



One City for All People

Davie Tucker, Jr.  
Executive Director

March 4, 2024

Maryam Abolfazli, Chair

Commissioners,

Edubina Arce

Garlinda Burton

Amy Charlton

Pratik Dash

Dakota Galban

Genma Stringer Holmes

Kosar Kosar

Larea Kwakye

Marcus Buggs

Ariel Safdie

Jeff Teague

Ben Vu Tran

Charles Traughber

Irwin Venick

Alecia Wynn

Please accept this report of the Title VI complaint filed with this office on October 23, 2023, alleging that discrimination against certain individuals and organizations associated with the Arts community occurred in the distribution of Metro-Nashville taxpayer funds. These discriminatory acts were facilitated by the Metro Arts Commission and the Metro Legal Department.

It is important to note that there is currently an Internal Audit Investigation and a Human Resource Investigation that are ongoing, that were initiated after the filing of this Title VI complaint and this report does not consider any of the issues raised in those investigations. This report centers on the actions taken by the Arts Commission in December 2022 and July 2023, the subsequent intervention of Legal and the August 2023 Commission vote to rescind and re-vote.

I want to acknowledge the small but conscientious and committed team of colleagues of MHRC who have worked on this issue for the last several months. A special acknowledgment of appreciation and gratitude is reserved for the primary investigator of this issue. Ashley Bachelder, who without her leadership and pragmatic and professional demeanor this report would not have been possible.

Metro Legal's claim lacks any robust analysis and bases its claim of unconstitutionality on a memo claiming the Supreme Court's ruling in a case specifically about college admissions criteria. We believe this case has very little, if any application to the issue at hand. While their analysis is presented as legal, it lacks the accompanying logic that would make it compelling.

As Executive Director of MHRC, I submit that there is probable cause that the complainants have been discriminated against based on our analysis of this claim and ask that the Commission move to schedule a public hearing.

Respectfully Submitted,

Davie Tucker Jr.

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## **METRO HUMAN RELATIONS COMMISSION REPORT SUMMARY**

### **Department**

Metro Arts Commission, Metro Legal

### **Allegation/complaint/issue**

Title VI discrimination regarding funding allocations in Metro Arts FY24 grant cycle

### **Type of investigation**

Title VI fact finding

### **Name of Complainant(s)**

Complainant 1, Complainant 2, Complainant 3, Complainant 4, Complainant 5, Complainant 6,

### **Investigator(s)**

Davie Tucker, MPS

MHRC Executive Director

Ashley Bachelder, MPH, MPS

MHRC Director of Policy and Research

### **BACKGROUND**

The Metropolitan Nashville Arts Commission (referred to as the Arts Commission or “the Commission”) was created by ordinance 78-1155; approved by the Council on December 19, 1978 and signed by then-Mayor Richard Fulton on December 22, 1978, for “the promotion and preservation of cultural heritage and a public need for the expansion of existing performing, visual and literary arts.” The Commission is comprised of fifteen members appointed by the Mayor, and approved by the Metro Council to serve 4-year terms. Members can be reappointed to a second four year term, after which they cannot be reappointed for at least one year.

Since 1987, the Commission has awarded approximately \$61,572,329 to various arts organizations in the Metro Nashville area. Roughly 71%, or \$43,948,461 of that amount has been awarded to organizations currently categorized by the Commission as organizations having annual operating budgets of 1 million dollars or more. Since its inception, 10 local organizations have received \$43,205,903 or almost 70% of all funds allocated.

The Commission provides community funding primarily through General Operating, Arts Build Community (ABC), Cultivate, and Thrive grants. Thrive was launched in 2014 as a micro-funding initiative that allowed the funding of individuals that do not have 501c3 status, with an explicit equity goal of increasing access to independent artists and small organizations. This was one of many intentional structural and procedural changes Metro Arts enacted over the last ten years to become a more equitable agency.

Over time, Thrive awards grew from \$1,000 to \$10,000. A new strategic plan adopted in 2015 declared “cultivate equity within the creative ecosystem” as one of its four main strategies,

including Thrive expansion and other initiatives to support artists and neighborhoods. In 2016, Metro Arts established an equity subcommittee of the Commission, which evolved into the Antiracist Transformation Team in 2017 and ultimately a standing committee now known as the Committee on Anti-Racism and Equity (CARE). CARE's mission is to hold Metro Arts accountable in becoming fully antiracist in its identity and work for equity in all policies and practices. The Commission adopted a cultural equity statement in May 2016 which it still cites today and includes the following commitment: "Metro Arts will continually review and edit our grant and public art practices and policies to ensure that more under-invested and under-represented communities can compete equitably for artist commissions, grants and other financial investments." The historical funding patterns that have served predominately large organizations also resulted in a disproportionate amount of those organizations being white-led organizations. An equity lens that increases access for independent artists and organizations of all budget sizes will impact the diversity of applicants across many factors, including race, religion, geography, age, and more; in the same way that the previous funding structure resulted in disparate racial outcomes. Despite these and other efforts, no reallocation or redistribution strategies were enacted with regard to grant funding over those years.

Daniel Singh was hired as Metro Arts Executive Director on July 27, 2022 with an explicit priority to deepen Metro Arts equity work. In October 2022, CARE released an Environmental Scan of Metro Arts that provided an equity analysis of five areas of the agency: personnel; programs, products and services; constituency; organizational structure; and purpose, identity and mission. This was a follow up to a 2019 Environmental Scan which documented "inequity in the arts ecosystem and tokensim within Metro Arts." The 2022 Scan documents inequities across the same five areas and prescribes eight next steps, two of which refer to grants and funding specifically: 1) grow support for funds, programs and policies that underwrite ongoing antiracist capacity-building for more arts organizations and arts practices, and 2) discern what practices are working to achieve a more equitable distribution of resources, and to pursue and deepen those practices.

In July 2023 the Commission voted to adopt a redistribution funding model that would begin to balance some of these historical funding inequities. One month later the Commission rescinded that decision, prompted by advice from Metro Legal that the recent Supreme Court ruling on affirmative action made their actions potentially unconstitutional. After rescinding, they revoted to keep the same formula in place from previous years.

## **ALLEGATIONS**

The complaint alleges that the Metro Arts Commission and Metro Legal discriminated against the complainants on August 17, 2023 with the Commission's vote on funding allocations for the FY24 grant cycle. Specifically, complainants Complainant 1, Complainant 2, Complainant 4, Complainant 5, and Complaint 6 were adversely affected by the vote, of which reduced their grant amounts by 50% from the previous decision approved by the Commission on July 20, 2023 for Complainant 1, 2, and 5, by 31.25% for Complainant 6, and by 100% for Complainant 4. The specific amounts are shown in the table below. Complainant 3 did not receive a FY24 grant and therefore did not suffer financial harm, but served on a Grants Editing Panel (described below) and provided guidance and input on the grant structure and process. Complainants allege that this

decision continues to uphold historical inequities and was driven by race-based reasoning that adversely and disproportionately affects people of color and is discriminatory.

In addition to the six complainants, 68 individuals signed on as supporters, 32 of which were Thrive or General Operating grant applicants and also adversely affected by the revote. 12 detailed impact statements were included with the complaint, detailing the impacts that the funding reversal had on their work and communities. While the complaint is from six specific complainants, the impact is systemic in that results from the revote adversely affected all Thrive applicants as well as organizations in the micro, small, and medium operating grant categories.

**Table 1. Complainant Names and Financial Harm**

<b>Complainant Name</b>	<b>Type</b>	<b>Grant amount approved on July 20, 2023</b>	<b>Grant amount approved on August 17, 2023</b>	<b>Total grant amount rescinded</b>
Complainant 1	Thrive	\$20,000	\$10,000	\$10,000
Complainant 2	Thrive	\$20,000	\$10,000	\$10,000
Complainant 5	Thrive	\$20,000	\$10,000	\$10,000
Complainant 4	Thrive - Mural	\$18,000	\$0	\$18,000
Complainant 6	Micro	Redacted for anonymity		\$4,273.69

**INVESTIGATION PROCESS**

This investigation is focused on decisions regarding the FY24 grant allocations. Ongoing internal and community conflicts have been present within the Metro Arts Commission since at least 2019, but this report seeks to provide analysis and commentary specifically and narrowly about decisions made in the grants program. Primary inquiries have been with these stakeholders:

- Metro Arts Commissioners: The 15 members who served in July and August 2023 and voted to allocate funding in one or both months.
- Metro Arts staff and consultants: Specifically, staff members whose roles were focused on the administration of grants.
- Metro Legal: Those representatives from the Metro Legal department who are assigned as the legal representative to Metro Arts or have been explicitly involved with providing legal advice to Arts Commissioners, Metro Arts staff, and MHRC staff and Commissioners.
- Complainants: Individuals who submitted the Title VI complaint.

Metro Arts has several grant and capacity building programs. This report focuses only on Thrive and General Operating grants. Thrive grants fall into two categories: community public art projects including murals and temporary artwork, and community-based art projects led by independent artists. Operating grants support nonprofit 501c3 arts organizations of all sizes. More information about both programs is available on the [Metro Arts Nashville website](#).

The investigation included review of the following:

- Metro Arts Commission and committee meetings: videos, audio recordings, agendas, and minutes when available
- Metro Arts Commissioner applications and nomination interviews
- Metro Arts departmental planning documents such as strategic plans and training materials, community engagement activities and reports, and other documents
- Grant guidelines and procedures
- Metro Arts bylaws and the code of the Metropolitan Government of Nashville and Davidson County (Municode)
- Itemized FY24 grantee information (name, grant amounts, organizational information, etc.)
- Historical grant allocations
- Metro Council meetings: videos, agenda, legislation as relevant
- Other publicly available materials relevant

**WITNESSES**

We conducted interviews with 14 of the 15 Arts Commissioners, 3 staff members, 2 consultants, and 6 complainants, listed in the table below. Commissioner West was not interviewed due to scheduling conflicts.

<b>Name</b>	<b>Role</b>	<b>Date of interview</b>
Darek Bell	Commissioner	12/8/2023
Paul Polycarpou	Commissioner	12/8/2023
Leah Love	Commissioner	12/11/2023
Sheri Bucy	Commissioner	12/12/2023
Ellen Angelico	Commissioner	12/12/2023
Matia Powell	Commissioner	12/12/2023
Janet Kurtz	Commissioner	12/12/2023
Carol McCoy	Commissioner	12/13/2023
Jim Schmidt	Commissioner	12/13/2023
Clarence Eward	Commissioner	12/15/2023
Will Cheek	Commissioner	12/29/2023
Diana Perez	Commissioner	1/12/2024
Dexter Brewer	Commissioner	1/16/2024
Marianne Byrd	Commissioner	2/5/2024
Jonathan Saad	Staff – Grants Manager	12/4/2023
Daniel Singh	Staff – Executive Director	12/11/2023
Chuck Beard	Staff - Artist and Organizational Support Coordinator	1/2/2024
Dana Parsons	Consultant	12/18/2023
Justin Laing	Consultant	12/18/2023

Complainant 2	Complainant	12/11/2023
Complainant 1	Complainant	12/19/2023
Complainant 3	Complainant	1/2/2024
Complainant 4	Complainant	1/10/2024
Complainant 5	Complainant	1/22/2024
Complainant 6	Complainant	1/24/2024

## **TITLE VI**

MHRC asserts that this complaint is highly likely to fit the criteria of Title VI based on the following:

- Metro Arts Commission receives funding from the National Endowment for the Arts,
- Metro Arts Commission receives funding from the Tennessee Arts Commission,
- Metro General Government receives federal funding.

MHRC notified Director Singh of the Title VI complaint on October 10, 2023. MHRC moved to arrange a meeting with Director Singh and then-Chair Angelico, tentatively scheduled for October 24. On October 17, Lora Fox of Metro Legal instructed MHRC cancel the meeting. The email stated: “The Legal Department has serious questions about whether HRC has jurisdiction over this complaint through Title VI and needs to understand the allegations. Derrick [Smith] will be looking into the jurisdictional question and you’re welcome to discuss this with him, of course. In the meantime, please do not meet with the Arts Commission Director or Chair – let’s wait a week or two to let Derrick review the situation.”<sup>1</sup>

MHRC complied with this request. The first interview with an Arts staff person was December 4 and the Commissioner interview was December 8. MHRC received an email on January 8, 2024, from Derrick Smith, Senior Counsel in the Legal Department stating this complaint would likely meet the criteria for a Title VI complaint.

MHRC complied with this request, though we find it worrisome that Metro Legal could consciously hinder a Title VI complaint process. Title VI compliance ensures the Metro government maintains its right to federal funding. Interference in that process puts the city at risk.

MHRC obtained independent legal counsel by Melody Fowler-Green of Yezbak Law Offices. We believe that Metro Legal has a conflict of interest with regard to the allegations in this complaint. The attached [Legal Memorandum](#) argues our position that the Metro Legal department can be properly named and held liable in a Title VI complaint (p. 6).

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<sup>1</sup> Derrick Smith, [email communication January 8, 2024](#)

## **OVERVIEW OF FY24 GRANTS -- WHAT HAPPENED**

This one-page overview provides a summary of what occurred leading up to the FY24 grant cycle and the decisions made in July and August 2023.

Arts staff led a number of community-engaged planning activities in Fall 2022 to develop recommendations that would increase access to Metro Arts funding opportunities. Primary among them were Community Editing Panels in which 27 representatives from arts organizations and independent artists provided direct input that led to a number of policy recommendations, examples including shortening the grant applications and removing various eligibility barriers, increasing the maximum amount for Thrive grants, and creating a funding model based on organization size that shifted some funding to organizations with smaller budgets. This included a tiered budget structure that determined funding amounts based on organization budget sizes categorized as micro, small, medium, midsize, and large. These and other changes were approved by the Arts Commission in December 2022. Meanwhile and throughout Spring 2023, Arts Commissioners and Arts staff participated in a number of trainings, planning, and capacity building work toward incorporating anti-racist and equity-focused initiatives.

By the mid-April 2023 grants deadline, 92 organizations and 155 individuals had applied for Operating and Thrive grants. The arts community mobilized to advocate for a budget allocation that would meet this demand, but then-Mayor Cooper's budget fell short. The Council approved a \$2M amendment for cultural support, which the sponsor described as intended to support equity and Thrive projects. Still, the total budget was insufficient to meet the full requests of all Thrive applicants *and* all organization requests, which left the Commission in a position to determine how to allocate funds in alignment with their equity goals and in support of the changes approved through the Community Editing Process.

Director Singh and contractor Dana Parsons developed multiple "funding scenarios" based on the budget structure approved in December (2022). Combined with data about organization sizes, included in informational materials and Commission deliberation were "BIPOC impact" and "white impact" dollar amounts that showed the result, in dollars, of each funding scenario for each category. The Grants and Funding Committee recommended approval of two scenarios that prioritized fully funding Thrive awards and prioritizing organizations with smaller budgets. In July (2023) the Commission approved one of those recommendations with an 8 (yea) -3 (nay) -1 (abstain) vote.

Commissioner Cheek expressed concerns over the constitutionality of the vote directly to Law Director Wallace Dietz. Metro Legal issued a memo and called for an Executive Session at which they recommended the Commission rescind its vote due to the Supreme Court's recent ruling in *Students for Fair Admissions v. Harvard* against affirmative action, implying that arts grants were race-based programs. In August (2023) the Commission rescinded and revoted, this time approving a scenario that partially funded Thrive projects, maintained funding levels from the previous year to midsize and large budget organizations, and funded micro, small, and medium organizations at lower amounts than they would have received under the July vote.

