

NEW SCHOOL FOR SOCIAL RESEARCH

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OFFICE OF THE PRESIDENT

STATEMENT BY JONATHAN F. FANTON, PRESIDENT, NEW SCHOOL FOR SOCIAL RESEARCH, ON THE NATIONAL ENDOWMENT FOR THE ARTS GUIDELINES

The National Endowment for the Arts has issued a statement interpreting the certification it now requires grant recipients to execute in order to receive the funds awarded to them. According to the NEA, references to obscenity in the certification are to be understood to refer to the Supreme Court's determination in Miller v. California and not to the language the NEA still seems to demand that recipients of grants sign. That certification is the subject of a suit brought by the New School for Social Research against the NEA.

While the NEA statement may appear to be a constructive step away from the palpably unconstitutional language grant recipients have been required to sign, the NEA seems to continue to insist that grant recipients swear to just that language. The NEA has not seen fit either to abandon entirely or to amend substantially a condition that so threatens the First Amendment. The NEA instead seems insistent that grant recipients sign an oath that can only have a chilling effect on recipients' exercise of their constitutionally guaranteed right of free speech. In fact, the NEA's statement raises new issues that cause concern. As a result, our attorneys have initiated steps to take the deposition of NEA Chairperson John E. Frohnmayer on July 18, 1990.

We believe the obscenity condition, even as now interpreted, will continue to cause grant recipients to avoid producing controversial art for fear it will be seen as coming too close to the line that defines prohibited speech. It continues to be impossible for grant recipients to know what the NEA will regard as obscene at some point in the future. The interpretation would seem to subject grant recipients to continuing surveillance by the NEA, even after the NEA has deemed a project worthy of funding and therefore not in violation of Section 304 of Public Law 101-121.

It becomes more and more apparent that both the intent of the obscenity condition as adopted by Congress and its effect as implemented by the NEA is not to prevent government funds from being used to support obscenity. Rather, it is to suppress ideas and speech that the government finds dangerous or offensive. This was evident recently in the reported statement of Chairperson Frohnmayer that political considerations would be addressed in decisions on grant awards, and in the denial by the Chairperson of grants to four performance artists on the basis of the controversial content of their work. These grants were denied despite a recommendation by an NEA peer-review panel that the grants be made on the basis of the artistic merit of the applications.

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The New School continues to support strongly reauthorization of the NEA without restrictions on the content of work it may fund. However, the NEA's own actions have contributed to a severe alienation between the agency and the artists it was meant to support. The NEA had the opportunity to take a positive step by abandoning the certification requirement. We regret its failure to do so.