

THE CLASH

The Culture Wars of the **1980s and 1990s**

In April 1987, the Southeastern Center for Contemporary Art in Winston-Salem, North Carolina, awarded an artist named Andres Serrano a \$15,000 prize for his art piece *Piss Christ*. The work, a large-scale color photograph that depicted a crucifix being submerged in a small glass tank of the artist's own urine, sparked controversy from conservative outlets. A right-wing religious fundamentalist group called the American Family Association (AFA) sent 178,000 letters to their church constituents and asked them to write to Congress to protest the use of taxpayers' funding of controversial art.¹ The group's letter was also sent to Capitol Hill, and received by Republican Senator Alfonse D'Amato of New York. On the floor of the Senate, D'Amato ripped up an exhibition catalog that featured *Piss Christ*. D'Amato's colleague, Jesse Helms (R-NC), cheered his actions and announced that "the Senator from New York is absolutely correct in his indignation; I do not know Mr. Andres Serrano and I hope I never meet him. Because he is not an artist, he is a jerk."²

The attentions then shifted towards the National Endowment for the Arts (NEA), the preeminent governing funding body for artists in the United States that, through the partnership agreement with the Southeastern Center for Contemporary Art, partially provided the funding for Serrano's art. In an effort to prevent the situation from escalating, the organization issued a response: "We, the Endowment, deeply regret any offense to any individual."³ Unsatisfied by the statement, Helms, D'Amato and 22 other senators proceeded to demand a review of the Art Endowment's funding procedures. What came next would be an intense struggle between artists' rights and the government's wielding of power that would last almost until the new millennium.

¹ Robert Wuthrow, *Creative Spirituality: The Way of the Artist* (University of California, 2001) 172.

² Richard Meyer, "The Jesse Helms Theory of Art." *October*, Vol. 104 (Spring 2003), Pp. 131-148. p.136.

³ Mark Bauerlein and Ellen Grantham, *National Endowment of the Arts, A History: 1965-2008* (Washington D.C. 2008). 91.

This article examines the culture wars in America during the late 1980s and 90s. It focuses on the cultural context that transpired during the time period that culminated in the Supreme Court ruling of *The NEA v. Karen Finley* (1998) that, in many ways, definitively changed how the art world operates, particularly in its relations with the government, which made funding for artists much more difficult.

The Sixties Liberation

To understand what led to the culture wars of the late 1980s and 90s, one must understand the radical shift in the American political landscape in the 1960s. The sixties gave birth to the New Left who were white Americans that were both young and affluent. There were hundreds of these American youths who voiced dissatisfaction with the promise of American life. Inspired by the civil rights movement and radicalized by the Vietnam War, they committed themselves to leftist activism of one sort or another.

This form of counter culturalism was not only a response to the conservative approach that dominated much of America in the twentieth century, but it was also, as author Andrew Hartman put it, an “effort to discover new types of community, new family patterns, new sexual mores, new kinds of livelihood, new aesthetic forms, new personal identities, on the far side of politics, the bourgeois home, and the Protestant work ethic.”⁴ The New Left’s emphasis towards racial and social movements such as antiwar, Black Power, feminist, and gay liberation were increasingly being incorporated into mainstream America, a fact that conservative Americans would acknowledge as a major threat.

The Birth of the NEA

⁴ Hartman, 14.