There has been considerable Commissioner turnover and staff changes in the months since these controversial votes. This report provides details and our findings about the actions that led to the approval of an equitable funding model and its abrupt reversal.

## **ANALYSIS & FINDINGS**

Six sections follow that provide deeper review of the events described above. The summary below highlights the main findings and analyses from each section. However, at the crux of the Title VI complaint is the advice provided by Metro Legal that caused the Arts Commission to rescind its July 2023 vote. In communications provided to MHRC during this investigation, it is clear that Metro Legal is of the opinion that the Commission's decision relied on race-conscious data that triggers strict scrutiny. We argue nothing in the Supreme Court case they referenced renders this decision unconstitutional. The Commission considered a variety of allocation options based on the race-neutral criteria of organization size. The fact that Commissioners were informed of and discussed the financial *impacts* of the race-neutral criteria on various racial groups does not render the action unconstitutional. This opinion is expounded upon in the attached legal opinion ([Legal Memorandum](#)).<sup>2</sup>

The impact of the legal advice allowed the opportunity to change the grant allocation vote, which resulted in different outcomes. The sections outlined below provide greater context and analyses which illustrate how those actions came to be.

### **Metro Council and the FY2023-2024 Budget**

- Mayor Cooper's budget proposed \$2M for "capital grants for cultural support" in the mayor's "administrative" fund, believed to be for a small number of large, or "legacy," arts organizations. The Metro Council redirected this funding to the Metro Arts operating budget for "funding for cultural support."
- The amendment's sponsor stated its intention to support Thrive awards, but the amendment did not include language or a mechanism to require the Arts Commission allocate it in that specific way. This \$2M would come from the FY23-24 surplus fund, which would not be available under after January 1, 2024.

### **Disparity Study**

- Metro Arts grants do not fit within Metro's existing Procurement Nondiscrimination Program, which allows for the setting of percentage targets for minority and/or women owned businesses for specific types of contracts.
- Director Singh commissioned an independent disparity study but it did not meet Metro's requirements for use in procurement.
- Metro Legal's communications imply that arts grants used race-conscious criteria or racial quotas. We argue the process was race-neutral.

### **Funding Scenarios & Commissioner Votes**

- The budget fell short by approximately \$2M needed to fully fund requests for all Thrive and General Operating applicants. Commissioners deliberated on a number of funding scenarios to distribute funds. In July, Commissioners voted to approve an equitable funding scenario that funded Thrive awards at a maximum of \$20,000 and adopted a funding structure based on size of organization that provided greater support to those with smaller budgets. In August, the Commission reversed the vote, citing that they should not decrease funding to midsize and large organizations so abruptly.

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<sup>2</sup> Melody Fowler-Green, [Legal Memorandum](#), 2024



- Two Commissioners – Byrd and Polycarpou – voted for the equitable scenario in July, then against it in August. Commissioners Bell, Brewer, McCoy and Schmidt were either absent or abstained from the July vote, then voted against the equitable scenario in August. Commissioner Cheek consistently voted against the equitable options.

### **Metro Legal Involvement**

- The affirmative action court ruling was used to call for rescinding the vote and revoting.
- The funding scenarios voted on in July included a dollar amount labelled as “BIPOC impact” and “white impact” for each funding scenario. A second metric included the percentage of funds that would go to micro, small, and medium size organizations. The BIPOC and white impact measures were descriptive data points that showed the result of each proposed scenario. Metro Legal advised that those metrics and the discussion around them was unconstitutional, and the Commission should rescind the vote. The applicability of affirmative action was insufficiently explained, both to Commissioners and the public. Lack of transparency leads us to question the legitimacy of its use and whether the Executive Session where this advice was given was allowable.
- Metro Legal’s advice and subsequent communications imply that the decision to fund Thrive awards and smaller organizations was expressly motivated by racial classifications. No Commissioner stated such in the July Commission meeting or in individual interviews.
- 9 of the 14 Commissioners interviewed either expressed frustration or confusion about the advice, or directly refuted and questioned its relevance.
- Commissioner Cheek is the only Commissioner to consistently vote against changes to the funding model and appears to be the only Commissioner to have had conversations with Metro Legal outside of Commission meetings.

### **Conflicts of Interest**

- Seven Commissioners have disclosed conflicts of interests with arts organizations; six of them being with midsize and large organizations.
- Recusals from voting occur on financial allocation of grants, but not for votes on the funding scenarios. This partial implementation of COI-related recusals allows Commissioners to vote on policies that determine funding distributions, despite their relationships with organizations that stand to benefit from those decisions.

### **Contributing Factors**

- Critical differences exist between some Commissioners and staff about how Metro Arts and the Arts Commission should prioritize and do its work. Some include conflicts and tensions over trust-based grant processes and how to operationalize and evaluate equity.
- Some of Director Singh’s decisions and actions have contributed the conflicts described, including his lack of understanding of the budget process and weak or ineffective relationships with some Commissioners.
- Metro Legal should more clearly articulate its relationship to the Commission, including the ways in which it serves as an advising and/or authorizing body.

## TIMELINE OF EVENTS

This timeline presents activities and actions we have identified as critical to the allegations in the complaint, mainly processes and decisions about the allocations of FY24 grants. Details are expounded upon in the analysis sections that follow.

- **October 26 and November 1, 2022:** Two community listening sessions are held to gather input about the future of Metro Arts, facilitated by Andrea Blackman of the Metro Office of DEI as part of its ongoing support and training. Input was gathered about the department’s strategic direction, grant categories, and the processes for grant applications, reviews and approvals.
- **November 29, 2022:** 12 Community Editors representing micro through large arts organizations participated in a one day editing panel (“Panel One”) to review and develop recommendations for General Operating grants.<sup>3</sup> This is where initial recommendations for a redistribution funding model based on budget sizes that provided greater support to smaller organizations were recommended.
- **November 30, 2022:** Panel Two, with 15 Community Editors, met to review and propose changes for Thrive grants and new programs. The two proposed Thrive categories included: 1) murals and public art projects for artists with partnerships with a nonprofit for grants up to \$20,000, and 2) community-based art projects for individual artists, artist teams, nonprofits, or for-profits with awards up to \$10,000.
- **December 12, 2022:** Grants and Funding Committee meeting. The Committee reviewed the outcomes and proposed changes that came out of the two Editing Panels. For General Operating grants, a micro-size organization category was created, and the FY24 Funding Formula was adjusted to provide grant amounts based on organizational budget size. Proposed amounts were 75% of the operating budget for micro-sized organizations, 50% for small, 25% for medium, 17% for mid-sized, and 1.8% for large. Two changes were recommended for Thrive: an increase of the funding maximum from \$10,000 to \$20,000, and that individual artists who are part of organizations with budgets under \$100,000 or are led by historically under-represented communities, women, or veterans be eligible for Thrive project grants. The Committee voted and approved these changes for the FY24 cycle.
- **December 15, 2022:** Full Commission meeting. The Commission voted 9 yeas, 1 nay, and 2 abstentions to adopt the Committee recommendations for changes to General Operating and Thrive grants. Votes were as follows:
  - Yay (9): Angelico, Dexter, Bucy, Edward, Haynes, Perez, Polycarpou, Powell, West
  - Nay (1): Cheek
  - Abstention (2): Byrd, Schmidt

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<sup>3</sup> Public editing processes are a best practice for modeling equity in decision-making. Metro Arts contracted with an outside consultant, Dana Parson, to develop and implement a community-based grant editing process. Community members were selected through an application process and were compensated \$500 to participate, including prep work that included reading materials on funding models in other cities, best practices for equitable grantmaking processes and summaries of past community engagement processes and outcomes. Community Editors participated in facilitated, day long “editing panels” that created recommendations for FY24 funding models and structures. The details of those proposals are described in the analysis section of this report. This process was used for Panels One and Two on November 29 and 30.

- **January 23, 2023:** Applications open for FY24 Thrive and General Operating grants, based on changes adopted in December.
- **April 10, 2023:** Application deadline for Thrive and General Operating grants. 92 organizations applied for Operating grants and 155 individuals applied for Thrive grants.
- **April 24, 25, 27, 28, 2023:** Grant review panels are held for Thrive and General Operating applicants. These panels evaluate applicants' eligibility criteria and merits, and provide a numeric score based on the rubric approved from the Public Editing Panels. Applicants who score 75% or higher on Thrive or 70% or higher on General Operating are eligible to receive funding. This review process only determined eligibility, not a guarantee of any specific funding amount. Exact funding will be determined by the funding scenarios that Commissioners will vote on in July. 131 Thrive and 88 Operating applicants met the scoring threshold.
- **April 24, 25 and May 3, 2023:** Metro Arts's contracted research firm, RISE Research & Evaluation, hosted listening sessions as part data collection for Metro Arts' independently commissioned Disparity Study. Community members were asked to share about their experiences with Metro Arts and specifically how to improve the grant and funding process (i.e., eligibility, application, selection, award amounts, etc.).
- **May 1, 2023:** The Mayor's recommended budget is filed, which is essentially a flat budget year from the previous; falling short from funding needed to fully meet all eligible Thrive and Operating grant requests.
- **June 1, 2023:** Metro Arts Grants Manager Jonathan Saad emails applicants that Metro Arts has requested additional funding from the Mayor and Council due to the overwhelming number of applicants.
- **June 20, 2023:** Metro Arts issued a media release with findings and highlights from two commissioned studies led by RISE Research & Evaluation. The first was a Comparison Study that concluded Nashville invests less public funding in the arts than its peer cities. Second, a companion Disparity Study that showed Metro Arts funded BIPOC-led organizations at significantly lower amounts than non-BIPOC-led organizations over the last 10 years.
- **June 20, 2023:** Metro Council approves Amendment B to the FY2023-2024 budget, BL2023-1867, as substituted. It allocates \$2 million to the Metro Arts Commission for "funding for cultural support."
- **June 21, 2023:** Jonathan Saad informs grant applicants via email of the approved amendment. He states that funding recommendations will be developed in the next few weeks and discussed at the upcoming Grants and Funding Committee, followed by approval of awards at the July Commission meeting.
- **July 5, 2023:** Jonathan Saad emails Thrive and General Operating applicants to share details of several funding allocation scenarios to be brought before the Grants and Funding Committee and full Commission. Scenarios A-F provide different allocation frameworks for distributing funds between Thrive applicants and micro through large

organization General Operating applicants. He includes the details in an attachment and a pre-recorded, 20-minute video<sup>4</sup> by Dana Parsons that explains each scenario.<sup>5</sup>

- **July 7, 2023:** Dana Parsons hosts a virtual public information session about the funding scenarios.
- **July 10, 2023:** Grants and Funding Committee meeting. Committee members voted to recommend Scenario A and a modified Scenario B. These scenarios were described as the equitable options because they best reflected the redistribution funding model by prioritizing Thrive awards and micro, small and medium organizations.
- **July 20, 2023:** Metro Arts Commission meeting. Commissioner Bucy as chair of the Grants and Funding Committee put forward a recommendation to consider Scenarios A and B. Commissioner Angelico made a motion to approve Scenario A. Scenario A passed with 8 yeas, 3 nays, and 1 abstention. Votes were as follows:
  - Yea (8): Angelico, Bucy, Byrd, Edward, Love,<sup>6</sup> Perez, Polycarpou, Powell
  - Nay (3): Cheek, Kurtz, West
  - Abstention (1): McCoy
- **July 21, 2023:** Jonathan Saad emails applicants to inform them the Commission approved Scenario A for FY24 grants. He stated “there are several issues that are still being worked out due to a shortage of overall funding, as appropriated in the Metro Budget,<sup>7</sup> and a portion of funds will not be available until after January 1, 2024.” He says award notifications and instructions to be sent the following week.<sup>8</sup>
- **July 25, 2023:** Lora Barkenbus Fox sends Director Singh a memo addressed to the Metropolitan Arts Commission with subject line “The US Supreme Court Rules in *Students for Fair Admissions, Inc. V. Presidents & Fellows of Harvard College*.” The memo provides a 7-sentence summary of how the ruling applies to local government grants and concludes “grant-makers may consider an applicant’s discussion of how race or other societal issues affected his/her life or experiences as an individual – but a decision may not be made on the basis of race.” Fox and Tessa Ortiz-Marsh have a virtual meeting with Director Singh and other staff members to review the memo and call for an Executive Session.
- **July 26, 2023:** Director Singh shares the memo with Arts Commissioners.
- **August 7, 2023:** Jonathan Saad emails Thrive applicants and states “since the July 20th Commission meeting and vote, we’ve received additional information from internal Metro departments. We are currently incorporating that information back into our process. Our plan right now is to create adjusted scenarios based on current feedback and re-present these recommendations at the following meetings.” He provides the dates and

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<sup>4</sup> Metro Arts. [Video: Grant Allocations](#).

<sup>5</sup> Saad’s email does not explicitly state that there is not enough funding to fulfill every FY24 applicants’ request in alignment with the funding formula adopted in December 2022. In the video, Parsons explains that \$1.9M would additionally be needed to meet all requests, but that is not explicit in the body of the email.

<sup>6</sup> The minutes incorrectly note Commissioner Love as abstaining. In the audio recording she is audible as voting yea, and she confirmed her yea vote in an interview.

<sup>7</sup> We challenge the veracity of language that states there was a problem due to a shortage of funding as appropriated in the budget. Each scenario that the Commissioners choose from, as designed, was based on the same total dollar amount, as allocated in the budget. This statement implies that this staff member anticipated a challenge as to why the Scenario could not be implemented. We believe this statement is at best not transparent, and at worst, deceptive.

<sup>8</sup> This follow up communication and information was never provided.

details for the upcoming August Grants and Funding Committee meeting and Arts Commission meeting.<sup>9</sup>

- **August 11, 2023:** A closed Executive Session meeting is held with Metro Legal’s Lora Barkenbus Fox and Tessa Ortiz-Marsh, Director Singh, and Commissioners. Legal provided advice to rescind the July vote and re-vote on new, race-neutral funding scenarios.
- **August 14, 2023:** Grants and Funding Committee meeting. The Committee discusses the legal memo and a new set of scenarios that prioritizes individual artists via Thrive grants, small to mid-sized organizations, and those that are historically underfunded. There are five funding scenarios numbered 1-5. The Committee voted to recommend Scenario 1, which mostly closely reflected Scenario A that was approved in July.
- **August 15, 2023:** Jonathan Saad informs Thrive applicants that Metro Legal has reviewed the voting from July 20th and determined the process was unconstitutional because of the Supreme Court decision ruling on affirmative action. The email states “Metro Legal has determined that this process was unconstitutional because it named the racial impacts of the various funding scenarios.” He states they will use a different approach “that centers equity as fairness” and applies different weighting criteria that support individual artists, small to mid-size organizations, and organizations that have received less than funding from Metro Arts in the past. He includes 3 attachments: a table with details of new funding Scenarios 1-5, a companion text document with greater description, and a list of Thrive and General Operating applicants with their potential award amounts for each Scenario.
- **August 17, 2023:** Metro Arts Commission meeting. Chair Powell opened discussion on Metro Legal’s advice to rescind the July vote. A motion passes unanimously to rescind Scenario A and all allocations within it. Commissioner Angelico motioned to approve Scenario 1, which failed with 6 yeas and 8 nays. The votes were as follows:
  - Yay (6): Angelico, Bucy, Edward, Love, Perez, Powell
  - Nay (8): Bell, Brewer, Byrd, Cheek, Kurtz, McCoy, Polycarpou, SchmidtCommissioner Schmidt motions to approve Scenario 4. The motion passes 8-6, with votes as follows:
  - Yay (8): Bell, Brewer, Byrd, Cheek, Kurtz, McCoy, Polycarpou, Schmidt
  - Nay (6): Angelico, Bucy, Edward, Love, Perez, Powell
- **August 28, 2023:** Thrive grantees receive an automated email through the platform Submittable about the conditional approval of their grant, which included the grant amount, the terms and agreement, and a deadline to accept of September 11, 2023.
- **September 29, 2023:** MHRC receives Title VI complaint via mail from Complainant 1, Complainant 2, Complainant 3 and Complainant 4. The complaint alleges discriminatory actions from the Metro Arts Commission and Metro Legal.
- **October 17, 2023:** Lora Fox emails to request MHRC not meet with Director Singh and Chair Angelico on an October 24<sup>th</sup> scheduled meeting. The email states, “The Legal

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<sup>9</sup> There are two points for concern with this email. First and most importantly, the Commission had not yet decided to rescind the vote. The Commission is the authorizing body to make such a decision. Here, it appears that this staff person, guided by Metro Legal, presumes a forthcoming rescinding and revote to be imminent. Second, while this email says adjusted scenarios will be developed it does not provide clear context for why, or explicitly state that changes may be made from the July 20, 2023 funding decision. This contributed to confusion among applicants.

