

NAILING DOWN THE FEDERAL ARTS FRAMEWORK: HOW IT'S HANGING

By Robin Willscheidt, Senior Fellow at the Berkeley Art, Law, and Finance Project & Licensed California Attorney

<https://www.linkedin.com/in/robin-willscheidt/>

May 25, 2025

The information on this website is general and is provided for informational purposes only. It should not be construed as legal advice on any matter and does not establish an attorney-client relationship. Any views expressed herein are solely my own.

In recent months, a flurry of actions by the incoming federal administration have created new mandates, questions, and challenges for key federal arts and cultural entities in the United States.¹ These actions have reshaped the federal government's approach to arts and cultural policy and introduced significant uncertainty for many of the nation's cultural institutions, the effects of which are being felt across the country, as our federal arts infrastructure funnels support directly to state, local, tribal, and non-profit organizations.

This quick reference guide outlines the evolving legal and operational landscape of federal arts entities, detailing the institutions affected, the scope of recent directives, and the legal frameworks that govern them. The guide aims to provide a snapshot of a complex and rapidly developing situation—one with far-reaching implications for cultural organizations and the people they serve nationwide.

This discussion is not comprehensive and is current through May 25, 2025.

FEDERAL MUSEUMS AND CULTURAL INSTITUTIONS

THE SMITHSONIAN INSTITUTION

The Smithsonian Institution—perhaps the most well-known federal cultural establishment of the United States—was created by an act of Congress in 1846 using funds bequeathed to the United States by an Englishman, James Smithson.² The stated purpose of the Smithsonian is to serve as “an establishment for the increase and diffusion of knowledge among men.”³ The Smithsonian has become the world's largest museum, education and

¹ Brian Boucher and Margaret Carrigan, *What the Arts Endured During Donald Trump's First 100 Days*, ARTNET NEWS (Apr. 30, 2025), <https://news.artnet.com/art-world/trump-executive-orders-arts-2605142>.

² 20 U.S.C. §§ 41-80j.

³ *Id.*

research complex.⁴ Twenty-one museums, the National Zoo, and nine research facilities fall under the umbrella of the Smithsonian Institution.⁵

Congress delegated the authority of managing the Smithsonian to a Board of Regents, which continues to govern the Smithsonian today.⁶ The Board of Regents now has seventeen members, including the Chief Justice of the United States Supreme Court, the Vice President, three members of the Senate, and three members of the House of Representatives.⁷ Nine citizen members are appointed by a joint resolution of Congress, signed by the President of the United States, each of whom serves a six-year term.⁸ Citizen members are limited to two terms, pursuant to the Smithsonian bylaws adopted by the Board of Regents in 1979.⁹ The Board of Regents appoints a Secretary, the Smithsonian's chief executive officer, who oversees the institution.¹⁰ Currently, Lonnie G. Bunch III, a historian who was the founding director of the National Museum of African American History and Culture, leads the Smithsonian.¹¹

The Smithsonian is “considered unique in the Federal establishment.”¹² It is not an executive branch agency and is not subject to certain federal laws that apply to such agencies; however, because it is so “closely connected” to the federal government, it enjoys certain immunities, including immunity from state and local regulation and from lawsuits, unless such suits are specifically authorized by Congress (for example, under the Federal Tort Claims Act).¹³ The exact nature of the Smithsonian's legal status has been defined over time and remains subject to open questions.

⁴ *What to Know About the Smithsonian*, ARTNET NEWS (Mar. 29, 2025), <https://news.artnet.com/art-world/what-to-know-about-the-smithsonian-2627259>; *About the Smithsonian*, SMITHSONIAN, <https://www.si.edu/about>; Michael Kimmelman, *Trump Targets the Smithsonian*, N.Y. TIMES (Mar. 29, 2025), <https://www.nytimes.com/2025/03/29/arts/design/trump-smithsonian-explainer.html>.

⁵ *Legal History: Office of General Counsel*, SMITHSONIAN, <https://www.si.edu/ogc/legalhistory>.

⁶ *Id.*; 20 U.S.C. §§ 41-80j; *Members of the Board of Regents*, SMITHSONIAN, <https://www.si.edu/regents/members>.

⁷ *Legal History*, *supra* note 5; *Members of the Board of Regents*, *supra* note 6.

⁸ *Id.* See also Sarah Cascone, *Can Trump Really Control the Smithsonian? Here's What We Know*, ARTNET NEWS (Apr. 4, 2025), <https://news.artnet.com/art-world/what-to-know-about-the-smithsonian-2627259>. According to the Smithsonian's chief spokesperson, Linda St. Thomas, “Vice presidents traditionally have not attended the quarterly meetings of the board. The content of the exhibitions is determined by curators, museum directors, and staff, all of whom report to the secretary ... The board is a governing body and do not handle day-to-day management of the institution.” *Id.*

⁹ *Members of the Board of Regents*, *supra* note 6.

¹⁰ The Smithsonian Board of Regents: Media Fact Sheet, SMITHSONIAN (Feb. 5, 2025), <https://www.si.edu/newsdesk/factsheets/smithsonian-board-regents>.

¹¹ *Id.*; Kimmelman, *supra* note 4.

¹² *Legal History*, *supra* note 5.