With the election of President John F. Kennedy in 1960, America as a nation seemed poised to dedicate to the arts and become a widespread movement. As Kennedy prefaced during his 1960 election campaign: “We live in an era of impressive artistic achievement. Our painters, sculptors, musicians, dancers, and dramatists are the envy of the world.”⁵ In light of Americans’ interest in the arts, Kennedy proposed that the United States should establish a permanent official body dedicated to supporting inspiring artists.⁶

Kennedy appointed August Heckscher, a former U.S. delegate and chief editorial writer for the *New York Herald Tribune*, as his special consultant on the arts. In May 1963, Heckscher compiled a report for the president entitled “The Arts and the National Government,” which led to the establishment of the President’s Advisory Council. To coincide with Heckscher’s report, in April of the same year, Senator Jacob Javits (R-NY), along with fellow Senators Joseph Clark (D-PA), Hubert Humphrey (D-MN), Claiborne Pell (D-RI), and other sponsors, introduced S.R. 1316. The proposal stated its purpose was “to establish a National Council on the Arts and a National Arts Foundation to assist the growth and development of the Arts in the U.S.”⁷

After Kennedy’s untimely death in 1963, his successor, Lyndon B. Johnson continued the mission to establish a federal arts agency. On August 1964, legislation established the National Council of the Arts (NCA) which was passed by the House of Representatives by a vote of 213 to 135.⁸ The council’s purpose was to legislate the acts and appropriate funds for setting up the proposed federal arts agency. On September 29, 1965, after much preparation, Johnson signed

⁵ Donna M. Binkiewicz, *Federalizing the Muse: United States Art Policy and the National Endowment of the Arts*, (The University of North Carolina Press, 2004.) 34.

⁶ Bauerlein, 6.

⁷ Bauerlein, 6-7.

⁸ Bauerlein, 15.

the National Foundation of the Arts and Humanities Act that completed the goal set by Kennedy: the creation of the National Endowment for the Arts.

The Arts Endowment in its inaugural fiscal year had a budget of \$2.5 million and made the first NEA grant of \$100,000 to the American Ballet Theatre in December, 1965. Ensuing grants were awarded to artists from varying fields: literature, architecture, education, music, public media, visual arts, and theater. By 1967, the agency's first complete series of grants, topped off on a budget that was nearly \$8 million. The early NEA grants demonstrated the agency's close involvement in following the current movements and trends in American culture by supporting visual pop culture and neo-surrealism arts, as well as an appreciation of other styles and genres. The Arts Endowment also rewarded established artists and encouraged young and fresh talents who were either overlooked or growing in acceptance. An interesting fact worth noting in the NEA's early legislation is that the original writers were fearful that any government involvement beyond organizational funding would promote the perception that government-supported art, funded by the NEA, was government approved, conformist art; and not true works that were both visionary and unrepressed.⁹

In the Name of God and Country

By the time Ronald Reagan was elected president in 1980, the conservative right had undergone its own transformation. In the wake of the New Left reorienting the values of America in the sixties, the 1970s ushered in a new political movement, the "New Right," who were formally part of the establishment.

One of the chief catalysts of the movement was Jerry Falwell, a Baptist pastor from Lynchburg, Virginia. Falwell was a well-known evangelical who had a one-hour ministry

⁹ Gary E. Devlin *NEA v. Finley: Explicating the Rocky Relationship Between the Government and the Arts*, 27 *Pepp. L. Rev.* 2 (2000) Available at: <http://digitalcommons.pepperdine.edu/plr/vol27/iss2/6>

program entitled *The Old-Time Gospel Hour*.¹⁰ Falwell, along with fellow pastors such as Pat Robertson, advocated for the stability of the traditional family. As Falwell declared: “It is my conviction that the family is God’s basic unit in society; we are in a holy war for the survival of the family; [men and women need] to get in a relationship with God and His principles for the home.”¹¹ Falwell and the New Right blamed secularization, feminists, the practice of abortion, and gay rights as deterrents to traditional family values and therefore implored Christian congregations to be more proactive in the nation’s politics to prevent such developments from continuing.

In 1979, Falwell founded the Moral Majority, which was an effort to bring religious conservatives in and form a profitable and political organization. Aided by well-connected Republican operatives such as Richard Viguerie and Howard Phillips, Falwell’s organization in its first year enrolled 2.5 million mostly evangelical members and reported contributions in excess of \$35 million. By the time the 1980 presidential election came around, Moral Majority and the Christian Right in general, was becoming an emerging voice in the political landscape, giving the New Left opposition, both in its morals and ideals.