Department has serious questions about whether HRC has jurisdiction over this complaint.”

- **October 23, 2023:** The four complainants finalize Title VI complaint via notarized signatures and have an introductory meeting with MHRC staff.
- **December 1, 2023:** MHRC Commissioner Charles Traugher and Executive Director Davie Tucker meet with Metro Legal representatives Lora Fox and Derrick Smith for first conciliation attempt.
- **December 4, 2023:** MHRC staff begin interviews with Metro Arts staff and Commissioners.
- **January 23, 2024:** Metro Council approves resolution allowing MHRC to obtain outside legal counsel.
- **January 23, 2024:** Complainant 5 submits Title VI complaint and has an introductory meeting with MHRC staff.
- **January 24, 2024:** Complainant 6 submits Title VI complaint and has an introductory meeting with MHRC staff.

## **ANALYSIS SECTION 1: Metro Council and the FY2023-2024 Budget**

This section provides a review of the FY2023-2024 budget process and the advocacy efforts that resulted in a \$2M amendment to Metro Arts. As described by two Metro Arts staff members, former Mayor John Cooper had had ongoing conversations with six of the major downtown arts organizations about their hardships throughout the pandemic, reportedly among them, the Country Music Hall of Fame, the Frist Art Museum, the Nashville Symphony, the National Museum of African American Music, and the Tennessee Performing Arts Center. Cooper requested \$10M from the state via federal COVID-19 relief funds that would be administered through the Nashville Convention and Visitors Corporation and earmarked for capital improvements for those organizations.<sup>10</sup> To our knowledge that support was never realized, though there is not a transparent way to track public funds distributed through the CVC.

Cooper released his proposed FY2023-2024 budget on May 1, 2023, which included a \$2M appropriation for “capital grants for cultural support” from the general fund surplus allocations. This line was assigned under “administrative,” which operates under the discretion of the Mayor’s Office.<sup>11</sup> Our working assumption is that these funds were intended for the organizations described above after Cooper’s unsuccessful attempt to leverage federal funds.

Every year the Metro Council puts forward a substitute budget that makes minor adjustments and changes to the Mayor’s budget. In its substitute, the Council approved two changes to this capital grant allocation. First, it passed an amendment that expanded the allowable use of surplus funds beyond strictly capital uses, and second, it redirected the \$2M to the Arts Commission and changed “capital grants for cultural support” to “funding for cultural support.”<sup>12</sup> During Council discussion, lead sponsor Councilmember Kyonzé Toombs stated the purpose of the amendment as *“clarifying the language [to] give Metro Arts Commission the leeway to open up the funding to a greater variety of organizations. As written, there was concern from Metro Arts that it would restrict them and they really want to open up funding for Thrive projects, that goes to smaller organizations, and led by people of color, so they just want to make sure they have that equity, so they can truly affect the equity piece. So they just want this language so they are not restricted.”*<sup>13</sup> Councilmember Bob Mendes and Finance Director Kelly Flannery emphasized this funding will not be available until January 1, 2024, and will be non-recurring. The amendment passed on June 20, 2023 and was adopted into the approved budget.

### **Community Advocacy: 1% for the Arts**

Several months of advocacy efforts preceded the passage of the budget. While an in-depth analysis of who was involved and what mechanisms were most impactful is beyond the scope of this report, this section includes highlights of activities undertaken by Metro Arts staff, Commissioners, and through public processes. This section provides context about the origins of

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<sup>10</sup> Jeong, Yihyun. “Mayor John Cooper Asks Sate for \$82.6M More in COVID-19 Relief for Nashville.” The Tennessean, 16 September 2020.

<sup>11</sup> The Metropolitan Government of Nashville and Davidson County, [FY2023-2024 Recommended Budget Book](#) (May 2023), 104

<sup>12</sup> Metro Council, [Amendment to Ordinance No. BL2023-1867, As Substituted](#) (2023)

<sup>13</sup> Metro Nashville Network, [6/20/23 Council Committees: Budget & Finance](#), 40:30

the \$2M amendment, since the contested use of Metro Arts' limited funding is at the center of this complaint.

Commissioner Cheek served as the Chair of the Advocacy Committee at the time of the budget process. In an interview, he described that the Commission's advocacy began late, but that the Nashville Arts Coalition (NAC), a 501c3 organization, worked in parallel to the Arts Commission to advocate for increased arts funding. NAC promoted the messaging of 1% for the arts, or \$30 million of the city's \$3 billion budget. NAC's mission broadly describes itself as educating the Davidson County community about the value of public funding for the arts, and as a coalition, advocates for arts funding from the Metro Council.<sup>14</sup> The "Who We Are" section of NAC's website was deleted at the time of this inquiry, but it shows the structure for a paid, tiered membership model. Publicly available documents show its affiliation with individuals who have affiliations with the Belcourt Theater, Tennessee Performing Arts Theater, Oz Arts, the Nashville Shakespeare Festival, Alias Chamber Ensemble, and Unscripted.<sup>15</sup>

In an interview, Director Singh described a "splintering relationship" and growing tensions with NAC which he attributed to, among conflicts about long-term vision, his support of diverting the capital grants away from specific organizations and into Metro Arts' general grant fund. Around the same time, Arts Equity Nashville (AEN) formed as another coalition, primarily comprised of smaller, grassroots organizations and independent artists who felt that they were not represented by the efforts of NAC. AEN supported the goal of 1% of the budget for the arts but centered Thrive and small organizations in their messaging. Among their efforts, AEN organized a letter writing campaign that generated 12,255 emails to councilmembers and hosted a mayoral forum on June 14 which listed more than 130 cosponsoring organizations and individuals.<sup>16,17</sup> At the forum, then-Councilmember Freddie O'Connell announced the forthcoming amendment for Metro Arts.

Meanwhile, Metro Arts staff advocated for a larger operating budget by emphasizing a sharp increase in applicants from the previous year, up from 54 to 88 eligible General Operating applicants and 22 to 156 Thrive applicants.<sup>18</sup> On June 20, 2023 Metro Arts released findings from two independent studies. The first, a Comparison Study concluded that among five peer cities, Nashville's arts funding is the lowest per capita in budget and spending, has the lowest rates of increase, and has a least diversified funding stream.<sup>19</sup> The second, a Disparity Study, presented data that show a history of Metro Arts consistently and substantially funding BIPOC-led organizations at lower levels than white-led organizations, and that the race and gender demographics of Metro Arts funded organizations do not reflect the population of arts organizations in Nashville.<sup>20</sup> Together, Metro Arts and the Arts Commission used these to advocate that funding should increase and equity should guide its implementation.

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<sup>14</sup> Nashville Arts Coalition, [Connect with Local Officials](#)

<sup>15</sup> ProPublica Nonprofit Explorer, [Nashville Arts Coalition Inc. Form 990-PF](#) (2022)

<sup>16</sup> Keep Artists in Nashville, [Right-size the arts investment in Nashville](#) (2023)

<sup>17</sup> Arts Equity Nashville, [Cosponsors](#) (2023)

<sup>18</sup> Metro Arts Board of Commissioners, [Minutes May 18, 2023](#)

<sup>19</sup> RISE Research & Evaluation, [Support for the Arts Among Metro Nashville Arts Commission and Comparison Agencies](#) (2023)

<sup>20</sup> RISE Research & Evaluation, [Nashville Metro Arts Disparity Study](#) (2023)



The Metro Council held a pre-budget hearing on February 21, 2023, later followed by the standard public hearing on the Mayor’s budget on June 6. Nearly two dozen individuals spoke in favor of arts funding across the two meetings, including representatives from both NAC and AEN. The Council’s amendment for one-time \$2M for operating support to Metro Arts passed on a voice vote, which then-Councilmember and Budget Chair Kevin Rhoten said was the “main thing” for which he received wish list requests.

### Authorizing Authority

In their interviews, nearly all Commissioners cited a woefully underfunded budget as the primary driver of this funding dilemma, however only a few commented on what they understood as the intent of the council’s amendment. Commissioner Cheek described: *“To my knowledge there was no restriction on the funding. There was no statement of intent on what should have happened. The \$2M came to the Arts Commission and it was the Commission’s discretion to determine where that money should go.”* Commissioner Love described her understanding differently: *“Even reviewing council, my understanding was the funding was allocated because we wanted to make funding a little more equitable. That’s my understanding about why it was really pushed through. That’s why we were doing the scenarios that way, to make it equitable for everyone.”* Commissioner Edward similarly described: *“A big part of us trying to raise money was that we were trying to prioritize equity. That’s why I thought we got more money. All the organizations of all sizes were on board with equity.”* The complainants, who are part of Arts Equity Nashville, described the amendment as a direct response to their advocacy for equitable funding. One complainant stated: *“I was under the impression that if Metro Council said this is for Thrive, who will go against the democratically elected body?”* Another complainant described, *“it was a huge triumph when council voted for the money to go to artists and not the big organizations.”*

Void of an ordinance that specifies such, there is policy that binds the Commission to a specific use of the funds beyond “cultural support” in Metro Arts’s operating budget, even if the sponsor’s intent was articulated more specifically. Councilmember Delishia Porterfield attended the July 20, 2023 Arts Commission meeting to give public comment requesting that Commissioners vote on the most equitable scenario, at which she said, *“multiple councilmembers advocated for funding to stay with Metro Arts because of Arts’ commitment to BIPOC organizations and equity.”* She said the council “did its job” by allocating the funding, and now Commissioners should make allocations that prioritize Thrive, micro, small and medium organizations.<sup>21</sup> Despite the amendment, the Arts Commission is the body that holds ultimate authorizing power to allocate funding to specific organizations and individuals.

It was not always the case that the Metro Council had no authorizing authority in grant allocation decisions. Currently, the [Metro Code of Ordinances 2.112.040 Power and Duties](#) reads (our emphasis in bold):

[The Arts Commission] Award[s] funds appropriated to it by the metropolitan council to deserving nonprofit civic and nonprofit charitable organizations. **Criteria for the awarding of such funds shall be established by the Metropolitan Nashville Arts**

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<sup>21</sup> Arts Commission. [July 20, 2023 audio recording](#), 27:00

**Commission and approved by resolution of the metropolitan council.** Once a determination is made by the Metropolitan Nashville Arts Commission that a deserving nonprofit civic or nonprofit charitable organization is to receive funds, a grant contract shall be prepared and signed for each such organization. A notice shall be published in a newspaper of general circulation of the intent to make an appropriation to deserving nonprofit civic and nonprofit charitable organizations; included within that notice shall be the amount of the appropriation and the purpose for which the funds will be spent. **The grant contracts shall then be submitted to the metropolitan council for approval by resolution at two consecutive regularly scheduled meetings of the metropolitan council.**

This code is misleading because a 2015 state law preempted the requirement that council approve grants to nonprofit organizations. [Tennessee Code Annotated § 7-3-314](#) reads (our emphasis in bold):

Notwithstanding any state law or regulation to the contrary, where counties with a metropolitan form of government establish an arts commission or arts board and appropriate funds to that entity in the annual budget, that entity may distribute money to nonprofit organizations involved in the study, participation in and appreciation of the visual, performing, or literary arts **without obtaining additional approval from the legislative body.** The arts commission or arts board shall provide an annual report to the legislative body prior to the adoption of the annual budget detailing the grant recipients, the moneys disbursed, and the purpose for which the money was disbursed.

State law did not preempt the entire code. Still in effect is: “Criteria for the awarding of such funds shall be established by the Metropolitan Nashville Arts Commission and approved by resolution of the metropolitan council.” [RS2001-749](#), approved by the Metro Council on September 18, 2001, contains the most recent Arts Commission Rules and Regulations. In it, regulations 1.1 and 1.2 read:

Regulation 1.1: Grants made under the authority of the Metropolitan Code Section 2.112.040(H) shall be made in accordance with the following criteria: excellence; need in the community; inclusive planning; community outreach and impact; educational merit; innovation; administration, development and financial management. These criteria shall be set forth in MNAC’s Grant Guidelines.

Regulation 1.2: The MNAC shall regularly review its Grant Guidelines.

With this most recent Rules and Regulations being more than 20 years old, the Commission should consider updating its language to align with and fortify Metro Arts’ goals and priorities.

### Conclusion & Takeaway

This section detailed how the Metro Council approved a \$2M amendment for operating support to Metro Arts. The origins of the amendment, first for capital grants to a few large organizations with a history of Metro funding shows the level of influence that some groups have traditionally

had regarding access to the administration and ability to obtain resources for their benefit. In this budget cycle, the Metro Council acted as a check and balance to divert that funding to something they determined more equitably met community needs and had broader support. The sponsor of the amendment clearly stated the intent for funding to support Thrive awards, although requirements for how the funds be awarded were not part of the bill. Parallel advocacy groups both called on the Council to increase funding in the name of equity, although distinctions in how that would be done become more pronounced in decisions made by the Arts Commission in July and August.

## **ANALYSIS SECTION 2: Disparity Study**

This section provides clarifying information about disparity studies and their role in Metro Government and Metro Arts. Metro has a “Procurement Nondiscrimination Program” that defines allowable uses of “race-conscious” recruitment and goal setting in the procurement of vendors for specific services. The Program currently includes three general categories: construction, non-professional services (i.e., printing, janitorial services, etc.) and professional services (i.e., those that requiring licensing such as accounting, auditing, etc.). This means procurement can set goals and targets for minority and/or women owned businesses for specific contracts in order to encourage fair and open competition for parties wishing to do business with Metro, and to ensure that Metro does not participate in or perpetuate discriminatory practices.<sup>19</sup>

Disparity studies were designed in response to legal challenges to the constitutionality of such nondiscrimination and minority business programs. Disparity studies are a tool that provides legal justification to use race- and gender-conscious programs as a strategy for remedying historical discrimination. “Race- and gender-conscious” policies are those that use race or gender as *criteria* for participation; and race-neutral policies are those that do not. Metro may set goals under the Procurement Nondiscrimination Program that are race- and gender-conscious after a disparity study has demonstrated a “continuing pattern of underutilization of and discrimination against minority or women owned business enterprises by the Metropolitan Government.” Once a disparity study is completed, the Metro Finance Director and Director of Law have authorizing authority to develop race- or gender-conscious programs, which must be approved by resolution of the Metro Council.<sup>22</sup>

Metro has a longstanding contractual relationship with Griffin & Strong P.C., an Atlanta-based law firm that completed Metro’s Disparity Studies in 2004 and 2018 and is currently underway with another update. Director Singh was told that Metro Arts grants do not fit into the scope of services under existing studies and he would need an arts-specific one in order to use race-conscious criteria on grant applications. In an interview, Director Singh explained that an arts-specific disparity study by Griffin & Strong was cost prohibitive in Fall 2022. He instead created an RFP for a new disparity study using his delegated authority to directly procure contracts.

