

\$2.3 Million Will Flow to Nashville Artists and Organizations as part of Conciliation Agreement following Year Long Discrimination Dispute



“Report sides with artists in Metro Arts grant funding discrimination claim.” This was a Tennessean headline on March 6, 2024, days after MHRC staff presented our Title VI Fact-Finding report after a months-long investigation into a discrimination claim against Metro Arts and Metro Legal. Jump forward to five months later, MHRC has now negotiated a “conciliation agreement” (i.e., similar to a group settlement) that amounts to approximately \$2.3 million in payments to 122 individual artists and 64 community and arts organizations. Much has been said about what has happened at Metro Arts and the Arts Commission over the last few years, and the story will be told differently based on what you’re reading or who you’re asking. Here, we provide a deep dive about how the MHRC became involved and why this is important to Nashville and the Metro Government. **At the core of this dispute is what it means to have equitable access to public resources.** While this story is about Metro Arts, the themes are applicable across the city. We hope that anyone who cares about the common good, about human relations, and about civic engagement will wrestle with us as we work through the big picture issues this work has brought to the forefront.

Title VI and Protection from Discrimination

Title VI of the Civil Rights Act of 1964 orders that no person shall, on the ground of race, color, or national origin, be excluded from the participation in, be denied the benefit of, or be subjected to discrimination under any program receiving Federal Financial Assistance. In other words, if the work we do in the Metro Government receives any federal funding, then federal law prohibits racial and ethnic discrimination. Many Metro departments receive federal grants, and moreover, the Metro government accepted hundreds of millions of dollars in federal pandemic relief in the last few years. So, we believe that Title VI and the protections it confers apply to virtually everything that happens as Metro business.

A community member has two options if they feel they’ve experienced discrimination under Title VI. They can file a claim in federal court directly with the Department of Justice, where they must prove discriminatory treatment. Or they can file a complaint with a local civil or human rights agency. Such administrative agencies have authority to investigate overt discriminatory treatment, but also actions that cause disparate impact. This latter option widens the possibilities for leveraging local remedies when there are violations.

Enter MHRC.

Public Funding for the Arts: Who Gets It?

In October 2023 the MHRC received a complaint from a group of artists alleging racial discrimination in the distribution of Metro Arts grants. First, a quick note about names. The Arts Commission is the governing board, comprised of 15 volunteers appointed by the mayor, that authorizes policy decisions and approvals of public funds via the Metro Arts grants program. Metro Arts is the city department that staffs the Commission – there is an Executive Director and other staff, who are all Metro employees.

The Arts Commission is a grant making body. It has provided General Operating grants to arts organizations since 1988. In the nearly three decades since, approximately 70% of the more than \$60 million in funds have gone to just 10 arts organizations. When you peruse the historical records, you see familiar names of arts institutions that are sometimes referred to as “legacy organizations” or “the majors.” While these institutions are pillars in the Nashville community, there has also been acknowledgement that other contributors to the arts scene should have greater access to public tax dollars and funding in the form of grants.

In recent years, the Arts Commission and its leadership have discussed ways to diversify its grantees to better reflect the wide range of artist traditions, cultures, and work across the local arts ecosystem. They updated the Metro Arts mission statement to emphasize equity and access. They stood up community-led committees as formal parts of the Commission and developed racial equity goals with accompanying initiatives. They developed a new program in 2014 called Thrive, which directly funds individual and independent artists. Despite these and other measures, the general trends for where grant funds flow did not shift in significant ways.

In Fall 2022, Metro Arts began to shake things up more significantly. The staff moved through a community-driven process to redesign the grant criteria and applications to remove barriers. The redesign created a new structure that provided greater support to small organizations, measured by organizational budgets, as well as the Thrive program that funds project grants to individual and independent artists. They committed to extensive community engagement, leading to a 600% increase in applicants from the previous year. The Commission approved these and other policy changes along the way.

The “July vote,” the “August vote,” and Affirmative Action

Public funding for the arts – in Nashville and nationally – is underfunded. The increased number of applications and a flat budget created a dilemma. The Metro Council stepped in and allocated an extra \$2M for grants, but it still fell short of meeting the increased demand which now included those who had been receiving funds for decades, plus a whole group of first-time applicants. Facing hard decisions about how to allocate limited funds, in July 2023, the Arts Commission leaned into its equity commitment and voted on a funding scenario that doubled the amount that Thrive grants received the previous year (from \$10,000 up to \$20,000 per applicant) and shifted more funds to organizations with annual budgets under \$500,000. This meant that larger organizations, who on average received a grant of \$110,000 the previous year, would receive less in this new cycle.

