes	No	Statute	Attempted

⁹ Free expression policy not currently in force, but Web site lists among “Public Purposes of the Arts” the “advancement of freedom of inquiry and the open exchange of ideas and values.”

¹⁰ Percent for Art guidelines note need “to be sensitive to the immediate community” and ban any “inappropriate” artworks.

**APPENDIX A
STATE AGENCIES**

Agency	Free Expression Policy	Explicit Restrictions	Where Found (Council Web site, Statute or Other)	Interviewed (Y/N/Attempted)
Oregon Arts Commission www.oregonartscommission.org/main.php	Unclear ¹¹	Unclear ¹²	Web site; 1990 policy direct from agency	Yes
Pennsylvania Council on the Arts www.artsnet.org/pca	Yes	No	Statute	Yes
Rhode Island State Council on the Arts www.risca.state.ri.us	Yes	No	Web site; Statute	Yes
South Carolina Arts Commission www.state.sc.us/arts	Yes	No	Statute	Yes
South Dakota Arts Council www.state.sd.us/deca/sdarts	Yes	No	Statute	Yes
Tennessee Arts Commission www.state.sd.us/deca/sdarts	Yes	Yes ¹³	Statute; Restrictive policy described in interviews	Yes
Texas Commission on the Arts www.arts.state.tx.us	No	Yes ¹⁴	Statute	Yes
Utah Arts Council arts.utah.gov/index.html	No	No	None found	No

¹¹ Free expression policy not currently in force.

¹² Percent for Art program criteria include whether work is “appropriate for each building.”

¹³ Unwritten policy against nudity in exhibits at Commission’s gallery.

¹⁴ Commission’s legislation references obscenity as defined by Texas penal code.

**APPENDIX A
STATE AGENCIES**

Agency	Free Expression Policy	Explicit Restrictions	Where Found (Council Web site, Statute or Other)	Interviewed (Y/N/Attempted)
Vermont Arts Council www.vermontartscouncil.org	No	No	None found	No
Virginia Commission for the Arts www.arts.state.va.us	No	No	None found	Yes
Washington State Arts Commission www.wa.gov/art	No ¹⁵	No	None found	Yes (via email)
West Virginia Commission on the Arts www.wvculture.org/arts	No	No	None found	No
Wisconsin Arts Board arts.state.wi.us/static	Yes	No	Web site; statute	Yes
Wyoming Arts Council wyoarts.state.wy.us	Yes	No	Statute	Attempted

¹⁵ In interview, agency official noted “an internal unwritten perspective that freedom of speech is important.”

APPENDIX B
SAMPLE OF 104 LOCAL AGENCIES

YAgency	Does Council Have a Web site	Free Expression Policy	Explicit Restrictions	Where Found	Interviewed (Y/N/Attempted)
ALABAMA					
Metropolitan Arts Council, Birmingham www.metropolitanarts.org	Yes	No	No	None found	Attempted
Arts & Humanities Council of Montgomery	No	No	No	None found	Attempted
ALASKA					
Anchorage Cultural Council www.anchorageculturalcouncil.org	Yes	No; not a grant-making institution	No	None found	No
Fairbanks Arts Association www.fairbanksarts.org	Yes	No	No	None found	No
Juneau Arts and Humanities Council www.juneauartscouncil.org	Yes	No	No	None found	No
ARIZONA					
Phoenix Arts Commission www.ci.phoenix.az.us/ARTS/artscomm.html	Yes	No	No	None found	No
City of Sedona Arts & Culture www.city.sedona.net/a&c.htm	Yes	No	No	None found	No
Tucson-Pima Arts Council www.tucsonpimaartscouncil.org	Yes	No	No	None found	No
ARKANSAS					
City of Little Rock Arts & Humanities Commission www.accesslittlerock.org/administration/administration_artshumanities.html	Yes	No	No	None found	No

APPENDIX B
SAMPLE OF 104 LOCAL AGENCIES

Agency	Does Council Have a Web site	Free Expression Policy	Explicit Restrictions	Where Found	Interviewed (Y/N/Attempted)
CALIFORNIA					
Alameda County Art Commission www.co.alameda.ca.us/arts/index.shtml	Yes	No	No	None found	No
Anaheim Arts Council www.anaheim.net/com_res/arts.html	Yes	No	No	None found	No
Berkeley Civic Arts Commission www.ci.berkeley.ca.us/oed/civarts/commish.htm	Yes	No	No	None found	Attempted
City of San Diego Commission for Arts and Culture www.sannet.gov/arts-culture	Yes	No	No	None found	No
Fresno Arts Council www.fresnoarts.org	Yes	No	No	None found	No
Los Angeles County Arts Commission www.lacountyarts.org	Yes	No	No	None found	Yes
Sacramento Metropolitan Arts Commission www.sacculture.com	Yes	No	No	None found	No
San Francisco Arts Commission sfac.sfsu.edu	Yes	No	No	None found	No