Singh contracted with RISE Research & Evaluation, a firm that specializes in research services at the intersection of arts, culture, and equity. RISE began its work in January and released the Disparity Study at the end of June. It included three parts: an analysis of Metro Arts funding from 2013-2023 comparing BIPOC-led organizations and predominately white organizations; a citywide demographic survey of arts organizations; and qualitative listening sessions. The quantitative results showed that white-led organizations have received substantially more funding in terms of the number of organizations and the grant amounts over time. The survey showed that Metro Arts funded organizations do not reflect the race and gender composition of the broader population of arts organizations. The authors note that a T-test could not be conducted to assess for statistically significant differences between white and BIPOC organizations due to the small number of BIPOC-led organizations. Still, they emphasize the results show a dire disparity, even if not measured by the intended statistical method. The report

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<sup>22</sup> The Code of the Metropolitan Government of Nashville and Davidson County, Tennessee, [Chapter 4.46 - Procurement Nondiscrimination Program](#)

concluded that “the data presented here should be enough evidence for Metro Arts to solidly move forward with remedies that support BIPOC organizations.”<sup>23</sup>

### Race-conscious or Race-neutral?

Sometime around the study’s completion or release, Director Singh was informed that it would not satisfy Metro’s standards due to the methodology and research team.<sup>24</sup> In a letter to MHRC on January 19, 2024, Metro Legal representative Lora Fox stated that they began the process to engage Griffin & Strong on July 28, 2023 about developing a “data-driven and community-based disparity study that would be robust and detailed enough to support the creation of an arts grants nondiscrimination program.” The letter also stated “a general claim of past discrimination cannot, alone, justify racial quotas in awarding public contracts. Narrow tailoring requires an examination of whether there is a race-neutral means to increase minority participation.”<sup>25</sup> This is in reference to a potential future disparity study. At this time conversations are ongoing between Metro Arts, Legal, Finance, and Procurement about how to potentially incorporate arts grants under Griffin & Strong’s work for FY25.

It is a contested opinion as to whether the grant process used race-conscious or race-neutral policies. Metro Legal’s communications (specifically, the July 2023 memo to the Arts Commission and January 2024 letter to MHRC) imply that the grants used overt, race-conscious criteria in its decision-making process. All grant policies are reviewed and approved by Finance, Legal, and Procurement every year. The process for the FY24 grant applications, scoring rubrics, and eligibility criteria were all approved by Metro Legal. Specifically, Ortiz-Marsh stated at the July 20, 2023 Commission meeting the following: *“I’m going through with Dana now on the new editing process. It complies with the Equal Protection Clause. So, you know, essentially there’s nothing in the application process that overtly takes into account race. So legally that is sufficient.”*<sup>26</sup>

The only procedural elements that Legal did not review in advance were the funding scenarios voted on in the July meeting. The scenarios were developed on budget tiers that categorized every applicant based on their organization’s budget size. These budget tiers were the criteria approved by the Commission in December 2022. Specific funding would then be granted to eligible applicants based on category. Each scenario labelled “BIPOC impact” and “white impact” with a dollar amount, showing the result of each scenario. Those “impact” dollar amounts were not *criteria* used to create each funding option; rather, they were descriptive data points for each scenario. We content this process used race-neutral criteria and successfully increased minority participation through such race-neutral means, thereby posing minimal risk to claims that Metro Arts used a race-conscious grant program.

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<sup>23</sup> RISE Research & Evaluation, [Nashville Metro Arts Disparity Study](#) (2023), 13

<sup>24</sup> Staff and the Commission still used the Disparity Study as an education tool. Of note, Commissioner Cheek expressed in an interview his disagreement with the Disparity Study, stating *“I’m somewhat frustrated that the survey gets waived around as a statement of equity when it’s not... It has nothing to do with the equity that’s accomplished by the organizations under it.”* Director Singh has also shared copies of text messages from Commissioner Cheek which share his opinion that the study should not be released until after the budget is passed.

<sup>25</sup> [Metropolitan Government of Nashville and Davidson County Department of Law](#), (no title), January 19, 2024

<sup>26</sup> Arts Commission. [July 20, 2023 audio recording](#), 1:30:00

### Conclusion & Takeaway

Legal's advice that Metro Arts needs a disparity study is predicated on an assumption that grants use race as a criterion for funding; when in actuality, budget size was the primary consideration. The funding models that were approved in December 2022 and July 2023 used the race-neutral criteria of budget size to allocate grant dollars. Inherent in that decision was a theory that by using budget as the primary criteria, the applicant pool would become more diverse, including diversity by race, as well as other factors (i.e., neighborhood and council district, gender and sexuality, nationality, etc.). The data shown by BIPOC and white impact proved that hypothesis to be true. If race-neutral policies guided this process, then the legal advice that a revote must be taken was an overreaction and not necessary. If in the future Metro Arts wishes to use race-based considerations as a way to concretize a strategy for addressing systemically disparate outcomes, then it could consider completing a qualifying disparity study. However, we contend the FY24 grants process did not require one.

### **ANALYSIS SECTION 3: Funding Scenarios & Commissioner Votes**

This section provides an overview of how the proposed funding scenarios were developed, how they changed from December 2022 to August 2023, what was approved by the Arts Commission, and how Commissioners described and reflected on their votes.

#### *December 2022 Vote*

Two Public Editing Panels were the primary activities that led to new and specific changes in the FY24 grants cycle. This process included 27 community members representing arts organizations of each size from micro through large organizations, plus independent artists, who participated in a day long participatory process to edit the grant applications, rubric, evaluation frameworks, etc. Editors' recommendations were compiled by staff and made available for an online comment period for further input and revisions. From this process there were several proposed changes, three of which are relevant to the allegations of this complaint.

The first was to adopt a tiered funding structure based on organization size for General Operating grants. Previously, operating grants had been based on two categories: Basic Operating Support for arts organizations with an average annual revenue of more than \$100,000, and Core Operating Support, for organizations with an average annual budget less than \$100,000. Applicants in both categories could request up to 20% of their annual budget, with a cap of \$300,000 for Basic Operating Support, and \$20,000 for Core Operating Support. Organizations rarely or never received the maximum award allowable, but the results still provided larger awards to organizations with the largest budgets. A clear explanation of how the exact grant amounts were determined under the Basic and Core support categories was not provided to us, which we take to assume means there may not have been a standardized or transparent method.

The proposed tiered funding formula alters this by providing a standardized funding structure and allocating larger budget percentages to smaller organizations. Organizations were classed by their budget, with categories spanning from organizational budgets of less than \$25,000 for micro organizations, to budgets over \$3M for large organizations. On one end, organizations with the smallest budgets could be eligible for 75% of their operating budget. On the opposite end, organizations with the largest budgets were eligible for 1.8%. The specific percentage amount for each level of organization size is referred to as the Base Percentage. This determined the grant amount that organizations could request. A Review Panel would then assess applicants' merit and assign a score of 0-100%. Applicants scoring 70% or higher are eligible for their full ask, and those scoring 93% or higher could be recommended for additional funding. Together, the Base Percentage + Panel Recommendation = Grant amount. This tiered funding formula is shown in Table 2.

The other new proposals were to create a micro size organization for those with budgets under \$25,000, and to increase the maximum Thrive awards from \$10,000 to \$20,000. Thrive scoring using a similar method, with the funding threshold being 75% to qualify. Detailed descriptions of these proposals are available in the Editor Packets.<sup>27</sup> References to an "equitable" funding model

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<sup>27</sup> [Panel One Editor Packet: Metro Arts Grants](#) (November 28, 2022) and [Panel Two Editor Packet: Thrive + New Programs](#) (November 17, 2022)

refer to this funding formula that redistributes larger percentages of funding to smaller budget organizations. Equity, in this context and in this report, refers to this redistribution based on size.

These recommendations were approved at the Grants and Funding Committee on December 12, 2022<sup>28</sup> then by the full Commission on December 15, 2022.<sup>29</sup> Individual Commissioner votes are shown in Table 3 later in this section.

**Table 2: December 2022 Funding Formula (Approved)**

Organization Size	Grant
Micro (operating budget <\$25,000)	75% of budget or 2K minimum grant
Small (operating budget \$25k-\$100k)	50% of budget or 3K minimum grant
Medium (operating budget \$100k-\$500k)	25% of budget
Mid-sized (operating budget \$500k-\$3M)	17% of budget up to 120K maximum grant
Large (operating budget >\$3M)	1.8% of budget up to 200k maximum grant

### Cap Allocation

Much attention has been given to the language and discussion about the “Cap Allocation” in the proposals, approved documents, and discussion at the December Commission meeting. This refers to continuity in funding for organizations already receiving Metro Arts grants. The approved General Operating proposal included the following: “Should the Total Ask Amount be unavailable, a percentage will be assigned to all orgs that allows for the maximum grant amount, first honoring that all organizations receive a grant greater than or equal to the previous year, and secondly, honoring small and medium organization full asks. \*All award allocations will be made based on Metro Arts funding availability.”<sup>30</sup> Concerns and objections to the new funding formula were voiced by some public commenters and Commissioners at the December meeting, primarily focused on potential financial harm to mid-size organizations, whether \$3M was the appropriate budget level to distinguish between mid-size and large organizations, and more generally about reducing funding to successful (i.e., large and established) organizations. In those discussions, this Cap Allocation was referenced to assuage those concerns that organizations would receive the same grant amount in this first year of the new formula.<sup>31</sup>

This funding formula was created and approved before it was known how many applications Metro Arts would receive and how many would qualify for funding under the new changes. Applications opened on January 23, 2023 and closed on April 10. The Review Panels took place in late April. In total, 88 organizations and 131 individuals met eligibility criteria, up from 54 organizations and 22 Thrive applicants the previous year. The Mayor’s budget was released on May 1, which previewed the reality that Metro Arts would not receive the amount requested. Even with the Council’s \$2M amendment, it ultimately fell short by approximately \$2M from funding needed to fulfill all General Operating and Thrive requests according to the new funding formula. This left the Commission in a position where it would have to choose how to allocate limited funds.

<sup>28</sup> Metro Arts Grants and Funding Committee, [Minutes Tuesday December 12, 2022](#)

<sup>29</sup> Metro Arts Board of Commissioners, [Minutes December 15, 2022](#)

<sup>30</sup> Metro Arts, [Metro Arts Operating Scoring Rubric FY24 Grant Cycle](#), p. 4

<sup>31</sup> Arts Commission, [December 15, 2022](#), audio recording



In the December Commission meeting, Director Singh and Ian Myers described the planning rationale to open applications with the new changes, see how many applicants come in, and use that real data to proactively request a budget from the Mayor and Council to meet the demand. When the budget fell short, the assurance of sustained funding for organizations already in the funding pipeline *and* the ability to fund new applicants according the new funding model turned impossible. The Cap Allocation was included in order to maintain support for the new funding model from organizations who have advocated on behalf of Metro Arts in the past. This was a concession to maintain the system, while also trying to change it. The timelines and order of which the Cap Allocation, grant applications, and the budget came to play out inflated expectations for all parties that turned to be incompatible.

### July 2023 Vote

Dana Parson, a contractor and Founder of The Leadership Institute for Compassionate Changemaking (a firm that specializes in organizational change) was the primary individual to develop adjusted funding scenarios based on available funding. Parsons had been brought on as a contractor starting in November 2022 to develop and implement the process for the Community Editing Panels and the resulting funding formula. Because the budget was insufficient to fully fund all requests, Parsons developed multiple “funding scenarios” that proposed different allocation options for each budget category. The scenarios differentiated between Thrive and General Operating grants, first prescribing a percentage of funding to go to Thrive requests, such as “fully fund Thrive at 100% of their ask” or “fund Thrive at 75% of ask,” etc. Each scenario then prescribed a specific funding amount to each category of organization sizes, micro through large, within General Operating grants. Some scenarios determined this amount based on the FY24 funding formula (for example, fund 80% of what the FY24 formula would mean for micro and small organizations), whereas others were based on the FY23 amounts (for example, fund 40% of FY23 grant amount). Taken together, a specification for Thrive plus a specification for General Operating make up one scenario, with each scenario totaling approximately \$4.6M.

Additionally, each scenario listed a dollar amount for “BIPOC impact” and “white impact” for the Thrive and overall General Operating categories. For example, under scenario A, Thrive BIPOC impact was \$608,055 and white impact was \$1,122,710. These amounts were provided as data points to show what the result would be for any given scenario for those two race categories. Finally, each scenario included the percentage of General Operating funds that would go to micro, small, and medium organizations, given that these were the variables used to shape the new funding formulas in December 2022. Prioritizing micro, small and medium organization sizes was how Metro Arts operationalized equity. At least 12 scenarios were provided to Commissioners for consideration between approximately July 5 and July 20, 2023. Scenarios can be [viewed here](#).<sup>32</sup>

The Grants and Funding Committee recommended Scenario A and a modified Scenario B for consideration by the full Commission.<sup>33</sup> A motion was made to approve Scenario A which funded Thrive at 100% of applicants’ FY24 ask, micro and small organizations at 80% of the

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<sup>32</sup> Metro Arts. [FY24 Funding Scenarios \(Detailed\)](#).

<sup>33</sup> Metro Arts Grants and Funding Committee, [Minutes Monday July 10, 2023](#)

FY24 formula, medium organizations at 75% of the FY24 formula, mid-size organizations at 55% of the FY23 grant award, and large organizations at 40% of the FY23 grant award. The Commission approved this scenario with 8 yeas, 3 nays, and 1 abstention.<sup>34</sup>

Scenario A was referred to as the “equitable” scenario because it fully funded Thrive awards and increased funding for smaller organizations. It prioritized the commitment to funding micro, small and medium organizations most similarly to the FY24 funding formula from December 2022.