¹³ *Id.*

Also unlike most federal agencies, the Smithsonian operates as a public-private partnership and has two sources of funding: both federal and private funds.¹⁴ Federal funds typically cover day-to-day operations, including staff salaries, physical facilities, and general operating costs; by contrast, private funds, such as donations from foundations, corporations, and private individuals, directly support exhibitions.¹⁵ Approximately 62% of the Smithsonian’s annual budget in fiscal year 2024 consisted of federal funds, including congressional appropriations and federal grants and contracts.¹⁶ The Smithsonian is authorized to accept gifts and generate revenue outside of the federal appropriations process and is recognized by the Internal Revenue Service as a 501(c)(3) tax-exempt organization.¹⁷ Private funds include gifts and donations, revenue generation from the Smithsonian’s own business activities, investments, and endowment funds (\$2.4 billion, according to the Smithsonian’s 2023 annual report)¹⁸—collectively referred to as “trust” funds.¹⁹ The Smithsonian’s total annual budget is just over \$1 billion.²⁰

The Smithsonian employs both federal civil service employees and “trust” employees.²¹ Federal employees are funded by federal dollars and are subject to federal hiring freezes, government shutdowns, and other related actions. By contrast, trust employees do not have federal status.²²

On March 27, 2025, the President issued Executive Order No. 14253, titled “Restoring Truth and Sanity to American History.”²³ Among other mandates, the executive order directs Vice President JD Vance to work with Congress to “ensure that future appropriations” to the Smithsonian prohibit expenditure on exhibitions and programs that “degrade shared American values, divide Americans based on race or promote programs or ideologies inconsistent with federal law” and to work with Congress to “seek the appointment of citizen members to the Smithsonian Board of Regents committed to advancing the policy of this order.”²⁴

¹⁴ *Id.*; Kimmelman, *supra* note 4.

¹⁵ *Smithsonian Institution Fiscal Year 2025 Budget Justification to Congress*, SMITHSONIAN INSTITUTION (Mar. 2024), <https://www.si.edu/sites/default/files/about/fy2025-budgetrequestcongress.pdf>.

¹⁶ Cascone, *supra* note 8; Graham Bowley, Robin Pogrebin, and Jennifer Schuessler, *House Democrats Criticize Trump’s Smithsonian Order* (Apr. 18, 2025), <https://www.nytimes.com/2025/04/18/arts/design/smithsonian-letter-vance-trump.html>.

¹⁷ *Legal History*, *supra* note 5; *Smithsonian Institute*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/530206027>.

¹⁸ *Legal History*, *supra* note 5; *Smithsonian 2023: Reaching Every Learner*, SMITHSONIAN, <https://www.si.edu/support/annualreport/2023>.

¹⁹ *Legal History*, *supra* note 5.

²⁰ Kimmelman, *supra* note 4.

²¹ *Legal History*, *supra* note 5.

²² *Id.*

²³ Proclamation No. 14253, 90 F.R. § 14253 (2025).

²⁴ *Id.*

This executive order is directed toward content review; it does not directly challenge the legal status of the Smithsonian.²⁵ Notably, as will be described in greater detail below with respect to the Institute of Museum and Library Services, the executive order does not claw back funds that have already been appropriated by Congress, but rather ties future funding to compliance.²⁶

Further executive actions taken to advance the President's directive that align with other steps taken this year impacting federal arts and other cultural entities and could affect the Smithsonian's status and operations, although such actions would likely be subject to challenge. These actions might include revocation of grant funding and federal contracts,²⁷ placement of federal employees on administrative leave,²⁸ challenges to the institution's 501(c)(3) nonprofit status,²⁹ or steps taken to impede the development of two new Smithsonian museums approved by Congress in 2020—the National Museum of the American Latino and the Smithsonian American Women's History Museum, each of which is to be funded, by Congressional directive, 50% by federal and 50% by private dollars.³⁰

In general, the executive branch has limited direct authority over the Smithsonian. The Smithsonian's key federal activities—including, among other things, the appointment of regents and federal appropriations—are governed by Congress. Though most of the Smithsonian's funding is federal, the institution relies heavily on trust funds, and trust employees are not subject to federal action, or federal inaction, in the case of government shutdowns, taken with respect to federal employees. Moreover, the terms of the Board of Regents are staggered, and the terms of three of its nine current citizen members expire in

²⁵ Bowley et. al., *supra* note 16.

²⁶ 90 F.R. § 14253.

²⁷ Complaint For Declaratory and Injunctive Relief, Am. Library Ass'n v. Sonderling, No. 1:25-cv-01050 (D.D.C. 2025).

²⁸ Complaint For Declaratory and Injunctive Relief, Am. Library Ass'n v. Sonderling, No. 1:25-cv-01050 (D.D.C. 2025).

²⁹ In recent months, the Administration has expressed an intent to remove tax-exempt status from certain institutions, including Harvard University. Gabriela Aoun Angueira and Thalia Beaty, *Can the IRS revoke Harvard's tax-exempt status?*, THE ASSOCIATED PRESS (Apr. 18, 2025), <https://apnews.com/article/harvard-nonprofit-tax-exempt-status-how-can-it-be-revoked-096614ea5ec65ec7a6ac08efd0f1e94f>. The executive branch, however, cannot unilaterally remove the tax-exempt status of non-profit organizations. *Executive Branch Lacks Authority to Target Nonprofit Organizations*, NATIONAL COUNCIL OF NONPROFITS (Apr. 21, 2025), <https://www.councilofnonprofits.org/files/media/documents/2025/myth-v-reality-executive-authority.pdf>.