The NEA in the 1980s

As the Christian Right was rising, the NEA faced a number of issues economically. By the beginning of the 1980s, there were a few lawmakers in Washington questioning the agency’s purpose. In one of the early signs of the culture war, Reagan’s Office of Management and Budget (OMB) director David Stockman attempted to abolish the NEA in an effort to jumpstart the country’s economy in the wake of the recession that encompassed the previous decade. Stockman viewed the NEA as one of many examples of the federal government’s excessive

¹⁰ Hartman, 84.

¹¹ Jerry Falwell, *Listen America!* (Garden City, NY: Doubleday, 1980), 128; found in Hartman, 87.

influence in public life.¹² In 1981, the Reagan administration tasked Frank Hodsoll to take over as NEA chairman. Hodsoll was not terribly adept in the arts; however, his background in government and public policy helped elevate the agency as the leader in arts education. Under Hodsoll's leadership, "the Arts Endowment focused on building infrastructures and support networks for the arts, cultivating new audiences, and fostering sustainability among arts organizations."¹³ To avoid steep budget cuts and liquidation, the NEA inaugurated several initiatives such as the Jazz Master's Program and the National Medal of Arts award that helped elevate the group's profile and give doubting lawmakers proof that their work has legitimacy.

One notable issue that the agency adamantly pushed to reform was its peer-review panels, which processed and evaluated recommended artists' merits before being awarded any funding. Originally, the NEA handled this process by three distinct governing bodies: (1) the advisory peer panels, who consist of a rotation of experts in their respective fields; (2) a 26 member National Council on the Arts, who are citizens with a broad experience in art; (3) and the Endowment chairperson who has the responsibility to approve the application.¹⁴ In 1979, a House Appropriations Committee report investigated the NEA's panel review requirements and concluded that there were two major concerns. The first cited that the group failed to establish a coherent policy position and to develop uniform systems of evaluation within its programs and panels. The second was the politicization of the review process and the creation of a closed system that resulted in "cronyism" and "conflict of interest."¹⁵ These issues stemmed from the suspicion of the agency's favoritism towards certain applicants and deliberately forwarding

¹² Bauerlein, 69-70.

¹³ Bauerlein, 69.

¹⁴ Devlin, 346.

¹⁵ Ann M. Galligan, "The Politicization of Peer-Review Panels at the NEA;" edited by Judith Huggins Balfe, *Paying the Piper* (University of Illinois Press, 1993) 261-263.

applications of artists who were turned down. The review process was also influenced by endowment staff members who “ran” the panels by assisting in the writing of the grant proposals.

In 1981, Reagan commissioned a Special Presidential Task Force to examine the endowment’s overall operation and its commitment to the public as an outlet to award federal funds for culture. The task force “found the endowments and their programs sound, appropriate, and reaffirmed the role of the private sector, both as independent donors and cooperators, and the NEA as patrons of the arts and humanities.”¹⁶ However, there were still minor details that needed to be addressed and Hodsoll proposed a six-part strategy for the NEA which is summarized by Bauerlein’s book:

- “• Providing long-term in situational assistance to the best of the arts organizations, big or small;
- Encouraging broader audiences for advanced and diverse art forms;
- Increasing efficiency in grant making by promoting anticipatory planning by arts institutions;
- Reinforcing links among federal, state, local, and regional arts organizations;
- Stimulating broader private support;
- Initiating a system of arts information delivery. Efficiency, stability, partnership, and sustainability.”¹⁷

By the end of the decade, which, coincidentally, would be the end of Hodsoll’s tenure as chairman of the NEA, his strategy helped the agency to expand and grow stronger than ever. By 1989, the NEA demonstrated a far-reaching economic and institutional understanding of the arts in America, as well as a commitment to form a newfound public support. The agency emerged with a budget increase of \$169 million along with its programs and awards going strong,

¹⁶Galligan, 265.