### August 2023 Vote

Metro Legal intervened in the days after the July vote, which is discussed in detail in the next section. Here we examine the details of the August revote. Five new scenarios were presented to Commissioners for the August meeting. The new scenarios had three adjusted variables/categories for evaluating equity: 1) Thrive; 2) operating grants for organizations with budgets under \$500,000; and 3) organizations that have received less than \$500,000 from Metro Arts over the last 25 years. With these variables, the intention was again to prioritize Thrive, micro, small and medium sized organizations. Like July, each scenario provided an allocation to Thrive at a percentage of 100%, 75% or 50% of the applicants’ request, plus an allocation to distribute across General Operating applicants based on variables 2 and 3. And again, each scenario labelled the percentage that would be allocated to micro, small and medium organizations. The scenarios can be viewed in a [chart format here](#),<sup>35</sup> and [narrative text description here](#).<sup>36</sup> The Grants and Funding Committee recommended Scenario 1, which funded Thrive at 100% and prioritized organizations with budgets under \$500,000.<sup>37</sup> The full Commission voted against this Scenario, with a vote of 6 yeas and 8 nays. Instead, Commissioners approved Scenario 4, which funded Thrive awards at 50% of their request and allocated the greatest amount of funding to organizations with budgets greater than \$3M.<sup>38</sup>

Commissioner Schmidt moved the motion to approve Scenario 4 immediately after Scenario 1 failed. An opportunity was missed in that moment to distribute a funding cut by moving a scenario that would have funded large organizations at a marginally smaller percent than their full FY23 award and distribute the difference to Thrive applicants and smaller organizations. Scenarios 2 or 3 provided compromises along those lines but were not considered.

Image 1 provides a comparison of the December 2022 funding model to the Scenarios passed in July and August. Notably, in the July scenario, 54% of General Operating grants would have been allocated to micro, small and medium organizations with budgets under \$500,000. In August, that percentage was down to 16%.

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<sup>34</sup> Metro Arts Board of Commissioners, [Minutes July 20, 2023](#)

<sup>35</sup> Metro Arts. [August – Scenarios Overview \(Chart\)](#)

<sup>36</sup> Metro Arts. [August – Scenarios Overview \(Text\)](#)

<sup>37</sup> Metro Arts Grants and Funding Committee, [Minutes August 14, 2023](#)

<sup>38</sup> Metro Arts Board of Commissioners, [Minutes August 17, 2023](#)

**Image 1. Funding Formulas and Scenarios approved in December 2022, July 2023, August 2023**

<b>December 2022 Vote - Funding Formula</b>		
<b>Organization Size</b>	<b>Award Amount</b>	
Micro (org budget <\$25k)	75% of budget, minimum \$2k	
Small (org budget \$25k-\$100k)	50% of budget, minimum \$3k	
Medium (org budget \$100k-\$500k)	25% of budget	
Midsize (org budget \$500k-\$3M)	17% of budget, maximum \$120k	
Large (org budget \$3M+)	1.8% of budget, maximum \$200k	

  

<b>July 20, 2023 Vote - Funding Scenario A</b>		
<b>Category</b>	<b>Proposed Grant Amount</b>	<b>Total</b>
Thrive	100% of FY24 formula (\$20,000 max)	\$ 1,730,765.00
Micro (org budget <\$25k)	80% of FY24 formula (75% annual budget)	
Small (org budget \$25k-\$100k)	80% of FY24 formula (50% annual budget)	
Medium (org budget \$100k-\$500k)	75% of FY24 formula (25% of annual budget)	
Midsize (org budget \$500k-\$3M)	55% of FY23 grant amount	
Large (org budget \$3M+)	40% of FY23 grant amount	
% of funds to micro/small/medium organizations = 54%		
<b>Total FY24 Grants</b>		<b>\$ 4,639,599.71</b>

  

<b>August 17, 2023 Revote - Funding Scenario 4</b>		
<b>Category</b>	<b>Proposed Grant Amount</b>	<b>Total</b>
Thrive	50% of FY24 formula (\$20,000 max)	\$ 875,382.00
Micro (org budget <\$25k)	Average of 37% of annual budget	\$ 55,324.00
Small (org budget \$25k-\$100k)	Average of 16% of annual budget	\$ 160,971.00
Medium (org budget \$100k-\$500k)	Average of 9.6% of annual budget	\$ 486,307.00
Midsize (org budget \$500k-\$3M)	Average of 9.7% of annual budget	\$ 1,210,271.00
Large (org budget \$3M+)	Average of 1.9% of annual budget	\$ 1,471,288.00
% of funds to micro/small/medium organizations = 16%		
<b>Total FY24 Grants</b>		<b>\$ 4,259,543.00</b>

*Procedural Differences*

Two procedural differences in how these funding decisions were made are noteworthy. In FY23 and previous years, Grant Manager Jonathan Saad stated that he was responsible for creating the funding formula, which was typically only one option. Other Commissioners confirmed that the full Commissioner deliberating between multiple scenarios was unusual, and that if those decisions were made in the past, that work would typically take place in the Grants and Funding Committee. Saad also described that Thrive awards were only funded in previous years when funding was available. With the decision to use the same funding pool for Thrive and General Operating awards, it both ensured more funding was available for Thrive, while making the General Operating funds dependent on how much is allocated to Thrive for the first time. This was complicated by the intention (with no enforcement mechanism) of the \$2M Council

amendment to support Thrive awards. Thrive ultimately received approximately \$875,000 – just under half the amount of the amendment.

Saad shared two additional comments that appear to show either some disagreement with or dissent against the process up to this point. In discussing the recommendations from the Editing Panels, he stated, *“some of the things that came from the committee I knew we wouldn’t do. It’s a nice idea but not practical. One thing was to push the award amount for Thrive to \$20,000. I knew that wasn’t a reasonable amount. I always thought we’d come back and scale it back down. It was just spit balling.”* When asked if he sent award notices to recipients after the July vote, he said, *“No, I knew the moment it passed it wouldn’t... In past years I would start right away, but it was so chaotic this year, there wasn’t a push to get the awards out.”* He did not offer a specific reason when asked why he thought it would not be followed through on. We are not able to conclude whether this was a truly prescient instinct or whether this staff person had information that others were not privy to. Meanwhile, from the community side, several applicants described poor communications from Saad and Metro Arts in general and lack of information about the status of their grant dispersions.

#### Commissioner Votes

Commissioner votes are shown in Table 3 for the three votes described above. Affirmative yea votes are shown in green, negative nay votes in red, and abstentions in yellow. Absences are labelled and N/A indicates the Commissioner was not serving at the time (e.g., they were not yet appointed or had completed their term of service).

**Table 3: Commissioner votes in December 2022, July 2023, and August 2023**

Commissioner	December 2022 (equitable funding formula)	July 2023, Scenario A (most equitable)	August 2023, Scenario 1 (most equitable)	August 2023, Scenario 4 (least equitable)
Angelico, Ellen	Yay	Yay	Yay	Nay
Bell, Darek	N/A	Absent	Nay	Yay
Brewer, Dexter	Yay	Absent	Nay	Yay
Bucy, Sheri	Yay	Yay	Yay	Nay
Byrd, Marianne	Abstain	Yay	Nay	Yay
Cheek, William	Nay	Nay	Nay	Yay
Edward, Clarence	Yay	Yay	Yay	Nay
Haynes, Clay	Yay	N/A		
Kurtz, Janet	N/A	Nay	Nay	Yay
Love, Leah	N/A	Yay	Yay	Nay
McCoy, Carol	N/A	Abstain	Nay	Yay
Perez, Diana	Yay	Yay	Yay	Nay
Polycarpou, Paul	Yay	Yay	Nay	Yay
Powell, Matia	Yay	Yay	Yay	Nay
Schmidt, Jim	Abstain	Absent	Nay	Yay
West, Campbell	Yay	Nay	Absent	
<b>Total</b>	9 yea; 1 nay; 2 abstentions	8 yea; 3 nay; 1 abstention	6 yea; 8 nay	8 yea; 6 nay

Fourteen Commissioners accepted our request for interviews. This section shares summaries of how they described the reasoning for their votes. We review them in these categories:

- Consistently voted *for* the equitable distributions (yea votes in December, Scenario A, and Scenario 1)
- Consistently voted *against* equitable distributions (nay votes in December, Scenario A, and Scenario 1)
- Voted *for* equitable distribution in July and *against* it in August
- Other voting patterns (i.e., abstentions, absences, etc.)

Commissioner West did not participate in an interview and was absent from the August Commission meeting. We do not speculate or include information about her July vote in these descriptions.

***For Equitable Distributions -- Commissioners Angelico, Bucy, Edward, Love, Perez, Powell***

The six Commissioners who voted each time for the most equitable scenarios expressly stated their preference for the funding models that redistributed a proportion of funds from larger, or “legacy,” organizations to smaller organizations, Thrive artists, and those who traditionally had less access to funding. The rationale from all of them was straightforward in that the Commission had for some time stated its intentions to move its funding priorities in this direction. Two Commissioners also gave deference to the Grants and Funding Committee’s recommendations. Quotes from Commissioners include:

*“I voted for Scenario A because we’ve been talking about this for a long time and sometimes you have to do what you say you’re going to do. We’ve been talking about how we need to focus on giving more funding to small orgs. It’s been an ongoing conversation for the last 3 years. Some people may say it was sprung up, but it’s not.” -- Commissioner Powell*

*“I’m the only one on the board who is an arts representative. For me, it was a personal thing. If I wasn’t on the board, I’d have been an artist applying for a grant as a small org. I resonate with that. I’ve done that work in the city.” -- Commissioner Edward*

*“I was really pushing towards a more equitable distribution of Metro funds to go to Thrive artists and small organizations, and bigger cuts to legacy organizations... I sat back and I listened to all the organizations... everyone made a good point, but in my heart of hearts, I knew I should stick with the little guy... Each time I voted, I voted for wanting to make Thrive participants get 100% of their money.” -- Commissioner Bucy*

*“I’m almost certain it was the committee’s recommendation. I thought we should keep where we were in July, that was the most equitable.” -- Commissioner Love*

*“Because it was the most equitable scenario. I’ve been concerned that the funds were not being equitably distributed in the Nashville arts community. It was going to have a positive impact... That day when we voted, we had a lot of people from the public speak. Making comments, that made it clear why we were there and why we needed to choose the more equitable scenario. It was very explicit what the community was needing.” -- Commissioner Perez*

### **Against Equitable Distributions – Commissioner Cheek**

Commissioner Cheek is the only Commissioner who voted against the new funding formula in December 2022 and against the equitable scenarios in August and July. In an interview he did not recall the details from the December 2022 vote. He did describe, in detail, his rationale behind his votes in July and August which he summarized as, *“in July, I was opposed to it based on principles, and by August, I had heard about the real impact.”* He described the July vote as too much of a financial increase to individual artists without a system in place to monitor use of those funds:

*“I was not comfortable that we were spending taxpayer money in a way that we could reliably measure that we were doing a good thing and were in fact funding art in a way that taxpayers are comfortable paying for... We didn’t have any way to track it. With an arts organization, there’s a board of directors and there’s a paid staff. With an individual artist there’s none of those checks and balances built in... I’m not sure I ever saw a list of who the recipients were and what their projects were, and who approved the projects, and who is supervising the grants. For example, if you received a \$10,000 grant, who is following up with you to see what did you do? Did you go to Kroger and shop? Or did you put on the arts production that you supposedly were going to do with the money? I don’t remember seeing information about that, and in retrospect, I think we were*

*premature to give as much money as we did to individual artists without accountability.”<sup>39</sup>*

Of note, Commissioner Cheek is the only Commissioner who shared a concern about accountability of funds to individual artists. We note this is a potential point of philosophical disagreement between an individual Commissioner and Metro Arts’ overall movement toward trust-based grant practices that broaden access and fund individuals. Commissioner Cheek also shared that his July vote was motivated by a concern that organizations who had advocated for the \$2M council amendment would not continue to support advocacy efforts in future budget cycles if they did not receive some of those funds. He further explained that in August Commissioners had heard from impacted arts organizations who would receive less funding under the equitable scenario: *“we had heard about specific impacts from some of the arts organizations and what it would mean to cut funding. It had become more personal because I was hearing from, you know, a friend on the Opera Board. And I wasn’t the only Commissioner hearing... the mid-size organizations, it made a meaningful impact. Like the Nashville Rep, it was very difficult for them to fund the gap.”* This was a common theme among Commissioners who voted against the equitable scenarios.

#### ***For Equitable Distribution in July and Against in August – Commissioners Byrd, Polycarpou***

Commissioners Byrd and Polycarpou voted for the equitable scenario in July then voted against it in August. Commissioner Byrd described her position on both votes as follows:

*“I had completely bought into the concept and Arts had a commitment to DEI and we wanted to support the small institutions and the most under-represented in the past. When we looked at Scenario A, that is what we voted for. When we had to reconsider everything, and were not allowed to take DEI and BIPOC issues into consideration as part of that process, I felt we absolutely had to go back and honor the promise that Daniel [Singh] made to those community members, many of whom were with the larger organizations. And make sure they got at least the same amount of money that they got the previous year. The commissioners did not vote on that, the Commissioners did not make that promise. Daniel made that promise.”*

Commissioner Byrd acknowledged that there were *“conflicting promises made.”* She stated that after being advised by Metro Legal that they should reconsider the vote, she reviewed every document and email since December 2022 and ultimately, *“felt the promise that had been made by the Executive Director was that you can’t give everybody everything, but you have to keep your promise, and he made a promise.”* Commissioner Byrd delivered a lengthy statement further elaborating these points at the August 17, 2023 Arts Commission meeting.

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<sup>39</sup> Much of the processes and requirements of Commissioner Cheek’s concerns about scoring and reporting requirements are stated in the FY24 Thrive Call for Artist Services & Guidelines. The scoring rubric includes three questions on community impact, project timeline, and project budget. The guidelines describe that project reports are due within 30 days of project completion and must include a list of itemized expenses, at least one promotional material, at least 3 photos or videos that document the project, and a project closeout form. Additionally, 10% of projects will be selected for deeper documentation and audit, and the guidelines include language that allows Metro Arts staff to request additional documentation if there is reason to believe projects are out of compliance. The full [Call for Artist Services is available here](#).

Commissioner Polycarpou, who similarly changed his vote between July and August, emphatically described his desire to fund independent artists, but described the impact that the conversation at the August meeting had on his decision making. He shared:

*“Primarily the discussions I heard at the August meeting led me to think we are way too quick doing this, and we are going to hurt other people in the arts along the way... Some of those orgs made plans for what we decided then. It was even on the website that no organization would be given less than they were in 2023. I couldn't in good conscious think that we could just say ‘no we didn't say that.’ That was my primary thought process... It was the timing that ultimately got me. We'd already promised – like [Commissioner Byrd] said, and she read it aloud – this is what we promised in December. And that promise is still on the website... I want to be sure you hear me. I did not change my mind to say this doesn't count. I put my mind on hold.”*

This promise that Commissioners referred to is the Cap Allocation previously described. The verbal statements and written language throughout the Editing Panels and drafting of the funding formula state that organizations would receive a FY24 grant that is no less than their FY23 grant. Director Singh has stated in public meetings and in his interview that he did make those statements. No Commissioner, including those who voted for the equitable scenarios in conflict with the Cap Allocation, denied that that was repeatedly stated. The approved documents also stipulate that all grants are dependent on available funds.