³⁰ Public Law No. 116-260, Consolidated Appropriations Act, 2021 (Dec. 27, 2020); Elizabeth Blair, *Congress Approves 2 New Museums Honoring American Latinos, Women's History*, NPR (Dec. 22, 2020), <https://www.npr.org/2020/12/22/949153631/congress-approves-2-new-museums-honoring-american-latinos-womens-history>; *Smithsonian Institution Museums: Selected Issues for Congress*, Congress.gov (May 5, 2025), <https://www.congress.gov/crs-product/R44370>. President Trump signed the appropriations package that initially approved the two museums in 2020 and has recently indicated support for the Smithsonian American Women's History Museum. Justin Papp, *Questions linger on future of Smithsonian museums on women, Latinos*, ROLL CALL (Apr. 3, 2025), <https://rollcall.com/2025/04/03/questions-linger-on-future-of-smithsonian-museums-on-women-latinos/>.

late 2029. As the executive order recognizes, members of the Board of Regents are appointed by Congress.³¹

Several Democratic lawmakers, members of an oversight committee of the House of Representatives, have sent a letter to the Vice President addressing the executive order and calling for the curatorial independence of the Smithsonian.³² However, the Smithsonian executive order has not yet prompted an active legal controversy.³³

KENNEDY CENTER

The John K. Kennedy Memorial Center for the Performing Arts is the national cultural center of the United States, created by bipartisan legislation in 1958 and supported through a fundraising campaign launched by President Kennedy and Mrs. Kennedy in 1962. After President Kennedy's assassination, an act of Congress renamed the project in the president's memory.³⁴

The Kennedy Center operates as a bureau within the Smithsonian.³⁵ It is a separate, independent entity, administered by its own board of trustees, which includes, pursuant to its authorizing legislation, leaders across government who serve as ex-officio trustees, including certain members of Congress and the executive branch and Washington, D.C. officials, and thirty-six general trustees, appointed unilaterally by the president, who serve six-year terms.³⁶

The Kennedy Center is a trust instrumentality of the federal government and also operates as a public-private partnership with federal and trust employees.³⁷ While it receives federal

³¹ *Members of the Board of Regents*, *supra* note 6; Cascone, *supra* note 8.

³² Bowley et. al., *supra* note 16.

³³ Another notable public-private partnership is the National Gallery of Art, which receives funding from Congress for its day-to-day operations but draws the bulk of its support for acquisitions and growth from a private trust, the "result of an agreement struck by steel magnate Andrew Mellon in 1936 to give the nation a collection of Old Masters paintings and build the original West Building to house them, plus an endowment for future growth. In return, Congress provides funds for maintenance, upkeep and administrative costs." *Highlights of the National Gallery of Art's History*, NATIONAL GALLERY OF ART, <https://www.nga.gov/about/gallery-history.html>; Kriston Capps, *DOGE Visits National Gallery of Art to Discuss Museum's Legal Status*, BLOOMBERG (Apr. 18, 2025) <https://www.bloomberg.com/news/articles/2025-04-18/washington-dc-national-gallery-of-art-gets-a-visit-from-doge>. So far, the National Gallery of Art has evaded the Administration's scrutiny. However, on April 18, representatives from the Department of Government Efficiency met with key representatives at the NGA. *Id.*

³⁴ 20 U.S.C. §76h; *Our Story*, THE KENNEDY CENTER, <https://www.kennedy-center.org/our-story/>; Hillel Italie, *What's going on with the Kennedy Center under Trump?*, THE ASSOCIATED PRESS (Feb. 25, 2025), <https://apnews.com/article/kennedy-center-trump-what-to-know-4305e2c3d5611c4bfb1686d597727369>.

³⁵ 20 U.S.C. §76h.

³⁶ *Id.* Typically, these appointments have been bipartisan. Ali Bianco, *Trump Says He'll Be New Kennedy Center Chair After Dismissing Trustees*, POLITICO (Feb. 8, 2025), <https://www.politico.com/news/2025/02/07/donald-trump-kennedy-center-014498>.

³⁷ 20 U.S.C. 76r(e).

monies, including appropriations and federal contracts, for operations and maintenance, it must use its charitable trust funds (which include earned income, contributions, and grants) “for any direct expense incurred in the production of a performing arts attraction, for personnel who are involved in performing arts administration . . . or for production, staging, public relations, marketing, fundraising, ticket sales, or education.”³⁸

On February 7, President Trump indicated that he would be removing several individuals from the Kennedy Center’s Board of Trustees.³⁹ On February 12, the Kennedy Center announced a new set of board members. In its statement, the Kennedy Center said that President Trump had been elected Chairman of the Board and that the contract with the president of the Center, Deborah Rutter, had been terminated.⁴⁰ In her place, Richard Grenell has been appointed interim president.⁴¹

To date, no legal action has been taken regarding the termination and replacement of the Kennedy Center board, though the ability to take such action is an open question—this is unprecedented in the Center’s history. In a statement, the Center indicated that there “is nothing in the Center’s statute that would prevent a new administration from replacing board members.”⁴² Indeed, per the statute, board members are presidential appointees, and its language does not explicitly address removal.⁴³ The Center’s governance documents provide that the chair of the board of trustees “must be appointed by the Center’s board members.”⁴⁴

With respect to the legality of the termination of the board, a spokesperson for the Kennedy Center directed attention to a decision in the 2022 federal case in the United States District Court for the District of Columbia, *Spicer v. Biden*, as a precedent.⁴⁵ During his first term, President Trump appointed Sean Spicer and Russell Vought to the Naval

³⁸ *Id.*

³⁹ Bianco, *supra* note 36; Michael Scherer and Ashley Parker, *Trump Takes Over the Kennedy Center*, THE ATLANTIC (Feb. 7, 2025), <https://www.theatlantic.com/politics/archive/2025/02/trump-kennedy-center-arts/681613/>; Board of Trustees, THE KENNEDY CENTER, <https://www.kennedy-center.org/about-us/leadership/trustees/>. In addition, on April 30, President Trump removed several Biden appointees from the board of the Holocaust Museum. Boucher et. al., *supra* note 1.