**APPENDIX B
SAMPLE OF 104 LOCAL AGENCIES**

Agency	Does Council Have a Web site	Free Expression Policy	Explicit Restrictions	Where Found	Interviewed (Y/N/Attempted)
Santa Monica Arts Commission arts.santa-monica.org/about	Yes	Yes	No	Web site	Yes
Sausalito Arts Commission www.sausalitoarts.com	No/incomplete ¹	No; Not a grant-making institution	No	None found	Yes
COLORADO					
Aspen-Snowmass Council for the Arts	No/incomplete	No	Yes ²	Unwritten; described in interview	Yes
Boulder Arts Commission http://artist.bldr.net/BAC.cfm	Yes	No	No	None found	No
Denver Office of Mayor's Commission on Art, Culture and Film www.denvergov.org/artculturefilm	Yes	No	No	None found	No
Telluride Council for the Arts www.telluridearts.com	Yes	No	No	None found	No
CONNECTICUT					
Arts Council of Greater New Haven www.artscouncil-newhaven.org	Yes	No	No	None found	No
Greenwich Arts Council www.greenwicharts.org	Yes	No	No	None found	No
Greater Hartford Arts Council www.connectthedots.org	Yes	No	No	None found	No

¹ Incomplete denotes presence of a site or a page on municipality's Web site, but no content.

² Restrictions, at director's discretion, on "violent" or other content deemed inappropriate, for work exhibited in gallery space.

APPENDIX B
SAMPLE OF 104 LOCAL AGENCIES

Agency	Does Council Have a Web site	Free Expression Policy	Explicit Restrictions	Where Found	Interviewed (Y/N/Attempted)
DELAWARE					
Wilmington Arts Commission www.ci.wilmington.de.us/departments/cultural.htm	Yes	No	No	None found	No
FLORIDA					
Miami Dade County Cultural Affairs Council www.tropiculturemiami.com	Yes	No	No	None found	No
Sarasota County Arts Council www.sarasota-arts.org	Yes	No	No	None found	No
Arts Council of Hillsborough County www.hillsboroughcounty.org/agencies/arts_council	Yes	No	No	None found	No
GEORGIA					
City of Atlanta, Bureau of Cultural Affairs www.bcaatlanta.org	Yes	No	No	None found	No
DeKalb Council for the Arts	No ³	No	No	None found	No
Cobb County Parks, Recreation, and Cultural Affairs www.cobbcounty.org/prca/index.htm	Yes	No	Unclear	Policy proposed in 1993/not formally adopted; in Free Expression Policy Project files	Yes
City of Savannah Cultural Affairs www.ci.savannah.ga.us	Yes	No	No	None found	No

³ Web address leads to a search engine.

APPENDIX B
SAMPLE OF 104 LOCAL AGENCIES

Agency	Does Council Have a Web site	Free Expression Policy	Explicit Restrictions	Where Found	Interviewed (Y/N/Attempted)
HAWAII					
Honolulu Mayor's Office of Culture and the Arts www.co.honolulu.hi.us/moca	No/incomplete	No; not a grant-making institution	No	None found	Yes
IDAHO					
Boise City Arts Commission www.ci.boise.id.us/arts_commission/index.shtml	Yes	No	No	None found	Attempted
ILLINOIS					
City of Chicago Dep't of Cultural Affairs www.ci.chi.il.us/culturalaffairs	Yes	Yes	No	Web site	Yes
Springfield Area Arts Council www.springfieldartsco.org	Yes	No	No	None found	No
INDIANA					
Bloomington Area Arts Council www.artlives.org	Yes	No	No	None found	No
Greater Gary Arts Council	No	No	No	None found	Attempted
Arts Council of Indianapolis www.indyarts.org	Yes	No	No	None found	No
IOWA					
Ames Community Arts Council	No	No	No	None found	Attempted
Metro Arts Alliance of Greater Des Moines www.metroarts.org	Yes	No	No	None found	No