#### **Other Voting Patterns (absent, abstained, etc.) -- Commissioners Bell, Brewer, Kurtz, McCoy, Schmidt**

Five Commissioners voted against the equitable scenario in August but had either absences or abstentions in previous votes. Overall, they described Scenario A in July as moving too fast and breaking past promises, and argued that Scenario 4 in August also accomplished equity. Quotes from those Commissioners include:

*“If the goal was to offer more funding to Thrive, there were other scenarios that accomplished that same goal, while still looking at the arts community overall. [Scenario 4] gave Thrive grants a five-times increase, which is a phenomenal amount. Most companies only go with 3-6% increase in funding increases for any department.” -- Commissioner Kurtz*

*“Scenario 4 still gave something to everyone. And still honored what we said we were going to do, the commitments that were made way before my time... In my mind, trying to spread it to as many organizations possible would be the best for the Nashville community as a whole.” -- Commissioner Bell*

*“In the end, we decided we would keep our promise to not injure or defund those organizations. They pointed to the promises... And that was contrary to the July vote. We were saying all along that we were going to move in this direction, but we were not going to do it this way. We were going to wean them.” -- Commissioner Brewer*



*“I thought it was more balanced and lived up to some promises that were made to organizations across the city. It greatly increased the amount to Thrive by three or four times the amount of funding and it went to three or four times the number of artists... I thought we need to look at a more phased in and incremental scenario that would move toward funding Thrive and hold harmless others for a year and give them time to budget and deal with incoming cuts... I still believe it will increase equity in a real way.” -- Commissioner Schmidt*

*“Jim [Schmidt] was the former chair, he said, I don’t know why we’re pitting the arts agencies against each other. We have more money than we’ve ever had before, so we will be able to fund a lot of the new Thrive people... I was listening to him and thinking that made sense. So that is why, when the vote came up for Scenario 1, I thought that we had not been keeping our word.” -- Commissioner McCoy*

Commissioners’ referrals to increased Thrive funding is about the increase in Thrive recipients, but not the level of funding per individual. The total Thrive allocation in FY24 was \$875,382, up from \$178,600 in FY23. Thrive awards remained at the \$10,000 funding maximum, but the number of recipients increased from 22 to 101.

Under the August vote, Thrive recipients and arts organizations in the micro, small and medium size categories received less than they would have under the July vote. Mural projects, included within the Thrive category, received no funding. Mid-size and large arts organizations were not adversely affected in the difference between July and August. The Metro Arts website includes lists of [organization grantees](#) and [Thrive recipients \(by project name\)](#).

### Conclusion & Takeaway

This section described decisions between December 2022 to August 2023, during which efforts were made to create and implement a new funding model that increased Thrive awards and allocated greater funding to organizations with smaller budgets. A community-engaged Public Editing Process created the structure and funding formula for awards before the Metro budget was approved, which ultimately fell short of funding needed to fulfill requests from all applicants. The Commission was challenged to integrate two things: the new funding formula, and an applied distribution based on limited funding. Commissioners who voted in support of Scenario A in July and Scenario 1 in August did so because they felt that prioritizing organizations with smaller budgets and fully funding Thrive was a commitment Metro Arts wanted to make for years, and those scenarios put resources behind achieving equity in this way. Commissioners who voted for other Scenarios felt the Commission should not change the formula as abruptly. No Commissioner denied the Cap Allocation or that statements were made about maintaining funding across FY23 to FY24 for organizations already in the funding pool. As one Commissioner said, *“We did say we were not going to pull funding from organizations in year one. We said that. But we couldn’t keep that promise when there’s not enough money.”* The July vote passed with a comfortable margin of 8-3-1. By August vote was ultimately 8 in favor and 6 opposed, demonstrating how divided the Commission ended on this dilemma.

## **ANALYSIS SECTION 4: Metro Legal Involvement**

This section describes, chronologically as they occurred, discussions with and about Metro Legal and their advice at the July Commission meeting, in the memo, at the Executive Session, and the August Commission meeting. Also included are Commissioners' stated understanding of and reaction to the legal advice.

In May 2023 Director Singh shared an email from the Hewlett Foundation with Commission committee chairs that included resources to understand the possible implications to Supreme Court rulings on *Students for Fair Admissions v. Harvard*. In an interview, Commissioner Cheek confirmed his recall of two or three conversations he'd had with Director Singh about how equity work can continue regardless of any court rulings that may prohibit decision-making based on race. Other Commissioners did not recall any conversations happening at this time about the affirmative action ruling. Shortly after, the court issued its ruling on June 29, 2023.

### *July Commission Meeting – Approval of Scenario A*

In the July Commission meeting, Commissioners Cheek and West asked Metro Legal to comment on possible legal implications given the SCOTUS ruling. This discussion occurred during the Grants and Funding committee's presentation of their recommendations of Scenario A or B. Those exchanges are as follows:

*Commissioner Cheek: I have a question for Legal. So I got nervous when I saw Thrive BIPOC impact and Thrive white impact, particularly with the Supreme Court's race-based case. Are you comfortable that what we are doing doesn't violate equal protection under our Supreme Court's new decision?*

*Tessa Ortiz-Marsh (Metro Legal): Legal is currently analyzing. We've given the Arts Commission and Director guidance with last year's process. I'm currently working with Dana [Parsons] on this year's process. But Legal is currently analyzing the most recent decision and how that can and will affect organizations. And, I don't know if anyone knows AG Skrmetti also released a statement in the last week.<sup>40</sup> So, I can't give you a current, concrete answer on the most current AG's statement because that is something that Legal is working through.<sup>41</sup>*

The Commission continued discussion of the advocacy efforts that leveraged \$2M via the council amendment and how to interpret the meaning of BIPOC and white impact on each funding scenario. Commissioner West asked Legal to weigh in again:

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<sup>40</sup> It is premature to suggest that Skrmetti's July 13, 2023 statement has implications on the decisions made by the Arts Commission one week later. This joint statement from 13 state AGs addressed to Fortune 100 CEOs gestured broad strokes about what is allowable under state and federal law regarding equal protection and discrimination in employment and contracting practices. We characterize this as a political statement more than a legal statement. The Supreme Court ruled on a college admissions case, and subsequent legal challenges to its broader interpretation would have to work their way through the courts, beginning locally, before broader applicability can be found. The [statement is available here](#).

<sup>41</sup> Arts Commission. [July 20, 2023 audio recording](#), 1:05:00

*Commissioner West: Question for Metro Legal, following up on Will's [Commissioner Cheek] question. As you all work through the Supreme Court cases, are there any chances that we make a funding decision and may need to roll them back?*

*Tessa Ortiz-Marsh: There's always a chance we get sued for something. That's the reality so – yes, but –*

*Commissioner West: [inaudible]*

*Tessa Ortiz-Marsh: Truthfully, any decision in the public sphere can subject you to litigation. What Daniel [Singh] said is the application process has been run by Metro Legal. I'm going through with Dana [Parsons] now on the new editing process. It complies with the Equal Protection Clause. So – you know – essentially there's nothing in the application process that overtly takes race into account. So legally, that is sufficient.<sup>42</sup>*

This exchange emphasized that the application, review and rubric/scoring process for individual applications were approved by Metro Legal without concern for Equal Protection violations. Discussion continued to further explain what the dollar figures for BIPOC and white impact mean on each scenario, which Parsons explained as “*a result of the scenario rather than a requirement of the scenario.*” In total, discussion lasted approximately 1 hour and 20 minutes. Commissioners approved Scenario A, described as the “most equitable” option.

### *After the July Meeting*

The exact date is unknown, but likely sometime between July 20<sup>th</sup> and July 24<sup>th</sup> Commissioner Cheek called Legal Director Wallace Dietz “to express his concerns about the legality of the process for awarding grants and contracts at the July 20 Commission meeting” (confirmed by Director Dietz via email on January 10, 2024<sup>43</sup>). All Commissioners were asked in individual interviews if they had any conversations with Metro Legal outside of Commission meetings, all of whom said no.

### *The Legal Memo and Executive Session*

A memo addressed to the Metropolitan Arts Commission from Lora Barkenbus Fox and Tessa Ortiz-Marsh was sent to Director Singh on July 25, 2023. The full text of the memo reads:

*At the last Arts Commission Meeting, the Department of Law was asked about the effect of the recent U.S. Supreme Court ruling on race-based decision-making. Here is a summary of the ruling and how it would apply to local government grants.*

*Race may not be used as a way of distinguishing between applicants. The Equal Protection Clause forbids treating people differently because of the color of their skin.*

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<sup>42</sup> Arts Commission. [July 20, 2023 audio recording](#), 1:29:45

<sup>43</sup> Wallace Dietz, [email communication January 10, 2024](#)

*Preferences for one race over another may not be used to remedy the effects of societal discrimination. Racial balancing is patently unconstitutional.*

*People may be treated differently on individual skills, differences, or unique abilities. They may be treated differently based on where they live. Grant-makers may consider an applicant's discussion of how race or other societal issues affected his/her life or experiences as an individual – but a decision may not be made on the basis of race.<sup>44</sup>*

Fox shared the memo minutes before a scheduled virtual meeting with Director Singh and five other staff members, at which Fox requested an Executive Session be called. Director Singh shared the memo with Commissioners the next day and began scheduling logistics to arrange the meeting, which took place on August 11, 2023 at 8am.

State law provides a narrow exception to the Tennessee Open Records Act which allows for a public body and its attorney to meet in private. The exception is as follows:

(1) The meeting must concern litigation that has already been filed or that is likely to be filed and to which the county is or will be a party, and (2) the private meeting must be limited to discussions between the attorney and members of the public body regarding the public body's legal options, and no discussions between members of the public body as to what action should be taken can take place.<sup>45</sup>

The Executive Session immediately preceded an Arts Commission meeting on the same morning, which happened at an unusual time of 8:55am—9:10am. Not every Commissioner disclosed whether they attended the Executive Session meeting, but we can speculate that 10 Commissioners attended, based on the attendance recorded for the 8:55am Commission meeting. Those Commissioners were: Angelico, Brewer, Bucy, Byrd, Edward, Kurtz, Perez, Polycarpou, Powell, and West.<sup>46</sup>

No Commissioners, staff or Metro Legal representatives have disclosed any specific lawsuit threats or described who would have legal standing to sue. We asked Commissioners to describe the advice that was given and their understanding of and reaction to it. One Commissioner described Fox as the person in charge of the meeting, with Ortiz-Marsh taking notes. Reportedly, Fox described two elements as potentially unconstitutional: 1) that BIPOC and white impact dollar amounts were labelled on each funding scenario, and 2) and that Commissioners' discussion in the July 20<sup>th</sup> meeting could give the impression that race was used as the primary factor in determining how to vote. The following quotes illustrate Commissioners' responses.

Some Commissioners refuted, challenged, or questioned the applicability of the advice:

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<sup>44</sup> Metropolitan Government Department of Law, [The U.S. Supreme Court Ruling in Students for Fair Admissions, Inc. v. President & Fellows of Harvard College](#)

<sup>45</sup> UT Institute for Public Service, County Technical Assistance Services, [Limited Exception for Attorney-Client Discussions](#), Reference Number: CTAS-2425

<sup>46</sup> Metro Arts Board of Commissioners, [Minutes August 11, 2023](#)

*“The whole race thing for me was never an issue. I was totally comfortable with what we voted on. 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 are not stupid they’ll see through that... It was definitely said you could end up in front of a judge. 100% that was said. Absolutely.” -- Commissioner Polycarpou*

*“Just because something benefits people based on race doesn’t mean it’s unconstitutional. I didn’t vote solely on race, but I understand that Legal has a responsibility to lay everything out. But we really weren’t given a full explanation. I understood it to mean we had to rescind because the only reason commissioners voted the way they did was because it would benefit people based on race. Commissioners could have been asked if that’s why they did. There could be some tweaking to that process. Some of the commissioners may or may not have voted on that reason. Others needed time to be able to say, ‘well that’s not why I voted that way.’ In hindsight I wish there was more discussion and explanation.” -- Commissioner Love*

*“We couldn’t talk about race. But like ok, well it’s not about race. It’s a money thing. I remember feeling so lost in the meeting about what we can and cannot do. All I wanted to do was be fair and move the needle in favor of smaller artists and not large institutions. For me, nothing was going to change, whether the word race was in there. The intent is the same. I was out of my depth with legal jargon and legalese. She [Fox] didn’t really do anything to make it less muddy for me.” -- Commissioner Bucy*

*“I didn’t agree with it at all, that’s why my vote didn’t change. [I] didn’t vote based on race, we voted on size of organization. The scenarios at the beginning acknowledged that race was referenced, but that wasn’t the scenario overall. I was voting based on size and how much funding they get. I don’t even remember the percentage of BIPOC percents. Ellen [Commissioner Angelico] had done a good job of arguing with Legal, letting them know it was based on size. I think it was intimidating. I was like whaaaat. It was intimidating.” -- Commissioner Edward*

*“Each scenario did have a BIPOC impact metric. We absolutely did talk about it. It was divvied up based on size, it wasn’t divvied up based on BIPOC impact, even though that was part of the conversation. For me personally, seeing what the COB (Community Oversight Board) has gone through – not being able to have their own representation – we’d have to get other representation and I just didn’t have confidence that that was possible for us.” -- Commissioner Angelico*

Others expressed frustration and concern:

*“Legal called us in, said we talked too much about race. If someone were to sue, they couldn’t determine, based on our conversation, whether we funded on race or on size. There were people trying to recommend to ignore Metro Legal, but we are volunteers. We don’t get paid, nobody has time for that. So we took the advice of the legal counsel that we actually have, and we did what they said we should do.” -- Commissioner Powell*

*“We had to follow legal of course. But are we still feeling good that we can accomplish the purpose, and still be equitable in how we distribute funds? I did NOT leave the meeting feeling that way. It wasn’t that we were definitely not going to accomplish it, but after that meeting I didn’t have clarity about how we were going to stay in our commitment.” -- Commissioner Perez*

*“I was highly disturbed by what we were having to do. It was completely unfair to everyone that Metro Legal had waited until after we had taken all our votes to say we had to undo it... I don’t think anyone questioned their opinion because it was given to us by Metro Legal. That’s the way it came across. There was no discussion about it, we had to do it.” -- Commissioner Byrd*

*“I don’t want Metro to get sued, or the Arts Commission get in trouble. It was federal, we’re a city under the state – could it trickle down and affect us? We probably should have better clarified and found out what do that mean, does it affect grants? Have there been any lawsuits on this? Any time legal says something we’re going to try to follow what they say. Sure. They should be the ultimate authority on whatever we do. But, you know, I don’t know if they or anyone had real clarity on what we’re supposed to do or not do on this.” -- Commissioner Bell*

Some Commissioners agreed with the advice or felt they had no reason to question it:

*“I’m a lawyer and I think about things legally. I think we reconsidered our decision because the reliance on race that was in the funding scenarios, we could not legally rely on race when making a decision about funding... the question whether you can do something that is constitutional or not. In the United States, if you do something that is in violation of the constitution, it doesn’t matter if you can be sued, it’s still a violation of the law.” -- Commissioner Cheek*

*“The discussions in the July meeting were focused very heavily on BIPOC representation and the dollars that would flow there. Legal said that we were suspect under the Supreme Court case and that we made a decision based on race, which isn’t allowable I believe. I mean, I rely on the legal experts. I’m not a lawyer, and I didn’t have any reason to question their interpretation. Following legal advice from attorneys who understand these things more than I do is a wise decision.” -- Commissioner Schmidt*

*“Their advice to us was that they would have that conversation again, being mindful of where we might redo that conversation. We had never before used those categories [Thrive, micro, small, etc.]. They simply said, you know, we had been talking for months about budget sizes. You can talk about that without talking about race. It was clear to me. I’m a lawyer myself, it all made sense to me.” -- Commissioner Brewer*

Two Commissioners seemed indifferent:

*“I’d like to say that I have good recall, but I was still focused on how we needed to change a very complicated formula in 4 days. Let me think. I don’t really remember*

*focusing on what she said that much... When she said that, I did not focus on what Metro Legal was saying. Because I had just listened to Marianne Byrd and Father Dexter and Jim [Schmidt]... I don't remember the big scheme of things where Metro Legal said something." -- Commissioner McCoy*

*"In August they felt the language was problematic, so they recommended we vote again with the new scenarios. I really can't speak to what my state of mind was at that point. I just remember they had that conversation with us and that was their recommendation." -- Commissioner Kurtz*

Some Commissioners couldn't recall the exact order of communications and meetings or which statements were said in which meeting, which may account for differences in recall across Commissioner statements.