⁴⁰ Javier C. Hernández and Robin Pogrebin, *Trump Made Chair of Kennedy Center as Its President Is Fired*, N.Y. TIMES (Feb. 12, 2025), <https://www.nytimes.com/2025/02/12/arts/music/trump-kennedy-center-chairman.html>; Manuel Roig-Franzia and Travis M. Andrews, *How did Trump so easily take over the Kennedy Center? Ask Sean Spicer.*, THE WASHINGTON POST (Feb. 14, 2025), <https://www.washingtonpost.com/entertainment/2025/02/14/trump-kennedy-center-sean-spicer-lawsuit/>.

⁴¹ Travis M. Andrews, Manuel Roig-Franzia and Matt Viser, *Trump Names Ally To Lead Kennedy Center, Leaving Its Future Uncertain*, THE WASHINGTON POST (Feb. 10, 2025), <https://www.washingtonpost.com/entertainment/2025/02/10/trump-kennedy-center-richard-grenell/>.

⁴² Vivian Ho, *What Is the Kennedy Center, and Can Trump Make Himself Chairman?*, THE WASHINGTON POST (Feb. 8, 2025), <https://www.washingtonpost.com/entertainment/2025/02/08/kennedy-center-trump-board-explainer/>.

⁴³ 20 U.S.C. 76r.

⁴⁴ Andrews et. al. *supra* note 41.

⁴⁵ Ho, *supra* note 42; Roig-Franzia et. al., *supra* note 40.

Academy's Board of Visitors, a presidential appointment position, to serve three-year terms. Spicer and Vought sued to prevent President Biden's attempt to remove them before their three-year terms had been completed. The lawsuit was dismissed, ruling that "the law's language on the board's terms 'did not insulate the plaintiffs from the President's removal.'"⁴⁶ While some scholars have indicated that there may be a difference between a public-private partnership and a direct government entity, others "[do not] see any legal reasons for making a distinction between these quasi-public and totally public organizations."⁴⁷

FEDERAL ARTS FUNDING: NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

The National Foundation on the Arts and the Humanities is the "primary vehicle for federal support for the arts and the humanities."⁴⁸ The foundation was established in 1965 by the Foundation on the Arts and the Humanities Act and today includes three separate, independent federal agencies: The Institute of Museum and Library Services, or "IMLS," the National Endowment for the Arts, or "NEA," and the National Endowment for the Humanities, or "NEH."⁴⁹ Executive departments are the primary operating bodies of the executive branch. However, Congress may delegate, by statute, the authority to supervise certain areas to an independent agency, whose leaders do not serve as part of the President's Cabinet.⁵⁰

IMLS is funded through the Labor, Health and Human Services, Education, and Related Agencies Appropriations Act.⁵¹ By contrast, the NEA and NEH are funded through the Interior, Environment, and Related Agencies Appropriations Act.⁵² All three agencies, however, are funded through annual congressional appropriations, which, combined, totaled approximately \$700 million in 2024.⁵³

INSTITUTE OF MUSEUM AND LIBRARY SERVICES

⁴⁶ Roig-Franzia et. al., *supra* note 40.

⁴⁷ *Id.*

⁴⁸ Shannon S. Loane, CONG. RSCH. SERV., R48255, NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES: FY2024 APPROPRIATIONS (2024), https://www.congress.gov/crs_external_products/R/PDF/R48255/R48255.1.pdf.

⁴⁹ 20 U.S.C. § 951 (2010). The IMLS was established within the Foundation in 1996. Loane, *supra* note 48.

⁵⁰ MARSHALL J. BREGER AND GARY J. EDLES, *Established by Practice: The Theory and Operation of Independent Federal Agencies*, ADMIN. L. REV. (Fall 2020).

⁵¹ Loane, *supra* note 48.

⁵² *Id.*

⁵³ *Id.*; Torey Akers, *Trump Administration Sued by 21 States' Attorneys General for Trying to Eliminate Institute of Museum and Library Services*, THE ART NEWSPAPER (Apr. 4, 2025), <https://www.theartnewspaper.com/2025/04/04/trump-administration-sued-attorneys-general-institute-museum-library-services>.

IMLS is the primary administrator of grants to museums and libraries in all fifty states, the District of Columbia, and U.S territories.⁵⁴ The agency funnels funding—\$267 million in 2024—through different state entities and directly to cultural institutions that provide critical support for staffing, maintenance and operations, and distinct programming.⁵⁵

IMLS was established by the Museum and Library Services Act (“MLSA”), first enacted in 1996.⁵⁶ Since then, the MLSA has been reauthorized on a bipartisan basis, most recently by Congress, and signed into law by President Trump, in 2018, which amended and reauthorized the MLSA through the end of fiscal year 2025.⁵⁷ The IMLS is headed by a Director, appointed by the President with the advice and consent of the Senate, who serves for a term of four years.⁵⁸

