



August 12, 2026

South Carolina Arts Commission
Board of Commissioners

Flavia Harton, Chairperson

Heidi Carey

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Danielle Thompson

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1026 Sumter Street, Suite 200

Columbia, SC 29201

Cc/ Ashley Kerns Brown, Interim Executive Director
cabrown@arts.sc.gov

Re: Grantmaking to LGBTQ-affirming arts organizations

Dear Commission Members,

We've heard that the S.C. Arts Commission may be changing its grant selection criteria to match President Trump's federal prohibition on so-called "gender ideology." I am writing to assure you that Executive Order 14168 ("Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government") does not control your funding decisions and to warn you that applying its (or your own) anti-LGBTQ viewpoint preferences to the Commission's funding decisions would violate the First Amendment and expose the Commission to legal liability.

Executive Order 14168 is inapplicable and, in any event, was vacated.

President Trump's Executive Order forbidding "gender ideology" does not require the Commission to amend its grant selection criteria. To start, the Executive Order only applies to federal funds, not state funds.¹ And in any event, it no longer applies to *any* funds. Last year, the relevant portion of the Executive Order was declared "unconstitutional and unlawful,"

¹ See E.O. 14168, § 3(g) ("*Federal* funds shall not be used to promote gender ideology." (emphasis added)).

and was “vacate[d] and set[] aside” under the Administrative Procedures Act (APA).² The Commission has no duty to obey a vacated Executive Order.

The First Amendment prohibits the Arts Commission from selectively disfavoring LGBTQ-affirming speech or expression.

Troublingly, public emails show that some commissioners believe the Commission should deny or withhold funding from entities “structured around specific sexual orientations,” that engage with “controversial” topics, or that “support drag performances.” Please do not follow the advice of those commissioners. Implementing those viewpoint preferences would violate the First Amendment and expose the Commission to legal liability.

The First Amendment to the United States Constitution forbids viewpoint discrimination. It is well settled that “ideologically driven attempts to suppress a particular point of view are presumptively unconstitutional in funding, as in other contexts.”³ Indeed, it is a “bedrock principle” that the government cannot “aim at the suppression of dangerous ideas in the provision of subsidies.”⁴ Importantly, EO 14168 was declared unconstitutional under these very principles.⁵

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We at the ACLU of South Carolina applaud the Commission’s commitment to supporting diverse arts experiences throughout the state. Rather than turning from its values, we merely ask that the Commission continue to evaluate LGBTQ-focused affinity groups and arts organizations on the same artistic-merit criteria it applies to every other applicant. Doing so is consistent with your mission, legally compliant, and vitally important for fostering the arts in South Carolina.

I would be glad to discuss any of the above at your convenience.

Sincerely,

/s/ Allen Chaney

Allen Chaney

Legal Director

ACLU of South Carolina

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² *R.I. Latino Arts v. Nat’l Endowment for the Arts*, 800 F. Supp. 3d 351, 374 (D.R.I. 2025).

³ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 830 (1995).

⁴ *Thakur v. Trump*, 163 F.4th 1198, 1206 (9th Cir. 2025) (quoting *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998)).

⁵ *R.I. Latino Arts*, 800 F. Supp. 3d at 368.