¹⁷ Bauerlein, 78.

becoming distinguished honors.¹⁸ However, despite the agency's growth and success, critics still argued for alternatives to decentralize the NEA's panel system in favor of channeling funds through state and local agencies. The NEA eventually conceded to the pressures of their critics and by 1990, thirty-five percent of its funds were allocated to state art agencies, compared to the previous twenty percent formula.¹⁹ This new initiative to give local and state art associations the license to dictate federal patronage became a major factor in blurring the traditional lines between patron and audience, which led to the series of events that occurred not within the NEA internally, but externally from the controversial artists they funded.

The Imperfect Moments

The increased resentment among Conservatives and the sometimes controversial artists being funded and exhibited created an impasse that forced the art world to be taken away from its comforts on the edges of society and to the center of American culture and politics. The culture wars emerged via the controversies surrounding two exhibitions: Andres Serrano's *Piss Christ* (1987) and Robert Mapplethorpe's *The Perfect Moment* (1989). Both covered subject matter that stirred an uproar from the right-wing groups and the support by the left: the homoeroticism in much of Mapplethorpe's photography and the photographic juxtaposition of a plastic crucifix submerged in a tank of Andres Serrano's urine.²⁰ In 1987, Serrano's *Piss Christ* was one, along with nine other artists' works, that received a visual arts award by the Southeastern Center for Contemporary Art (SCCA) in Winston-Salem, North Carolina.²¹ The award included a grant, partially funded by the NEA, of \$15,000 to work three tours: Los

¹⁸Bauerlein, 69, 86.

¹⁹Galligan, 266.

²⁰Peggy Phelan, "Money Talks," *TDR*, Vol. 34. No. 1 (Spring 1990) 4.

²¹Chris Burgess, "Multiple Streams and Policy Community Dynamics: The 1990 NEA Independent Commission," *The Journal of Arts Management, Law, and Society*, Vol. 36: No. 2 (Summer 2006) 105.

Angeles, Pittsburgh, and Richmond. When the tour arrived in Richmond in 1989, the art piece drew an ire from right-wing fundamentalist religious groups.

One in particular was Rev. Donald Wildmon, who was the head of the American Family Association (AFA). Wildmon wrote a letter that enlightened the pastor's plea for his fellow Christians to realize the anti-religious sentiments that art (such as *Piss Christ*) has and dutifully protect their values from its "demeaning disrespect."²² Wildmon then proceeded to send letters of indignation to every member of Congress with a copy of *Piss Christ* enclosed hoping to gain support in Capitol Hill.

Wildmon's letter drew the attention of Senator Alfonse D'Amato (R-NY), who launched his own grievances by directing them towards the NEA and their funding of Serrano. On May 18, 1989, D'Amato adamantly voiced his opinion on the Senate floor against then acting NEA chairman Hugh Southern in regards to the agency's perceived poor choices of using tax payers' dollars on artists such as Serrano: "If you want free speech, you want to draw dirty pictures, you want to do anything you want, that is your business, but not with taxpayers' money."²³ 50 senators and 150 representatives supported the New York lawmaker's position and proceeded to question the agency's funding procedures. Southern was forced to respond, providing senators an outline of the NEA's grant-making process and promising that the organization would look further into the case.

On June 12, 1989, House of Representatives' Richard Armev (R-TX) expounded the argument further: the issue was not whether art should be subjected to censorship, nor did it have anything to do with freedom of speech, it was about money. Armev was quoted in the June 14,

²² Rev. Donald Wildmon, "letter concerning Serrano's *Piss Christ*," April 5, 1989; Found in Bolton, 27.

²³ Alfonse D'Amato, Jesse Helms, "Debate in Senate over the NEA, statements with letter of protest to NEA's Hugh Southern, 18, May. 1989; Bolton, 28.