Congress provides funding to IMLS each year through appropriations,⁵⁹ most recently through a continuing resolution approved by the Senate on March 14, 2025, which extended government funding, including funding for IMLS, through September 30, 2025.⁶⁰

On March 14, 2025, the President issued an executive order titled “Continuing the Reduction of the Federal Bureaucracy.”⁶¹ This order mandates that the “non-statutory components and functions” of seven Congressionally mandated and funded agencies, including IMLS, shall be “eliminated to the maximum extent consistent with applicable law.”⁶²

On March 20, the President named a new acting director of IMLS: Keith Sonderling, the deputy secretary of the Department of Labor.⁶³ In an open letter to Acting Director Sonderling, the National Museum and Library Services Board—established under 20 U.S.C. § 9105a as an official advisory board to the Director⁶⁴—the Board advised the Acting Director that: “the Museum and Library Services Act of 2018, as codified in Title 20 of the

⁵⁴ Loane, *supra* note 48.

⁵⁵ Andrew Limbong, *Entire Staff at Federal Agency That Funds Libraries and Museums Put on Leave*, NPR (Mar. 31, 2025), <https://www.npr.org/2025/03/31/nx-s1-5334415/doge-institute-of-museum-and-library-services>,

⁵⁶ 20 U.S.C. § 9106.

⁵⁷ 20 U.S.C. §§ 9101-9179; *Legislation*, INSTITUTE OF MUSEUM AND LIBRARY SERVICES, <https://www.imls.gov/about/learn-about-imls/our-mission-vision/legislation-budget/legislation>; *FAQ: Executive Order Targeting IMLS*, AMERICAN LIBRARY ASSOCIATION, <https://www.ala.org/faq-executive-order-targeting-imls>.

⁵⁸ 20 U.S.C. §§ 9101-9179 204 (a)(1)-(2).

⁵⁹ Loane, *supra* note 48.

⁶⁰ Public Law No. 119-4, Full-Year Continuing Appropriations and Extensions Act, 2025 (Mar. 15, 2025).

⁶¹ Proclamation No. 14238, 90 F.R. § 13043 (2025).

⁶² *Id.*

⁶³ Hillel Italie, *What’s Happening with the Institute of Museum and Library Services After Trump’s Executive Order*, THE ASSOCIATED PRESS (Mar. 20, 2025); Andrew Limbong, *Federal Agency Responsible for Library and Museum Funding Gets a Visit from DOGE*, NPR (Mar. 20, 2025), <https://www.npr.org/2025/03/20/nx-s1-5335600/library-museum-funding-doge-sonderling>.

⁶⁴ 20 U.S.C. § 9105a.

U.S. Code, outlines specific statutory mandates that cannot be paused, reduced, or eliminated without violating Congressional intent and federal statute,” “Congress has codified structural and administrative requirements that establish the lawful foundation for the agency’s continued operation,” and “Sections 9133 and 9176 of the Act affirm IMLS’s duty to obligate and disburse funds to grantees, subject only to the availability of appropriations, not to executive discretion. Any failure to fulfill these legal obligations or to reduce staffing or program operations below the minimum required to meet statutory mandates would place the agency in noncompliance with Congressional intent.”⁶⁵

On March 31, IMLS placed its entire staff of seventy employees on ninety-day administrative leave.⁶⁶ Shortly thereafter, IMLS began issuing letters to state grantees informing them of the termination of IMLS grants, effective immediately.⁶⁷ Twelve staff members have since returned to office.⁶⁸ AFGE Local 3403, the union that represents IMLS workers, provided in a statement that “the status of previously awarded grants is unclear,” and “without staff to administer the programs, it is likely that most grants will be terminated.”⁶⁹

On April 4, twenty-one state attorneys general filed a lawsuit against the Administration, *Rhode Island v. Trump*, arguing that the executive order is illegal and requesting declaratory judgment that the order violates the Administrative Procedure Act, the appropriations clause of the United States Constitution, and separation of powers doctrine, including the “take care” clause of the Constitution, and requesting injunctive relief from enforcement of the executive order.⁷⁰ In a nutshell, the Administrative Procedure Act governs how federal agencies develop and implement regulations and requires that certain procedures be followed; plaintiffs argue that the proper steps were not taken in the President’s attempt to shutter IMLS. Plaintiffs further argue that the Administration violated the separation of powers doctrine by refusing to spend funds that Congress had already appropriated and similarly violated the “take care” clause, which requires the executive to “take care that the laws [of Congress] be faithfully executed.”⁷¹

On April 7, the American Library Association and the American Federation of State, County and Municipal Employees filed a joint lawsuit against the Administration, *American Library*

⁶⁵ Letter to Keith E. Sonderling from National Museum and Library Services Board dated March 24, 2025, https://www.aam-us.org/wp-content/uploads/2025/03/IMLS-Board-Letter_032325.pdf.

⁶⁶ Limbong, *supra* note 55.

⁶⁷ Complaint For Declaratory and Injunctive Relief, Am. Library Ass’n v. Sonderling, No. 1:25-cv-01050 (D.D.C. 2025).

⁶⁸ Nathalie op de Beeck, *R.I. District Court Holds Motion Hearing on Fate of IMLS*, PUBLISHERS WEEKLY (Apr. 21, 2025), <https://www.publishersweekly.com/pw/by-topic/industry-news/libraries/article/97591-r-i-district-court-holds-motion-hearing-on-fate-of-imls.html>.

⁶⁹ A Statement from AFGE Local 3403 on the Status of the Institute of Museum and Library Services, <https://www.artsactionfund.org/sites/artsactionfund.org/files/imls%20union%20statement%20admin%20le ave.pdf>; Limbong, *supra* note 55.