Central to the decision to prioritize funding to individuals and smaller organizations was a theory that by doing so, Metro Arts’ grantees would become more racially diverse. This was a priority goal in their equity work. When considering their options in July, the Commissioners looked at the aggregate data on racial demographics to see the results of each funding scenario that was presented. This next explanation gets a bit in the weeds, but it’s important to understand what happened, so stick with us.

Commissioners were provided several funding scenarios for different ways to allocate the total available grants budget. The scenarios were developed based on size; for example, “Scenario A” provided the highest levels of support to individuals and small organizations, whereas “Scenario E”

provided the most to larger organizations, with other Scenarios B, C, and D all falling along the middle. The description of each scenario included the total (in aggregate) dollars that would go to BIPOC applicants and white applicants for each scenario, if selected. The Commission voted to approve the scenario that provided the greatest amount of funding to Thrive and small organizations. That scenario also had highest BIPOC dollar amount: **it provided \$988,478 to BIPOC applicants and \$3,651,121 to white applicants.** Commissioners, staff, and advocates who supported this material shift to smaller organizations celebrated the outcome. The Grant Manager sent an email to all applicants the next day about the Commission’s decision.

Five days later, Metro Legal contacted Arts staff to inform them they had concerns about the vote, citing the recent Supreme Court ruling, *Students for Fair Admissions v. Harvard (SFFA)*, that struck down affirmative action in college admissions the previous month. Though puzzled, staff followed Legal’s guidance and called a private Executive Session where representatives from Metro Legal told, suggested, and/or warned the Commissioners they should rescind their vote because it appeared they made their decision explicitly based on race, which is not allowable unless certain conditions exist. Our Title VI investigation centered on this meeting and the few days before it; specifically, why was this meeting called, and did Metro Legal tell the Commissioners they were required to rescind the vote.

It’s important for us to say that we’ll never know exactly what was said in that meeting. But, we conducted interviews with Arts Commissioners, and the testimony from some paint a possible picture of heavy-handed guidance or clear directives given by Legal. For example, one Commissioner said: *“What I heard was ‘you guys could end up before a judge over this decision. Someone else said how about we just revote exactly how we voted the first time. Someone from Legal said judges aren’t stupid they’ll see through that.”* Another Commissioner told us: *“I was highly disturbed about what we were having to do. It was completely unfair to everyone that Metro Legal had waited until after we had taken our votes to say we had to undo it.”* Another described it as intimidating, one said they were out of their depths with legalese, and multiple others argued that their vote was about size of organization and not explicitly about race.

During our investigation we also learned that one Commissioner called Metro Legal following the vote to express concerns about the legality of the Commission’s decision. This Commissioner was on the losing side of the vote, and, for months, had expressed disagreement about the new funding priorities. This gives the appearance that this Commissioner attempted, successfully, to create an intervention to reverse the vote.

Everything stalled after that private meeting. Communications with applicants went silent, grant contracts were never started, and, at the next Arts Commission meeting in August, another vote was taken that overturned the July decision and closely re-aligned with status quo funding from the previous year. The “legacy organizations” received the same size grant from the year before, and the majority of individuals and smaller organizations had their grants cut in half, completely zeroed out, or otherwise reduced.

And this all happened, purportedly, because of the SCOTUS ruling about affirmative action in higher education settings.

The Vote was Defensible

We are not naive about the state of race politics and the escalating attacks on diversity, equity and inclusion initiatives in Tennessee or nationally, but we assert that Metro Legal’s intervention was wrong. The legal advocacy organization Democracy Forward recently [released a report](#) that analyzes the ways in which the SFFA ruling has been misapplied in a number of settings, including government operations. Their analysis finds that most anti-equity attacks under the guise of SFFA are scare tactics that lack legal footing. In fact, one of their conclusions describes what happened at Metro Arts to a tee: *“programs with race-neutral criteria that analyze how decisions would affect people of color to ensure that there is less discriminatory impact do not violate SFFA. In fact, data collection and analysis remain critically important to help remove barriers and ensure greater equality”* (page 5). We also engaged independent legal counsel who looked at legal precedent and activity since SFFA and came to the same conclusion. Our [legal memo is available online](#). It includes thorough citations that argue why the Arts Commission’s July vote was allowable, did not violate the constitution, nor illegally take race into account.