1989 *Washington Times*, a newspaper known for its conservative leanings: “We’re not saying Serrano can’t have bad taste and bad manners if he wants to. We just don’t want to give him taxpayer money to be a tasteless boor.”²⁴ The day before Arme y’s statements were to be publicized, another controversy arose, adding more fuel to an already heated situation.

On June 13, 1989, the Corcoran Gallery of Art in Washington D.C., stunned the art community by announcing the cancellation of Robert Mapplethorpe’s *The Perfect Moment*. Mapplethorpe, who died of AIDS that March, was widely regarded as one of the major photographers of the previous two decades. *The Perfect Moment* was a retrospective exhibit that not only displayed still life and flowers, but also included sexually explicit works, homoerotic images, and nudes of children.²⁵ In light of the Serrano controversy, the Corcoran officials expressed concern that the show would drag the museum into the battle over the NEA’s funding of artistic work that is alleged to be offensive.²⁶ Although the Corcoran was not directly funded for *The Perfect Moment*, The University of Pennsylvania’s Institute of Contemporary Art (ICA) was responsible for piecing together Mapplethorpe’s exhibit, and was awarded \$30,000 by the NEA for the display.²⁷

Unfortunately, the cancellation of Mapplethorpe’s exhibit did not prevent the backlash coming from the Right. According to Burgess, 105 House members joined Arme y in sending another letter of protest to the NEA saying among other things, “If the NEA has enough money to fund this type of project, then the NEA has too much money to handle responsibility.”²⁸

²⁴ Phelan, 7.

²⁵ Joshua P. Smith, “Why the Corcoran Made a Big Mistake, *Washington Post*, 18, June. 1989; Bolton, 37.

²⁶ Smith, 37.

²⁷ Smith, 37.

²⁸ Burgess, 106.

Debate was intensifying on both sides of the political spectrum over the NEA's funding procedures and the policing of artworks that were deemed inappropriate.

Peggy Phelan, a performance studies professor from New York University at the time of the controversies, wrote that the public should acknowledge that art expresses the relationship between the image and human behavior as a representation of the reality people live in. Phelan wrote that "art really does expand the imagination and release new forms of the possible. We must stop finding this truth embarrassing, retrograde, [and] nostalgic."²⁹ Phelan also challenged the New Right (in particular Helms) to understand and prove that they have the knowledge to define what "good" art is to defend their attacks on individual artists and art in general, which was based off of misinterpretation that art is a desecration of religion that wasted government monies.

The right responded in kind to the challenge that Phelan and the opposition made. Televangelists such as Pat Robertson, head of the Christian Broadcasting Network, sent mailings to members of his congregation containing the nudes of Mapplethorpe's work with a note stating: "Together we can begin to turn back the tide of pornography, filth, and moral decay that is attacking every level of our society."³⁰ Pat Buchanan, who at the time was a nationally syndicated Conservative columnist and television commentator, wrote a piece for the *Washington Times* on May 22, 1989 that addressed the recent incidents in the art world revolving around Serrano and Mapplethorpe and expressed the need for the public to acknowledge the culture battle within America and the fight to maintain traditional values: "A nation absorbs its values through its art. A corrupt culture will produce a corrupt people; America needs a cultural

²⁹ Phelan, 12.

³⁰ Pat Robertson, "Christian Coalition direct mail," October 25, 1989; Bolton, 124.

revolution in the '90s as sweeping as its political revolution in the '80s.”³¹ Buchanan admonished businessmen, political leaders in Washington, and bankers for their lack of awareness in realizing the moral war waged in America by the art world and the failure of recognizing the importance of culture.

The following year, on April 1990, the Contemporary Arts Center (CAC) in Cincinnati presented *The Perfect Moment*. The day that the exhibit opened, police officers came into the gallery, arrested its director, Dennis Barrie, and charged both him and the museum for obscenity for showing the Mapplethorpe exhibit.³² Both the museum and its director were acquitted from the charges, but the incident only added to the damage to the NEA's reputation and public perception.