⁷⁰ Complaint For Declaratory and Injunctive Relief, *Rhode Island v. Trump*, No. 1:25-cv-00128 (D.R.I. 2025).

⁷¹ *Id.*

Association v. Sonderling, seeking declaratory and injunctive relief against the dismantling of IMLS, the termination and transfer of awarded grants, and the reduction of staff. The complaint similarly alleges violations of the Administrative Procedure Act, separation of powers doctrine, and, additionally, the First Amendment to the Constitution, which prohibits the government from restricting speech.⁷²

Echoing the advice of the National Museum and Library Services Board, these lawsuits set forth arguments that the functions of IMLS are required by statute, the Director of IMLS is required to issue funds that satisfy the agency’s statutory mandates, the executive branch’s actions taken with respect to IMLS violate the agency’s duty to disburse funds already allocated by Congress, and the executive cannot unilaterally dismantle an agency established by Congress.

The United States District Court for the District of Columbia granted a partial, temporary restraining order on May 1 in *American Library Association v. Sonderling*, which averted a reduction in force scheduled for May 4.⁷³ Shortly thereafter, on May 6, the District Court of Rhode Island granted a preliminary injunction in *Rhode Island v. Trump*, upholding that “Congress controls the agencies and appropriates funding” and determining that the executive order “disregards the fundamental constitutional role of each of the branches of our federal government; specifically, it ignores the unshakable principles that Congress makes the law and appropriates funds, and the Executive implements the law Congress enacted and spends the funds Congress appropriated.”⁷⁴

NATIONAL ENDOWMENT FOR THE ARTS

The National Endowment for the Arts is “the largest funder of the arts and arts education in communities nationwide.”⁷⁵ Pursuant to its authorizing legislation, the NEA is governed by a chairperson, who, like the Director of IMLS, is appointed by the President with the advice and consent of the Senate and serves a four-year term, and a National Council on the Arts,

⁷² Complaint For Declaratory and Injunctive Relief, *Am. Library Ass’n v. Sonderling*, No. 1:25-cv-01050 (D.D.C. 2025). “Defendants’ actions to dismantle IMLS—and in particular their termination of grants, with the stated goal of “restor[ing] focus on patriotism, . . . core values, . . . [and] American exceptionalism”—is contrary to the First Amendment because it imposes an unconstitutional condition—refraining from expression or association that is inconsistent with these goals—on federal funding.” *Id.*

⁷³ FAQ: *Executive Order Targeting IMLS*, *supra* note 57; Nathalie op de Beeck, *R.I. District Court Grants Preliminary Injunction in IMLS Case*, PUBLISHERS WEEKLY (May 6, 2025), <https://www.publishersweekly.com/pw/by-topic/industry-news/libraries/article/97715-r-i-district-court-grants-preliminary-injunction-in-imls-case.html>.

⁷⁴ *Id.*; Memorandum and Order, *Rhode Island v. Trump*, No. 1:25-cv-00128-JJM-LDA (D.R.I. 2025).

⁷⁵ *What Is the NEA?*, NATIONAL ENDOWMENT FOR THE ARTS, <https://www.arts.gov/about/what-is-the-nea>.

who advises the Chair.⁷⁶ The NEA's current Chair is Mary Anne Carter, who served as Chair during the President's first term.⁷⁷

The NEA, too, is primarily a grant-making entity, funded by annual congressional appropriations.⁷⁸ It funds tax-exempt nonprofit arts organizations, public (including local and state) arts agencies, school districts, colleges and universities, federally-recognized tribes, and, in certain limited circumstances, individual writers and translators.⁷⁹ NEA grants generally must be matched, one-to-one, by nonfederal sources⁸⁰ and are approved by peer review panels and, ultimately, the council and Chair.⁸¹

On February 7, 2025, the NEA revised its grantmaking rules in response to a series of executive orders.⁸² The new rules require that applicants to agree to comply with "all applicable Executive Orders" while the relevant award is being administered, including Executive Order No. 14168, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" (dated January 20, 2025)⁸³ and Executive Order No. 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" (dated January 21, 2025).⁸⁴ Specifically, the former mandates that applicants "understand[] that federal funds shall not be used to promote gender ideology" and the latter that applicants "will not operate any programs promoting 'diversity, equity, and inclusion' DEI) that violate any applicable Federal anti-discrimination laws."⁸⁵

Each executive order, however, is the subject of active litigation. Filed on February 3, 2025 in the United States District Court for the District of Maryland, *National Association of Diversity Officers in Higher Education et al v. Trump* challenges two diversity, equity and

⁷⁶ 20 U.S.C. § 954 (2010)(b). The National Council on the Arts was established through the National Arts and Cultural Development Act of 1964, one year prior to the NEA's authorization by Congress as an independent agency. *National Council on the Arts*, NATIONAL ENDOWMENT FOR THE ARTS, <https://www.arts.gov/about/leadership-staff/national-council-arts>.

⁷⁷ Elizabeth Blair, 'Chilling Effect': Arts Organizations React to End of DEI Initiatives from Fed Agency, NPR (Feb. 11, 2025), <https://www.npr.org/2025/02/11/nx-s1-5293082/trump-executive-orders-dei-nea-arts-organizations>; Zachary Small, *Trump Nominates Former N.E.A. Chair to Head Embattled Arts Agency*, N.Y. TIMES (May 8, 2025) <https://www.nytimes.com/2025/05/08/arts/trump-national-endowment-for-the-arts-carter.html>.