#### August 17 Commission -- Rescind and Re-vote

Commissioners reconvened six days after the Executive Session for their regular monthly meeting on August 17, 2023. In the meeting, Chair Powell stated that Metro Legal was recommending they rescind the vote:

*"We are going to have a conversation about this vote that we made last time – again. It wasn't necessarily about the vote; we've had a conversation for a long time about how we want to prioritize Metro funding. And that prioritization is around what type of organization size we want to prioritize. The conversation had that in it, but it had other things that made Metro Legal concerned about the vote. So, we need to rescind the vote. Metro Legal is recommending we rescind the vote from July 20th and that we have a new conversation about how we want to allocate funding for this coming year."<sup>47</sup>*

A motion was made to rescind approval of Scenario A as voted on July 20<sup>th</sup>. It was seconded and unanimously approved on a voice vote.<sup>48</sup> In the process of then rescinding each allocation within Scenario A, Commissioners Love and Polycarpou both asked for Legal to state their position for the record. Ortiz-Marsh made a statement, however, her microphone is turned off and she is partly inaudible. The brief exchange is as follows, to the best of our ability to interpret and transcribe:

*Tessa Ortiz-Marsh: "So, uh, the funding was [inaudible] as I believe Commissioner Cheek asked [inaudible] under what is, what, went through at Harvard [inaudible] affirmative action [inaudible] Metro Legal reviewed the commission at the last commission meeting where they, where the vote that was on the funding scenarios. It appears the decision by this commission was centered on people's race, ethnicity, race-*

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<sup>47</sup> Metro Nashville Network, [08/17/23 Metro Arts Board of Commissioners](#), 9:30

<sup>48</sup> No one voted against the motion to rescind the vote, even though Commissioners stated their disagreement with that advice. One Commissioner reflected in the interview, "After the advice was given, the Chair made the motion or almost said this is what we're doing. It was odd to me. The whole process of how it went down was odd." We interpret this as further evidence that Commissioners felt they were compelled to follow the advice. Or if not compelled, that they did not have a clear explanation of how to follow rules and procedure to not rescind.

*based factors, rather than legally acceptable factors such as skills [inaudible]. So Legal is recommending this commission have a new discussion based on criteria that is legally acceptable. Commissioner does that answer your question?"*

*Commissioner Polycarpou: "Yeah even though race was only one of the factors that we used?"*

*Tessa Ortiz-Marsh: "Correct, but it came down to the vote and – it was asked commissioners, race was, seemed to be, the prevailing factor in decision making."<sup>49</sup>*

Commissioners continued discussion about the new scenarios for approximately 50 minutes. A motion to approve the most equitable Scenario (Scenario 1) failed, and the Scenario that reflected most closely the same awards as the previous FY23 grant cycle prevailed. We do not have details on what Legal determined as the "prevailing factor" in their review of the Commission discussion and any other materials that led them to issue their advice.

### *Personnel Changes at Metro Legal*

Sometime after the August Commission meeting Lora Fox became the primary legal representative for Metro Arts. In an interview with Parsons, the consultant who led the Community Editing and Funding Formula process, she described her understanding of the abrupt change: *"suddenly staff were told we could no longer speak with Tessa [Ortiz-Marsh], we could only speak with Lora [Fox]. I imagine she got a talking to."* Parsons described her experience working with Ortiz-Marsh for policy and procedure approvals, which she described as collaborative, transparent, and *"really wonderful."* She recounted one of the last exchanges she had with Ortiz-Marsh, who had come to Parsons with questions about the funding formulas. Parsons described: *"I don't know who went to Legal, but Tessa came and said 'hey, I've been notified of this.' And [Tessa] had a lot of questions. We had nothing to hide from the process. I'm really proud of the work we [Metro Arts/Arts Commission] did, especially in July. So I was very transparent with her [Tessa]... We had developed a working relationship... and suddenly it was nope, don't ask Tessa. Lora is your primary contact now. And Lora was different. And that's fine, you know, personalities are different. But it wasn't discussion based anymore, things were just a question and a yes or no."*

In a conciliation meeting between Fox and MHRC, Fox suggested that Ortiz-Marsh is less experienced in staffing Metro Boards and Commissions. Based on the information presented above, we question whether the personnel change was actually attributed to Ortiz-Marsh's statements and actions as being in conflict with Metro Legal's position. Ortiz-Marsh's July statement that the grants process was legally compliant conflicts with the memo that was issued five days later. Her statement that the Commission could be sued for anything conflicts with the descriptions that were shared about the advice given in the Executive Session. It begs the question as to whether it was perceived or determined that she made a mistake in her actions or the way she approached her work. Once public and Commission tensions continued to escalate, Fox assumed the role for the Commission.

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<sup>49</sup> Metro Nashville Network, [08/17/23 Metro Arts Board of Commissioners](#), 16:30



### Analysis of Metro Legal's Involvement

Metro Legal's memo prompted action between Commission meetings that ultimately led to a different funding outcome in August. We question the memo's legitimacy and application for several reasons. First, it was not made clear how the higher education setting of the Supreme Court case for individual college applicants applied to Metro Arts. And even if it had been applied, Metro Legal appears to have used it in this specific situation and not uniformly across Metro. Questions have been raised about how it's application would apply to other departments and city functions.

Sufficient answers have not been provided on how arts organizations are adversely impacted under the Equal Protection Clause or how quantifying BIPOC and white impact based on race-neutral funding scenarios violates equal protections. To this last point, absent from the discussion over the legality of "BIPOC and white impact" are the actual numbers of each. The dollar amount labelled as "BIPOC impact" for Thrive grants in July was 35% of total Thrive funding, 13% of General Operating awards, and 21% overall. Even with this scenario being the highest "BIPOC impact," the majority of dollars in each category went to white impact: 65% of Thrive, 87% of General Operating, and 79% total overall.<sup>50</sup> The claim that there was too much focus on race, and BIPOC impact specifically, was for a scenario in which dollars to white individuals or white-led institutions were 79% of the total pool. In this sense, "white" is both racialized by labelling it with an impact quantity *and* erased by not acknowledging the disproportionate funding. Claims that arts grants had become "race-based programs" in FY24 began when activities were prioritized to broaden the pool of who gets funding and when the results of those efforts were measured.

Next, we question how the memo was used to call for an Executive Session. We contend that the justification for a closed meeting is questionable given that no one has disclosed an inherent lawsuit threat. Moreover, based on descriptions from some Commissioner interviews, we argue that Metro Legal may have stepped beyond the boundary of what is allowable in Executive Sessions, particularly with regard to the portion of the statute that reads: "the private meeting must be limited to discussions between the attorney and members of the public body regarding the public body's legal options, and no discussions between members of the public body as to what action should be taken can take place."

Metro Legal's relationship to Boards and Commissions has not been clearly defined *to Commissioners*, which we attribute as a contributing factor to this conflict. Per the charter, the Commission is an authorizing body, and Metro Legal is an advisor. It is Legal's responsibility to articulate this relationship clearly, which we assert they did poorly. In this case, a power dynamic comes into play: Metro Legal provided advice, and the assumption was you follow it. Many Commissioners did not agree with the advice but went along with it anyway by voting to rescind the vote. Several commissioners' disagreement was expressly stated in interviews and shown by the fact that six Commissioners voted again for the equitable scenario.

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<sup>50</sup> These percentages are calculated from the BIPOC and white impact labels on Scenario A.

This creates an appearance that the legal memo and Executive Session were instigated and used by at least one Commissioner who did not support the outcome of the July vote to then advocate for a revote. Commissioner Cheek, the only Commissioner to consistently vote against the equitable funding models and the only Commissioner that had conversations with Metro Legal outside Commission meetings, said so much in an interview. In discussing the new funding formulas voted on in August, he stated:

*“So yes, they eliminated the offensive words [BIPOC impact and white impact], but the underlying analysis involved race probably. I can’t imagine they went back and redid it. But by then, I think that some commissioners were looking at this differently. It became, what is our funding is doing to arts in Nashville, and less so about the philosophical shift toward funding individual artists. That question became less relevant in some people’s minds in the second vote, because we were looking at the actual impact of funding to arts organizations.”*

His comments continue to falsely state that the funding scenarios were based on race and not organization size, even including the August scenarios which Metro Legal formally approved as race-neutral. This insistence emphasizes Commissioner Cheek’s intention to ground race as the reason why the equitable scenario could not be implemented, while at the same time pivoting to the rationale that it was wrong for Commissioners to reduce funding to the large organizations. In other words, the legal intervention gave the Commission a second chance, or a redo, when the July vote went in a direction that some did not expect nor support. Two other Commissioners emphasized the predictability of how these events led to a different outcome, including Commissioner Byrd, who is one of the two who changed her vote:

*“I remember sitting there and having my heart pounding in my chest, but when you ask someone to revote on something, they are not going to make the same decision as before. They are going to go back and look, and review the information, and that’s what happened. To completely reconsider.” -- Commissioner Byrd*

*“It didn’t surprise me [that the outcome changed] because I live in America. But I was disheartened by it... It was heartbreaking to listen to the reasons why people wanted to remain in Scenario A. Just hearing the responses from the Commission, it almost felt as if it fell on deaf ears. Like some Commissioners fully knew what they planned to do. Once it was on the record that we were going to go back and look at our decision, you almost knew it was going to be reversed, because why would we revote on it. We had more people at the August meeting than we did in the July meeting, so no surprise.” -- Commissioner Love*

### Friction Against Implementing Equity

There were ultimately 6 Commissioners who changed the equitable scenario outcome in August: those who changed their vote from yes to no (Byrd, Polycarpou), the one who abstained then voted no (McCoy), and those who were absent then voted against it (Bell, Brewer, Schmidt). If we take Commissioners at their word about why they voted against the equitable scenario in

August, then it leaves us with the proposition that too much harm would be done to large and midsize organizations if they voted otherwise.

Many Commissioners spoke about the high volume of communications they received from people across all grant categories in the weeks leading up to the voting. Attempting to quantify those communications, assess how effective various lobbying or advocacy efforts were, or trying to measure their influence are outside the scope of our work. However, the reality is that more established, resourced, and networked organizations and groups always have more influence. This case provides an example of a more grassroots advocacy campaign that influenced outcomes in ways that were different from past years. As described earlier in the Metro Budget analysis section, the arts advocacy community was fragmented into two groups – the Nashville Arts Coalition (NAC), comprised of more established 501c3 art organizations, and Arts Equity Nashville (AEN), made up of more independent artists and smaller community organizations. The advocacy efforts from AEN led the Metro Council to pass the one-time \$2M amendment to support Thrive awards, and the Arts Commission confirmed that with their July vote. This was a historic achievement and allocation that broke from past funding patterns. The legal intervention created the opportunity for the Commission to reconsider and change course. Those who changed their vote admit to defaulting to the traditional funding pattern, and with that, either the explicit or implicit determination that it was more important to prevent harm to those legacy organizations.

Equity almost always requires redistributing resources. The term “hold harmless” was used during the August Commission meeting and by some Commissioners in interviews, but the majority of the discussion focused on holding harmless the impact of funding cuts to the large and midsize organizations, and not to the others. The Commission did not consider a compromise scenario that would have distributed funding cuts across all categories. We believe that those who were the most swayed and influenced by arguments over the harm caused to large organizations may have less experience with equity work, whether through professional, community, or lived experiences, and therefore became vulnerable to shift to the traditional funding pattern. One Commissioner also stated this belief in saying, *“When the rubber hits the road with equity and people get less, that’s what makes it hard. There has to be individual movement in that space. We haven’t done that work with Commissioners. The ones that I think have stood most firmly, they’ve done this work themselves outside the Commission.”*

### Conclusion & Takeaway

We end this section by emphasizing that Metro Legal has not provided answers to the questions at the beginning of this section, or others that were submitted by MHRC to Legal on December 14, 2023,<sup>51</sup> nor have they issued a formal legal opinion about how this ruling applies to Metro government. Instead, Director Dietz shared via email on January 10, 2024, a 5-page memo prepared by Griffin & Strong about “the use of race in awarding grants under the Metro Nashville Arts program.” The memo states that the law is “a bit unsettled specific to grant programs,” but offers four examples that lead them to conclude Metro Arts would “likely invite a

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<sup>51</sup> [Metro Human Relations Commission letter to Metro Legal](#), December 14, 2023.

legal challenge to any race-based grant program in the absence of a disparity study.”<sup>52</sup> Among the examples include a grant program in Alexandria, VA that *required* minority ownership to participate in a program, and similarly, a Bexar County, Texas example in which “preference points” were given to minority applicants for a grant program, both without disparity studies.

We assert that these examples and the entire memo thwart the question at hand. Metro Arts did not use race as a criterion in its grants. There were no race-based criteria, preference points, set-asides or any other preferential criteria that led the Commission to its July decision. Attempts to harden the narrative that race was used to drive decisions about how scenarios were formed and selected continues to obfuscate the fact that it was size, not race, that established the frameworks. No Commissioner said in the July 20, 2023 Commission meeting or in interviews that their decision was primarily motivated by racial classifications. Mere awareness of race in attempt to define a funding model at Metro Arts in order to provide greater resources to small organizations does not strike down the legality of the decision. Commissioner Powell, who chaired the Commission at the time, clearly articulated the difference in an interview: *“We were talking about race, because organizations that are smaller are Blacker and browner, and the same with artists. Increasing at the smaller level is really trying to right-size the funding. And that’s where a lot of people of color are. We talked about size a lot. It really was about size and less about race.”*

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<sup>52</sup> David Maher, Griffin & Strong, P.C., [Recent Questions to Griffin & Strong regarding Grant Program – Expanded](#), January 8, 2024.

## **ANALYSIS SECTION 5: Conflicts of Interest**

The Title VI complaint requested MHRC to investigate interest that may be present among Commissioners and how those conflicts came into play during the voting. The MHRC is not authorized to determine specific violations of ethical practices, but this section includes preliminary information toward this request. We include a brief assessment of Commissioners' nomination and confirmation process, how the conflict of interest (COI) policy is implemented centrally and specific to the Arts Commission, a brief analysis of Commissioners' expressed COIs in July and August, and our outstanding questions.

### *Commissioner Nominations and Confirmations*

By charter, Metro Arts Commissioners are all appointees of the mayor. Nominees complete a questionnaire which includes a Yes/No question "are you a lobbyist?" and an open field to "describe any potential conflict of interest your appointment may present." The questionnaire asks "have you read, signed and returned your Acknowledgement of Ethical Rules form?" and allows the nominee to upload a signed copy. Prior to October 2022, nominees answered Yes or No to the question: "Have you read the Acknowledgement of Ethical Rules?" Submission of a resume with the questionnaire is optional. This information is collected at the time of the nomination, and not again until a Commissioner goes up for reappointment for a second term. Nominees go before the Metro Council Committee on Rules, Confirmations, and Public Elections. There, Commissioners verbally confirm they live in Davidson County and are not currently serving on other Metro Boards or Commissions. Committee members typically ask the nominee to share about their interest in serving and anything else they wish to ask. The Committee then votes to recommend approval of the nominee, which must be approved by the full Council. If the Committee does not recommend approval, the Council must approve by a 2/3 vote, otherwise the nominee requires a simple majority vote.