In light of all the controversies that surrounded the works of Serrano and Mapplethorpe, the NEA was reviewed by the government regarding their federal patronage process. Senator Jesse Helms and other Conservative supporters pushed for the elimination of the NEA altogether, the return of \$45,000 to the federal bank (the amount of both Serrano and Mapplethorpe's grants) and the prohibiting of funds. The Helms Amendment (also known as the obscenity pledge) was “to promote, disseminate, or produce materials [within] the judgement of the National Endowment of the Arts;[and] arts considered obscene, including but not limited to, depictions of sadomasochism, homoeroticism, the sexual exploitation of children, or individuals engaged in sex acts that do not have serious literary, artistic, political or scientific value.”³³

³¹ Patrick Buchanan, “Losing the War for America's Culture?” *Washington Times*, May 22, 1989; Bolton, 33.

³² Douglas McLeod & JA MacKenzie, “Print Media and Public Reaction to the Controversy over NEA Funding for Robert Mapplethorpe's *The Perfect Moment* Exhibit,” *Journalism and Mass Communication Quarterly*, Vol. 75, Iss. 2 (1998) 286.

³³ “Public Law 101-121,” (1989); edited by Gregory B. Lewis & Arthur C. Brooks, “A Question of Morality: Artists' Values and Public Funding of the Arts,” *Public Administration Review*; Washington Vol. 65, Iss. 1, (Jan/Feb 2005) 10.

Congress further developed the policy in the summer of 1990 by creating an Independent Commission (IC) to review the NEA's grant-making procedures and examine the endowment's direction with respect to the federal patronage. Added to the NEA's 1990 appropriation legislation, the purpose of the IC was to evaluate the agency by: (a) reviewing the National Endowment for the Arts grant making procedures, including those of its panel system; and (b) considering whether the standard for publicly funded art should be different than the standard for privately funded art. After a series of public hearings, the IC issued a report that affirmed "that freedom of expression was essential for the arts; determinations of obscenity should be made by the courts, not by endowment staff nor its advisory panels in the grant-review process; by delineating the scope of the panels' operation and by broadening their membership to include "knowledgeable laypersons" to guard against charges of special interest and cronyism."³⁴

Although attempts to eliminate the organization proved unsuccessful, Helms and his fellow Conservative contingent did receive consolation when Congress revamped the Helms Amendment, entitling it the Decency Standard (§ 954(d)(1) on the NEA's legislation in 1990. The NEA's Decency Standard "banned any support of obscene art with public funds and forced the NEA to make determinations of obscene material; The NEA's imposed role of art reduced the realm of constitutionally protected expression and modified the parameters of legal protection. Content regulation of art thus devalued freedom of expression in society."³⁵ This decency clause would infuriate the art community and was the center of the continuing legal battles of the NEA into the nineties.

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³⁴ Burgess, 107.

³⁵ Olson Agraz, Jody Lynn, "The National Endowment for the Art's Decency Standard and freedom of expression: Examining the indecency-policy making system," The University of Utah, ProQuest Dissertations, 2008.

Coming on the heels of the controversies that surrounded the works of both Serrano and Mapplethorpe, a group of artists were also denied their grants from the NEA. On June 20, 1990, The NEA's peer-review panel who specialized in performance art, with the urgings of NEA chairman John Frohnmayer, motioned to reconsider four of the eighteen artists that were recommended for that year: Tim Miller, John Fleck, Holly Hughes, and Karen Finley. The NEA Four, as they were labeled, are performance artists who deal with controversial topics such as homosexuality, AIDS, racism, sexism, homophobia, love, and death in their work.³⁶ The renegeing of the group's grants from the NEA was another byproduct of the increased pressure by the government lawmakers, like Jesse Helms, who constantly threatened the agency's funding and, even, their abolition. When John E. Frohnmayer was sworn in as NEA chairman by President George H.W. Bush in July 1989, he said that he was "hopeful that Serrano and Mapplethorpe would be history by the time I got to the Endowment." Frohnmayer, a successful lawyer and chairman of the Oregon State Arts Commission prior to taking the job as NEA chairman, continued by saying that he "would try [his] best to persuade the Administration that [his] point of view was right, but that I was a team player, and if I failed to persuade, I would do the Administration's will."³⁷ To the blacklisted artists, (and the art community in general), they felt that Frohnmayer "sold out" to censors, opting for the NEA's preservation by being in the Bush Administration's good graces, rather than supporting the artists that the agency funded.