⁷⁸ 20 U.S.C. § 954 (2010)(c); *What Is the NEA?*, *supra* note 75.

⁷⁹ *Id.*; *National Endowment for the Arts FY 2026 Grant Opportunities Now Available*, NATIONAL ENDOWMENT FOR THE ARTS (Dec. 12, 2024); *Legal Requirements and Assurance of Compliance*, NATIONAL ENDOWMENT FOR THE ARTS, <https://www.arts.gov/grants/legal-requirements-and-assurance-of-compliance>.

⁸⁰ *FY 2026 Grant Opportunities*, *supra* note 79.

⁸¹ *Grant Review Process*, NATIONAL ENDOWMENT FOR THE ARTS, <https://www.arts.gov/grants/grant-review-process>.

⁸² *Legal Requirements*, *supra* note 79; Michael Paulson, *The N.E.A.'s New Gender and Diversity Edicts Worry Arts Groups*, N.Y. TIMES (Feb. 12, 2025), <https://www.nytimes.com/2025/02/12/arts/nea-dei-gender.html>.

⁸³ Proclamation No. 14173, 90 F.R. 8633 (2025).

⁸⁴ Proclamation No. 14168, 90 F.R. 8615 (2025); *Legal Requirements*, *supra* note 78.

⁸⁵ *Id.*; Proclamation No. 14173, *supra* note 83.

inclusion executive orders, including Executive Order No. 14173.⁸⁶ The NEA's rules currently state that, due to a preliminary injunction issued on February 21 (and clarified on March 10), the NEA is not requiring any grantee or contractor to make a "certification" or other representation pursuant to Executive Order No. 14173 "as long as this preliminary injunction remains in effect."⁸⁷ However, the Fourth Circuit Court of Appeals granted the government's motion for a stay of the preliminary injunction pending appeal on March 14.⁸⁸ As a result, the preliminary injunction is *not* currently in effect and the executive order instead remains in force.⁸⁹

On March 6, 2025, the American Civil Liberties Union filed a separate lawsuit in the United States District Court of Rhode Island on behalf of four plaintiff nonprofit arts organizations against the NEA directly and Acting Chair Carter in her capacity as Chair, requesting a preliminary injunction and declaration that Executive Order No. 14168 violates the Administrative Procedure Act and the First and Fifth Amendments to the Constitution and that the NEA's action exceeds the NEA's statutory authority under its enabling statute.⁹⁰ The next day, the NEA agreed by declaration to temporarily suspend its revised grantmaking terms.⁹¹ Pending the outcome of this litigation, grantees will not be required to make any "certification" or other representation pursuant to the order.⁹²

The revised grantmaking rules, as qualified above, apply to grant applicants. The status of NEA grants that have already been awarded remains unclear, though in early May, arts groups nationwide began to receive notices of the termination and withdrawal of their grants.⁹³ In addition to revising its rules and updating grant deadlines, the NEA also cancelled the "Challenge America" grant opportunity for the 2026 fiscal year, instead

⁸⁶ Complaint For Declaratory and Injunctive Relief, Nt'l Ass'n of Diversity Offcs. in Higher Ed. v. Trump, No. 1:25-cv-00333-ABA (D. Md. 2025).

⁸⁷ Clarified Preliminary Injunction, Nt'l Ass'n of Diversity Offcs. in Higher Ed. v. Trump, No. 1:25-cv-00333-ABA (D. Md. Mar. 10, 2025); *Legal Requirements*, *supra* note 79.

⁸⁸ Order Granting Motion for a Stay of the Preliminary Injunction, Nt'l Ass'n of Diversity Offcs. in Higher Ed. v. Trump, No. No. 25-1189 (4th Cir. Mar. 14, 2025); Erin M. Connell, *Fourth Circuit Reinstates Anti-DEI Executive Orders Pending Further Litigation*, ORRICK (Mar. 17, 2025), <https://www.orrick.com/en/Insights/2025/03/Fourth-Circuit-Reinstates-Anti-DEI-Executive-Orders-Pending-Further-Litigation>.

⁸⁹ *Id.*

⁹⁰ Complaint For Declaratory and Injunctive Relief, R.I. Latino Arts v. Nt'l Endowment for the Arts, No. 1:25-cv-00079 (D.R.I. 2025). For additional reading, see the 1990 NEA censorship controversy surrounding Robert Mapplethorpe's photography and the "indecent" clause added to the NEA's grantmaking terms. Margaret Quigley, *The Mapplethorpe Censorship Controversy*, Political Research Associates (May 1, 1991), <https://politicalresearch.org/1991/05/01/mapplethorpe-censorship-controversy>; *Finley v. NEA*, CENTER FOR CONSTITUTIONAL RIGHTS (Dec. 11, 2007), <https://ccrjustice.org/home/what-we-do/our-cases/finley-v-nea>.

⁹¹ Declaration Of Ann Eilers, Deputy Chair for Management and Budget, National Endowment for the Arts, R.I. Latino Arts v. Nt'l Endowment for the Arts, No. 1:25-cv-00079 (D.R.I. 2025).

⁹² *Legal Requirements*, *supra* note 79.