Democracy Forward leaves the reader with a challenge and call to action: *“we cannot needlessly overcorrect and do our opponents’ work for them.”*

This is a major point of contention for us. **We strongly believe that the July vote was defensible.** Metro Legal could have committed to defend against any possible affirmative action related challenge (i.e., if an organization who had their grant amount reduced were to file a lawsuit alleging unlawful preference was given to BIPOC applicants). Instead of defending this policy decision that the Commission authorized, Metro Legal led them to rescind the vote. The analysis from our independent attorney provided ample evidence that another reasonable opinion could have been made about July’s vote, and we were not provided with a detailed analysis about how Metro Legal developed its opinion. This, combined with our fact-finding investigation, is what grounded our finding of probable cause of discrimination. We believe that Metro Legal acted more as an authority that issued a policy directive, rather than acting as legal advisor.

Conciliation Means we Find a Resolution

MHRC facilitated a conciliation process to resolve the dispute, which eventually led to the \$2.3M settlement outcome. Conciliation is always a strong policy preference in remedying Title VI violations. Conciliation favors mediation and conflict resolution over litigation. It focuses on processes to bring government agencies into compliance. **From the beginning, we were clear that “make whole” payments to artists based on the July vote was our non-negotiable objective.** We tried to negotiate this early on through multiple private meetings, which were unsuccessful. We publicly presented our fact-finding report and legal analysis in March 2024, then began preparations for an evidentiary fact-finding public hearing which would focus on how and why Metro Legal provided the legal advice that caused this dispute. Three weeks later, Mayor O’Connell’s administration announced it would authorize payments for artists and organizations based on the July vote. We celebrated, but soon realized it wasn’t inclusive of all impacted artists, so we continued to negotiate. Representatives from the Arts Commission, Metro Legal, Metro Finance, the artists who filed the complaint, and MHRC all came to the table for multiple conciliation meetings to deliberate on the facts. In July, we reached an agreement that included full payments to everyone.

We believe this agreement was in the best interest of Nashville and the impacted parties. We acknowledge that there are major issues brought to light by the complaint that remain unanswered. This agreement does not settle the disputed interpretation of the affirmative action ruling and how it does or does not apply to the next grant cycle or other areas of Metro. It does not concretize any policies to maintain equitable funding to small organizations and individuals in future grant cycles. It does not do anything to address conflicts of interest in boards and commissions, power imbalances within Metro, or overreach of one department to another. We know some impacted parties are concerned there is nothing in place to stop something similar from happening again, and we understand those concerns. On the day the MHRC Commission voted to accept the agreement, one MHRC Commissioner said: *“This is not a one-off. This is what systemic bias looks like. Metro weaponized an interpretation of the law and control of public funds to marginalized groups. And it served to criminalize anyone who raised concerns.”*

While these unresolved issues are still of great concern to MHRC and Nashville as a whole, we also celebrate what this agreement achieved. We are not aware of any other example in Metro’s history of a multi-million-dollar Title VI settlement agreement, especially in what felt like an uphill battle from where we began. Conciliation means acknowledging at the beginning we will not get everything we want. But we leveraged every financial remedy that was recoverable and left no money on the table. **The \$2.3M total is every dollar and cent we argued should have been granted in the original July vote.** Policy change is difficult, if not impossible to achieve through litigative procedures and often difficult through conciliatory processes. Choosing the path of conciliation means we choose to stay in relationship – even when tense and with competing interests – and struggle through the civic requirements that make up our public processes. Taking the route of conciliation means we commit to finding resolutions.

The [full conciliation agreement](#), including some additional policy/procedural outcomes, is available on our website. Despite the challenges, we thank the O’Connell administration for authorizing these rightful payments. We also thank all the parties who came to the table to negotiate in good faith throughout conciliation and continue to collaboratively work together through other outgrowths of this work, like the Conciliation Agreement Working Group.

The Arts Commission must still grapple with how it operationalizes its commitment to equitable grant making and what they will do in the immediate and longer-term future. We are keenly watching and participating in the process and will use our influence to advocate for the equitable distribution of our public funds across Nashville, particularly to those who have been denied access in the past.

Shifting resources from “haves” to “have-nots” never comes without resistance. That is the work of equity. We recognize the limits we face as a Metro department in addressing systemic inequities within the system that we are also part of. This only underscores the importance of community advocacy and activism that pushes from the outside. We would have never been brought into this if a group of four artists had not taken risks to bring forward a discrimination complaint last year. While we do not want to sugarcoat, minimize, or justify the conflict or harms that many have experienced throughout this dispute, we will also continue to tell this story and emphasize the systemic issues of inequity and power imbalance that it raises. If Nashville aspires to be “one city for all people,” as the MHRC motto inspires us to be, then we must learn from these lessons and put these political and practical learnings to use. The future of the common good depends on it.

There are many nuances and details we could not include in this newsletter format, but we invite you to access the full [Title VI Fact-Finding report](#) if you seek greater detail about the work we undertook and our full analyses.