This sentiment of betrayal is reflected in the writings of the NEA Four. Tim Miller, a gay performance artist from California, targeted NEA chairman John Frohnmayer for being a coward and conceding to the demands of the Bush Administration. Miller went further in his statement:

³⁶ Peggy Phelan, *Money Talks Again*, *TDR*, Vol. 35, No. 3 (Autumn, 1991) 135.

³⁷ Both statements from Frohnmayer found in Bauerlein, 95.

“[Bush] has allowed artists that confront their society to be censored, distorted, and used by right wing demagogues to advance their political careers. I therefore declare that this artist [Tim Miller] is, and of right ought to be, a free and independent citizen and have the full power to create art about my identity as a gay person, art that confronts my society, art that criticizes our government and elected officials, and maybe even some art that deserves a few tax dollars from the 20 million lesbian and gay men who pay the IRS...even more next year thanks to King George. Surprise!”³⁸

Miller’s statement is a provocative (and flamboyant) display that blatantly showed his distaste for what he felt was an injustice that was cast upon him and the community. Within the parodying of the president as a king and calling out the NEA, Miller raised an important question: what is the purpose of the government’s decision to take away the privilege and rights to freedom of expression from the gays, the lesbians, and any group living on the edges of society, if the government considers these populations as taxpayers who contribute to the nation’s welfare?

Karen Finley’s response was more personal, as she displayed her distress over fabricated columns in the *Washington Post* regarding her grant termination and exhibit being cancelled. She proceeded to write a letter to the Editor on May 19, 1990, agreeing with her fellow banned artists that this is an attack towards her and her fellow artists by the government as a form of fear mongering and propaganda: “I know that the witch-hunt of the arts does not truly represent the wishes of the American people but merely those of fanatic fiction. I hope American citizens of different backgrounds will be able to continue to express themselves freely without fear of censorship.”³⁹ Finley made it clear that her “outrageous” performances of smearing her body in

³⁸Tim Miller, *Statement*, 4, July 1990; Bolton, 244.

³⁹ Karen Finley, “Letter to the Editor,” *Washington Post*, 19, May 1990; Bolton, 210.

chocolate, as the writers put it, was not sexual nor sexually explicit, but rather spoke out against women violence, degradation of women, incest, and homophobia. Finley also defended the NEA's right to contributing funds for any forms of art, even controversial, because it would otherwise only be regulated for the rich and powerful.

In 1990, the NEA Four filed a suit against the NEA and its chairman, John Frohnmayer. According to the suit, the group argued that the dismissal of their grant funding was in violation of: (1) their First Amendment rights due to funding denial based upon political grounds and a failure to follow procedural safeguards; (2) their rights embedded in the National Foundation on the Arts and Humanities Act of 1965, amended by applying unauthorized criteria and failing to follow established procedures; and (3) their rights established in the Privacy Act due to the alleged release of their applications by the NEA.⁴⁰ The group, led by Karen Finley, first pled their case in front of the U.S. District Court in Los Angeles.