⁹³ Paulson, *supra* note 82; Chloe Veltman, *Sweeping Cuts Hit NEA After Trump Administration Calls to Eliminate the Agency*, NPR (May 3, 2025), <https://www.npr.org/2025/05/03/nx-s1-5385888/sweeping-cuts-hit-nea-after-trump-administration-calls-to-eliminate-the-agency>; Small, *supra* note 77.

directing its general “Grants for Arts Projects” program to give priority to projects that “‘celebrate and honor the nation’s rich artistic heritage and creativity’ during the lead-up to the 250th anniversary of American independence in July 2026.”⁹⁴

NATIONAL ENDOWMENT FOR THE HUMANITIES

The National Endowment for the Humanities, known as the NEA’s “sister organization,” is dedicated to funding the humanities through grants to museums, historic sites, colleges and universities, elementary and high schools, libraries, public television and radio, and independent scholars.⁹⁵ The leadership structure is similar to that of the NEA, with a chairperson, currently Acting Chair Michael McDonald, and a twenty-six (currently twenty-four) member advisory council, the National Council on the Humanities, of private citizens appointed by the president and confirmed by the Senate, who serve staggered six-year terms.⁹⁶ Forty-two percent of NEH funding is filtered through state and territorial humanities councils, which then disburse funds to local organizations.⁹⁷

The NEH webpage regarding the implementation of recent executive orders features similar language to the NEA grantmaking rules; however, the NEH website recognizes the stay of the preliminary injunction in *National Association of Diversity Officers in Higher Education et al v. Trump* and states that the “NEH will reinstate [the Executive Order’s] prohibitions in the agency’s [notice of funding opportunities].”⁹⁸

On April 3, 2025, the NEH cancelled nearly 85% of its previously awarded grants and indicated that “no upcoming awards” will be made in fiscal year 2025.⁹⁹ Like IMLS, these grant funds were already awarded using Congressionally appropriated funds. In addition, the agency has begun placing most of its staff on administrative leave, aiming for a reduction in force to 50 employees from a prior staff of 170.¹⁰⁰

⁹⁴ Paulson, *supra* note 82; Blair, *supra* note 77; *FY 2026 Grant Opportunities*, *supra* note 79.

⁹⁵ *About the National Endowment for the Humanities*, NATIONAL ENDOWMENT FOR THE HUMANITIES, <https://www.neh.gov/about>; Loane, *supra* note 48.

⁹⁶ *National Council on the Humanities*, NATIONAL ENDOWMENT FOR THE HUMANITIES, <https://www.neh.gov/about/national-council-on-the-humanities>; Jennifer Schuessler, *Canceled Humanities Grants to Help Pay for Trump’s ‘Garden of Heroes’*, N.Y. TIMES (Apr. 10, 2025), <https://www.nytimes.com/2025/04/10/arts/trump-garden-heroes-humanities.html>.

⁹⁷ Elizabeth Blair, *Cultural Groups Across U.S. Told That Federal Humanities Grants Are Terminated*, NPR (Apr. 3, 2025), <https://www.npr.org/2025/04/03/nx-s1-5350994/neh-grants-cut-humanities-doge-trump>.

⁹⁸ *NEH Implementation of Recent Executive Orders*, NATIONAL ENDOWMENT FOR THE HUMANITIES, <https://www.neh.gov/executive-orders>.

⁹⁹ Janay Kingsberry and Anne Branigin, *At Least 1,200 Grants Canceled as NEH Cuts Target Humanities Across U.S.*, THE WASHINGTON POST (Apr. 7, 2025), <https://www.washingtonpost.com/style/2025/04/07/neh-grants-canceled-cuts/>; Blair, *supra* note 97.

¹⁰⁰ Jennifer Schuessler, *Trump Administration Moves to Cut Humanities Endowment*, N.Y. TIMES (Apr. 3, 2025), <https://www.nytimes.com/2025/04/03/arts/humanities-grants-canceled-doge.html>; Schuessler, *supra* note 96; Benjamin Sutton, *National Endowment For The Humanities Cancels Grants As Trump Administration Redirects Agency’s Resources*, THE ART NEWSPAPER (Apr. 4, 2025),

On Thursday, May 1, the American Council of Learned Societies, the American Historical Association, and the Modern Language Association filed a lawsuit in the Federal District Court for the Southern District of New York to prevent the dismantling of the NEH, their arguments similar to those in the IMLS lawsuits described above, including a First Amendment claim and a claim that the “Department of Government Efficiency,” or DOGE, “does not possess any congressionally conferred authority to terminate NEH grants or make other institutional decisions of NEH.”¹⁰¹

GALLERY-WRAPPING IT UP

As ongoing litigation and policy shifts unfold, the operational and funding structures of institutions and agencies like the Smithsonian, Kennedy Center, IMLS, NEA, and NEH remain in flux. These developments may lead to lasting changes in how federal cultural institutions function and interact with the public. Continued monitoring will be essential to understanding their long-term implications for the national arts framework and ability of the executive to shape our national cultural narrative.

The information on this website is general and is provided for informational purposes only. It should not be construed as legal advice on any matter and does not establish an attorney-client relationship. Any views expressed herein are my own.

<https://www.theartnewspaper.com/2025/04/04/national-endowment-for-the-humanities-cancels-grants-trump>.

¹⁰¹ Complaint For Declaratory and Injunctive Relief, Am. Council of Learned Societies v. McDonald, No. 1:25-cv-03657 (S.D. NY 2025); Jennifer Schuessler, *Lawsuit Against Humanities Endowment Offers Details on DOGE*, N.Y. TIMES (May 2, 2025), <https://www.nytimes.com/2025/05/02/arts/humanities-endowment-doge-grants.html>.