APPENDIX B
SAMPLE OF 104 LOCAL AGENCIES

Agency	Does Council Have a Web site	Free Expression Policy	Explicit Restrictions	Where Found	Interviewed (Y/N/Attempted)
KANSAS					
Lawrence Arts Commission www.lawrenceks.org	Yes	No	No	None found	No
Arts Council of Topeka www.artark.org	Yes	No	No	None found	No
KENTUCKY					
Frankfort Arts Foundation	No/incomplete	No	No	None found	Attempted
Greater Louisville Fund for the Arts www.artspage.org	Yes	No	No	None found	No
LOUISIANA					
Arts Council of Greater Baton Rouge www.acgbr.com	No/incomplete	No	No	None found	Yes
Arts Council of New Orleans www.artscouncilofneworleans.org	Yes	No	No	None found	No
MAINE					
Portland Arts and Cultural Alliance www.portlandartsandculture.org/paca	Yes	No	No	None found	No
MARYLAND					
Baltimore Office of Promotion & the Arts www.promotionandarts.org	Yes	No	No	None found	No
MASSACHUSETTS					
Cambridge Arts Council www.cambridgema.gov/~CAC	Yes	No	No	None found	No

**APPENDIX B
SAMPLE OF 104 LOCAL AGENCIES**

Agency	Does Council Have a Web site	Free Expression Policy	Explicit Restrictions	Where Found	Interviewed (Y/N/Attempted)
Mayor's Office of Cultural Affairs, Boston www.cityofboston.gov/arts	Yes	No	No	None found	No
MICHIGAN					
City of Detroit Cultural Affairs Department www.ci.detroit.mi.us/culturalaffair/default.htm	Yes	No	No	None found	No
MISSISSIPPI					
Yoknapatawpha Arts Council www.oxfordarts.com	Yes	No	No	None found	No
Tupelo Arts Council	No	No; not a grant-making institution	No	None found	Yes
MISSOURI					
Arts Council of Metropolitan Kansas City www.artslinks.org/council	Yes	No	No	None found	No
Southwest Area Council for the Arts	No	No	No	None found	Attempted ⁴
NEBRASKA					
Lincoln Arts Council www.artscene.org	Yes	No	No	None found	No
NEW HAMPSHIRE					
Federated Arts of Manchester www.9k.net/Tower/FederatedArts/About.html	Yes	No	No	None found	No
NEW JERSEY					
Arts Council of the Essex Area	No	No	No	None found	Attempted

⁴ Phone number for this Council was disconnected.

APPENDIX B
SAMPLE OF 104 LOCAL AGENCIES

Agency	Does Council Have a Web site	Free Expression Policy	Explicit Restrictions	Where Found	Interviewed (Y/N/Attempted)
Newark Arts Council www.newarkarts.com	Yes	No	No	None found	No
NEW MEXICO					
Albuquerque Arts Alliance www.swcp.com/abqarts/index.html	Yes	No	No	None found	No
City of Santa Fe Arts Commission sfweb.ci.santa-fe.nm.us/community-services/community-development/ArtsCommission/index.html	Yes	No	No	None found	No
NEW YORK					
Arts & Cultural Council for Greater Rochester www.artsrochester.org/artscouncil/research.htm	Yes	No	No	None found	No
Buffalo Arts Commission www.city-buffalo.com	Yes	No	No	None found	No
New York City Department of Cultural Affairs www.nyc.gov/html/dcla/home.html	Yes	Yes	No	Unwritten; described in interview	Yes
Saratoga County Arts Council www.timesunion.com/communities/scac	Yes	No	No	None found	No

APPENDIX B
SAMPLE OF 104 LOCAL AGENCIES

Agency	Does Council Have a Web site	Free Expression Policy	Explicit Restrictions	Where Found	Interviewed (Y/N/Attempted)
NORTH CAROLINA					
Chapel Hill Public Arts Commission www.ci.chapel-hill.nc.us/ABC/publicarts.htm	Yes	No	No	None found	No
Arts & Science Council of Charlotte/Mecklenburg www.artsandscience.org	Yes	No	Yes	Unwritten; described in interview ⁵	Yes
Arts Council of Winston-Salem & Forsyth County, Inc. www.intothearts.org	Yes	Yes	No	Web site	Yes (via email)
City of Raleigh Arts Commission www.raleigh-nc.org/arts/index.htm	Yes	No	No	None found	No
NORTH DAKOTA					
Dakota West Arts Council www.dakotawest.org	Yes	No	No	None found	No
OHIO					
Arts Commission of Greater Toledo www.acgt.org	Yes	No	No	None found	No
City of Cleveland, Bureau of Cultural Affairs	No	No; not a grant-making institution	No	None found	Yes
Greater Columbus Arts Council www.gcac.org	Yes	No	No	None found	No
OKLAHOMA					
Arts and Humanities Council of Tulsa www.ahct.org	Yes	No	No	None found	No

⁵ “Community standards” resolution passed in 1997 no longer in effect; current policy prohibits nudity on stage.