On June 9, 1992, presiding Judge Wallace Tashima declared that the NEA was unconstitutional in revoking the artists' grants. In a forty four page ruling, Tashima held the NEA's "general standards of decency clause" as a violation of the First Amendment because it was too vague and allowed arbitrary decision-making, and restricted the artists' freedom of speech and expression. Judge Tashima also stated that "artistic expression is at the core of a democratic society's cultural and political vitality."⁴¹ Tashima also noted that the Plaintiffs [the NEA Four] did not argue that arts funding is comparable to public forums nor that artists should receive NEA funding in a first come, first serve basis. Rather, that art funding should be the equivalent of the funding of a public university and that everyone has equal opportunity to

⁴⁰ Brian R. Collignon, "Taking into Consideration the "Decency Clause," *Washburn Law Journal* (Summer 1999) Sec. 2.

⁴¹ Liam Rector, "Reports from the Culture Wars: The Long, Hot, Barnburning Summer," *Harvard Review* No. 2 (Fall 1992)104.

receive federal funding.⁴² In the spring of 1998, the group's case was brought before the U.S. Supreme Court.

After deliberation, the court convened on June 25, 1998, with eight of the nine justices voting to uphold the decency and respect provision. Justice Sandra Day O'Connor delivered the opinion of the court: "[T]he 'decency and respect' criteria do not silence speakers by expressly 'threaten[ing] censorship of ideas.'" Thus, we do not perceive a realistic danger that § 954(d) (1) will compromise First Amendment values."⁴³ O'Connor explained that the NEA's decency clause's context does not necessarily mean what it applies. Despite instances of unconstitutional grant making, the justices ruled that the NEA's review panel is based not on instinct nor point of view but rather on methodology. The justices also put the role that the government played in the arts, more or less, as a facilitator, broadening artists' scope rather than mitigating their freedom of speech. The Supreme Court's ruling overturned the decision made by the District Court in 1993 and effectively established the decency clause as an official stipulation on the NEA's legislation.

The one justice who dissented, David H. Souter, stated: "the Government has wholly failed to explain why the statute should be afforded an exemption from the fundamental rule of the First Amendment that viewpoint discrimination in the exercise of public authority over expressive activity is unconstitutional."⁴⁴ In other words, Souter expressed that the provision would naturally hurt artists whose works are offbeat, disrespectful, and outside of traditional and mainstream American values. It should also be noted that Souter is a Republican who was appointed chief justice by President George H. W. Bush, giving a sense that this decision had

⁴² Rector, 104.

⁴³ Randall P. Bezanson, "Performing Art: The National Endowment of the Arts v. Finley," *Federal Communications Law Journal*, Vol. 60, Iss. 3 (June 2008) 562.

⁴⁴ David, Souter, *National Endowment for Arts v. Finley*, 524 U.S. 569 (1998); Devlin, 360.

become much more to do with an individual's morals and personal beliefs rather than political leanings.

The NEA Four did maintain their grants, which they won back in the 1993 case, but in failing to abolish (§ 954(d) (1) in the 1998 Supreme Court decision, *The NEA vs. Karen Finley* not only culminated a tumultuous period of the Culture Wars, it also effectively changed the relationship between the art world and the government in regards to public funding for the arts. Today, questions of the funding of the NEA have continued to plague the agency. The government also dismantled many of the NEA's most important programs and scaled back others. Artists, who may be considered controversial, are now looking for other options outside of government funding, such as private donations. Recently, as of March 2017, President Donald Trump requested the elimination of the NEA from his 2018 fiscal budget. On September 14, 2017, the House of Representatives passed a budget for the National Endowment of the Arts at \$145 million, which includes a \$5 million cutback.⁴⁵ In the end, the artists who were embroiled in the art controversies in the 1980s and 90s did win its share of battles, but ultimately lost the war for the abolishment of art censorship.

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⁴⁵ Felicia K. Knight, "The Ultimate Calamity Scenario in US Arts Funding: Eliminating the National Endowment for the Arts," *Cultural Trends*, Vol. 26, Iss. 4 (29, September 2017) 341.

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