APPENDIX B
SAMPLE OF 104 LOCAL AGENCIES

Agency	Does Council Have a Web site	Free Expression Policy	Explicit Restrictions	Where Found	Interviewed (Y/N/Attempted)
Arts Council of Oklahoma City www.artscouncilokc.com	Yes	No	No	None found	No
OREGON					
Regional Arts and Culture Council, Portland www.racc.org	Yes	Yes	No	Web site	Attempted
PENNSYLVANIA					
Allegheny County Regional Asset District www.radworkshere.org	Yes	No	No	None found	No
The Philadelphia Office of Arts and Culture http://www.phila.gov/visitors/commerce/index.html	Yes	No	No	None found	No
RHODE ISLAND					
Office of Cultural Affairs, City of Providence www.caparts.org	Yes	No	No	None found	No
SOUTH CAROLINA					
City of Charleston Office of Cultural Affairs www.ci.charleston.sc.us/oca.html	Yes	No	No	None found	No
SOUTH DAKOTA					
Rapid City Arts Council	No	No; not a grant-making institution	No	None found	Yes
TENNESSEE					
City of Chattanooga, Division of Arts & Culture www.chattanooga.gov/cpr/Art	Yes	No	No	None found	No
Memphis Arts Council www.memphisartscouncil.org	Yes	No	No	None found	No

APPENDIX B
SAMPLE OF 104 LOCAL AGENCIES

Agency	Does Council Have a Web site	Free Expression Policy	Explicit Restrictions	Where Found	Interviewed (Y/N/Attempted)
Metropolitan Nashville Arts Commission www.artsnashville.org	Yes	No	No	None found	No
TEXAS					
City of Dallas Office of Cultural Affairs www.dallasculture.org/oca.html	Yes	No	No	None found	No
City of San Antonio Office of Cultural Affairs www.sanantonio.gov/art/	Yes	No	No	None found	Attempted
Cultural Arts Council of Houston/Harris County www.cachh.org	Yes	No	No	None found	No
UTAH					
Park City Arts Council www.utohwy.com/p/pircnpsy.htm	Yes	No	No	None found	No
Salt Lake City Arts Council www.slcgov.com/arts	Yes	No	No	None found	No
VERMONT					
Bennington Area Arts Council	No ⁶	No	No	None found	Attempted
Burlington City Arts www.burlingtoncityarts.com	Yes	No	No	None found	No
Crossroads Arts Council of Rutland www.crossroadsarts.com	Yes	No	No	None found	No

⁶ Search leads to Bennington Center for the Arts, www.vermontartscenter.org, as of April 2003 an incomplete site.

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SAMPLE OF 104 LOCAL AGENCIES

Agency	Does Council Have a Web site	Free Expression Policy	Explicit Restrictions	Where Found	Interviewed (Y/N/Attempted)
VIRGINIA					
Arts Council of Richmond www.richmondarts.org	Yes	No	No	None found	No
Piedmont Council of the Arts avenue.org/Arts/Piedmont	Yes	No	No	None found	No
Virginia Beach Arts & Humanities Commission www.va-beach.com/vbahc	Yes	No	No	None found	No
WASHINGTON					
King County Arts Commission www.metrokc.gov/exec/culture/arts	Yes	No	No	None found	No
Seattle Office of Arts & Cultural Affairs (formerly Seattle Arts Commission) www.cityofseattle.net/arts	Yes	No	No	None found	No
WISCONSIN					
Dane County Cultural Affairs Commission www.co.dane.wi.us/dcca	Yes	No	No	None found	No
Milwaukee Arts Board www.mkedcd.org/artsboard	Yes	No	No	None found	No
Milwaukee Inner City Arts Council	No	No	No	None found	Attempted ⁷
Madison CitiARTS Commission www.ci.madison.wi.us	Yes	No	No	None found	No

⁷ Phone number for the Council was disconnected.

Free Expression Policy Project

a think tank on artistic and intellectual freedom

The **FREE EXPRESSION POLICY PROJECT**, founded in 2000, provides research and analysis on difficult censorship issues and serves as an intellectual resource for the free-expression community. The Project seeks free speech-friendly policy solutions to the concerns that animate censorship campaigns. Our areas of inquiry include:

- f** Restrictions on publicly funded expression – in libraries, museums, and universities as well as arts and humanities agencies;
- f** Internet filters, rating systems, and other measures adopted in the presumed interest of protecting teenagers and children from expression that is thought to be inappropriate for them;
- f** Other threats to free expression both online and off, including disputes over intellectual property and governmental or corporate control of academic research.

See the Web site at www.fepproject.org for our policy reports and other materials

Marjorie Heins, Director
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