We reviewed documentation on file with the Clerk's Office and the video recordings from committee interviews with two primary questions. First, what conflicts of interests were disclosed in the application materials and interview process, and second, did Commissioners demonstrate an understanding of and alignment with Metro Arts strategic equity goals. The table below summarizes Commissioners' interest in serving on the Commission, as stated in their interviews and/or questionnaires.

**TABLE 4. Commissioner Interview and Questionnaire Summary**

<b>Commissioner (Date of Interview)</b>	<b>Disclosed COI on Questionnaire</b>	<b>Expressed interest in serving on the Arts Commission</b>
Angelico, Ellen (1/5/2021)	None	Works as a professional musician and at Fanny’s House of Music. Believes in the importance of the arts in quality of life, social/youth development, and restorative practices. Substantial community/volunteer work with arts focused initiatives.
Bell, Darek (3/21/23)	None	Owner of Corsair Distillery, career in the construction industry and sees that as part of the arts funding ecosystem with regard to the built environment. Has been involved in creating the arts identity of Wedgewood-Houston and values the changes it has brought to the area.
Brewer, Dexter (12/15/20)	None	The only statements include: “Other than my love the arts, I have no qualifications for this appointment” (questionnaire) and “I love art and I think I may have something to offer to the committee” (interview).
Bucy, Sheri (2/2/21)	Employee and am a major donor to Nashville in Harmony (small organization)	Has worked professionally as a singer, actress, and comedian. Owner of small a musical-comedy tour company. Has been part of the arts community for some time, wants to continue serving on the finance committee to ensure funding so all people can access the arts in their community.
Byrd, Marianne (4/21/20)	Vice President of Iroquois Steeplechase Race Committee	Worked professionally with Tennessee State Museum Foundation, Blair School of Music, and Tennessee Dance Theater; has a personal interest in collecting fabric arts and sculpture.
Cheek, William (1/17/23)	None	Wants to continue serving to help guide the Commission’s changes toward becoming more equitable, including the allocation of funding into neighborhoods that have been traditionally overlooked.
Edward, Clarence (3/15/22)	None	As an independent gallerist, wants to ensure a wide array of artists are protected and represented.
Kurtz, Janet (4/4/23)	“I am a member of the media. Our sister publication may write about the Arts Commission, however my magazine does not.”	President of Kurtz Hospitality Marketing, and previously at the Hermitage Hotel. Is currently the editor of NFocus Magazine of F.W. Publishing. Believes exposure to the arts is an important part of youth development and that Metro can do more in this area.
Love, Leah (3/21/23)	Lobbyist at the state; husband is a state legislator	Believes the arts are important to youth development, quality of life, and civic participation. Attorney with a background in legislative/government affairs and has worked as a grant reviewer in the past.
McCoy, Carol (3/21/23)	None	Previously served on the boards for the Tennessee Arts Commission and Watkins College of Art at Belmont. Believes the Arts Commission will be a non-confrontational board, where people come together to enjoy the grantmaking process with people who appreciate the arts. Shared anecdotes of reviewing poorly written grant applications from small or new initiatives; believes they need more support to ensure funding will be handled properly. Believes her experience as a former trial lawyer and Chancellor will benefit the Commission.
Perez, Diana (3/1/22)	None	Wants to advocate for the Hispanic and immigrant communities for greater equity in representation and funding for the arts; has a professional and personal background in dance and media.

Polycarpou, Paul (4/5/22)	None	Operated the Nashville Arts Magazine for 11 years in addition to other professional experiences in the arts, music, and entrepreneurship fields. Through his work he has worked closely with Metro Arts and wants to serve.
Powell, Matia (1/17/23)	None	Is happy with progress the Commission has made in many areas, including the hiring of Daniel Singh, expansion of organizations receiving funding, a deepened focus on equity, changes to funding processes, and the Commission’s overall community engagement and transparency.
Schmidt, Jim (1/5/21)	None	General interest in wanting to be re-appointed to continue the work of building up the arts community. Has served on several arts related boards over time, including Nashville Children’s Theatre.
West, Campbell (3/15/22)	“My partner, Herb Williams, a local artist, will continue to abstain from pursuing any Metro projects per MAC guidelines.”	Currently the Director and co-curator of The Rymer Gallery. Has a background in arts development, grants, event production, and consulting. Is most excited about Thrive and youth focused art programs.

Interviews are typically between 1 and 8 minutes in length, with few follow up questions. Overall, the brevity of the interview process makes it difficult to understand a nominee’s background and how it aligns with the Commission’s goals, vision, and needs. Three responses stand out with regard to this complaint, from Commissioners Brewer, Cheek, and McCoy.

Commissioner Brewer expressly stated in his questionnaire that, “Other than my love of the arts, I have no qualifications for this appointment.” In his December 2020 confirmation interview, which was virtual, he stated “*I love art and I think I may have something to offer to the committee,*” followed by 15 seconds of inaudible speech. There were no follow up questions, and a favorable recommendation was made.<sup>53</sup> In an interview, he shared that he decided not to serve for a second term: “*I’m a friend of some people who asked me to run. But I never thought that giving out money to support arts institutions would become so political. Not worth the energy.*”

Commissioner Cheek’s confirmation interview for his second consecutive term was in January 2023, one month following the initial vote on the equitable funding formula. In it he stated: “*We are really optimistic about the way things are going. We just took a critical vote at how we are going to allocate funding. We are very focused on what we call equity, which is putting more arts funding and more support from the Commission into neighborhoods and arts that have been traditionally overlooked by the Commission.*”<sup>54</sup> This statement appears contradictory when compared to his nay vote on the December funding formula and his continued nay votes in July and August 2023.

In Commissioner McCoy’s March 2023 confirmation interview, she explicitly stated her interest in serving on a “*non-conflict entity where I can relish in participating with people who appreciate the arts,*” which prompted a councilmember to ask if she was aware of past conflicts and allegations of bias within Metro Arts. The councilmember asked Commissioner McCoy how

<sup>53</sup> Metro Nashville Network, [12/15/20 Council Committee: Rules Confirmations & Public Elections](#), 23:45

<sup>54</sup> Metro Nashville Network, [1/17/23 Council Committees: Rules Confirmations & Public Elections](#), 11:35, 11:45

she views the Commission's role, to which she responded: *"I read a news article, and I couldn't quite figure out what was going on. I know that the Executive Director either retired or was replaced so there's a new person on board, and I don't know who that is... I don't think that's the focus of the Commission."*<sup>55</sup> On her own accord, Commissioner McCoy shared a story about observing the Tennessee Arts Commission's grant evaluation process. In it, she referenced *"your Symphony, Cheekwood, Centennial – all these places want money,"* then went on to say:

*"People who come in who just want to start a new venture. Their application is woefully poor, you wouldn't award anyone that money until you thought it would be handled properly... The one I remember was the Chinese New Year's festival, it was a little group of people getting together and I think they asked for \$5,000 but the grant was just so poorly written, maybe if they'd gone to the center for non-profits they might have gotten some help."*

While we take in good faith the intention of Commissioner McCoy's statement with a problem-solving orientation to support organizations in their application process, it still shows signs of bias in one's assumptions of what groups, without question, typically have access to funding and how those are likely viewed as a benchmark for comparison from other applicants. This illuminates the Commissions' tension around trust-based grant processes.

These exchanges highlight the challenges of the vetting and confirmation process. Commissioner Cheek's statements are contradictory, which can be viewed as misleading or deceptive when evaluated in the full context of what happened in the grant cycle. It is concerning that what he stated in the confirmation interview sounds like something one would say because it is what people want to hear; in this case, that the Arts Commission is moving toward equity, even while his individual actions show his opposition. Commissioners Brewer and McCoy's statements show concern about preparation to serve. Commissioner Brewer's are more straightforward in that he was not qualified for this role but was appointed regardless. Commissioner McCoy's show the dilemma of an appointee who expresses enthusiastic interest, but may not be aligned, trained, or aware of the strategic goals or the overall environment of the Commission.

Beyond these three, none of the Commissioners were asked to comment on how their disclosed conflicts of interests may influence their service, or how relationships with various agencies may give appearances of conflicts of interest. Related, Commissioners who answered "yes" to "are you a lobbyist?" were not asked what they lobby for or if/how it relates.

It is not our intention to place blame on this Council committee, whose role is to confirm that nominees meet minimal requirements for service, which technically, are solely county residency and that they not presently serve on another board or commission. Given the structure of the Metro Council and this specific committee, it is not a reasonable expectation that councilmembers understand the needs and priorities of all 80+ boards and commissions or how they should evaluate nominees for fit. This shows the weakness of the process for evaluating, balancing, and taking into account conflicts of interests, both subtle and overt, and overall readiness to serve. The Council's confirmation of mayoral nominees should serve as the check

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<sup>55</sup> Metro Nashville Network, [3/21/23 Council Committees: Rules Confirmations & Public Elections](#), 14:30



and balance to the mayor’s power in this role, but it is structurally imbalanced and does not currently have the capacity to ensure this is done well.

Conflicts of Interest & Commissioner Recusals

Commissioners sign the [Acknowledgement of Ethical Rules](#) during the nomination process. Examples of the rules include: you shall not participate in making or influencing any Metro government decision in which you know you have any material financial interests distinguishable from that of the public; or, you shall not give the impression that any person can improperly influence the performance of your official duties or that you are unduly affected by the kinship, rank, position or influence of any person. The acknowledgement is filed with the Metro Clerk’s office.

Metro Arts staff administer its department-specific COI policy through annual Commissioner self-declarations, plus opportunities for additional disclosures in meetings where funding allocations are made. The annual disclosure form is submitted on Submittable, an online portal that Metro Arts uses for grants and other forms. It asks the following: “Please list all arts organizations with which you, or any members of your household, are currently associated and the associated relationship.” All 15 Commissioners completed the form in July 2023, and their disclosed COIs are listed in the table below. The Organization Size column is an addition we added to this table, it is not part of the disclosure form.

**Table 5: July 2023 Disclosures**

<b>Commissioner</b>	<b>Arts organizations with which you, or any members of your household, are currently associated, and the relationship.</b>	<b>Organization Size (based on FY24 definitions)</b>
Angelico, Ellen	None	n/a
Bell, Darek	None	n/a
Brewer, Dexter	None	n/a
Bucy, Sheri	Nashville In Harmony	Small
Byrd, Marianne	Cheekwood – husband is board member	Large
Cheek, William	Legal counsel to Oz Arts, Cheekwood, Symphony, Frist	Midsized, Large
Edward, Clarence	Ce Gallery	Not on the grant recipient list
Kurtz, Janet	Nashville Rep and Gilda’s Club. These organizations I have written about or been written about in my magazine: Nashville Symphony, Frist Art Museum, TPAC, Nashville Ballet, Nashville Children’s Theater, National Museum of African American Music, Belcourt Theatre, Cheekwood Botanical Garden and Museum of Art, Circle Players, Country Music Hall of Fame and Museum, Daybreak Arts, Humanities Tennessee, Kindling Art, Moves & Grooves, Nashville Film Festival, New Dialect, North Nashville Arts Coalition, OZ Arts, The Porch, Theater Bug, Nashville Design Week	Small, medium, midsized, large
Love, Leah	None	n/a

McCoy, Carol	Humanities Tennessee – Board member	Midsize
Perez, Diana	Conexión Américas	Not on the grant recipient list
Polycarpou, Paul	None	n/a
Powell, Matia	None	n/a
Schmidt, Jim	Nashville Children’s Theatre Advisory Committee	Midsize
West, Campbell	Our daughter, [name redacted], is a participant in Girls Write but our household does not have financial gain.	Medium (if applicable)

Commissioners are given the opportunity to disclose additional relationships or conflicts at each meeting before they vote.

Grant approvals in July and August included two steps. First, Commissioners voted on the funding scenario (e.g., scenario A in July and Scenarios 1 or 4 in August). Second, the allocations for Thrive, micro, small, medium, mid-size, and large recipients are voted on in alignment within the approved scenario. The Chair called for a vote for each category, for example, “approval of Thrive in alignment with Scenario A.” All Thrive applicants are then collectively approved with one vote. For General Operating grants, the names of each organization were read aloud when calling for a motion. For example, “approval of micro organizations in alignment with Scenario A,” followed by a verbal roll call of each organization in this category, then collective approval. Recusals were made in this allocations vote. Recusals do not apply on deliberation and voting of the overall funding scenarios.

Conflicts of interest were documented by recusals in July and abstentions in August and are shown in the two tables below. Recusals were not properly documented in August for several reasons: a procedural error by the Chair (she omitted to ask for them for Thrive, micro, small, and medium allocations), the use of a voice vote versus roll call vote, no recording of recusals in the minutes, and limited visibility and audio in the YouTube recording. Commissioners are marked as voting “yea” for Thrive through medium organizations in the table below based on the information available, though it is possible some may have abstained on some of those votes.

Not considering those four categories, Commissioner Cheek is the only Commissioner with an inconsistency in recusals/abstentions on his vote for mid-size organizations between meetings. In an interview he disclosed his COI due to a relationship with five large organizations: Belcourt Theater, Cheekwood, Nashville Symphony, County Music Hall of Fame, and the Frist Art Museum. His on-the-record disclosure includes Oz Arts, a midsize organization, from which he should have recused himself from in the August vote, as he did in July. Commissioner Cheek’s nay votes in July for micro through medium organizations stand out because he was the only Commissioner to vote against any allocation after Scenario A had been approved. One can interpret this as a protest vote, given his disapproval of Scenario A.

**Table 6. Allocation Approvals in Alignment with Scenario A (July 20, 2023)**

Commissioner	Thrive	Micro	Small	Medium	Mid-size	Large
Angelico, Ellen	Yea	Yea	Yea	Yea	Yea	Yea
Bell, Darek	Absent					
Brewer, Dexter	Absent					
Bucy, Sheri	Yea	Yea	Recuse	Yea	Yea	Recuse
Byrd, Marianne	Yea	Yea	Yea	Yea	Yea	Recuse
Cheek, William	Nay	Nay	Nay	Nay	Recuse	Recuse
Edward, Clarence	Recuse	Yea	Yea	Yea	Yea	Yea
Kurtz, Janet	Recuse	Recuse	Recuse	Recuse	Recuse	Recuse
Love, Leah	Yea	Yea	Yea	Yea	Yea	Yea
McCoy, Carol	Abstain	Abstain	Not recorded*	Abstain	Abstain	Abstain
Perez, Diana	Yea	Yea	Yea	Yea	Yea	Yea
Polycarpou, Paul	Yea	Yea	Yea	Yea	Yea	Yea
Powell, Matia	Yea	Yea	Yea	Yea	Yea	Yea
Schmidt, Jim	Absent					
West, Campbell	Yea	Yea	Yea	Yea	Yea	Yea

*\*The [July 20, 2023 meeting minutes](#) were used to construct this table, and verified by the audio recording. The minutes do not record Commissioner McCoy's vote on the allocation to small organizations and it cannot be discerned from the audio if or how she voted.*

**Table 7. Allocation Approvals in Alignment with Scenario 4 (August 17, 2023)**

Commissioner	Thrive	Micro	Small	Medium	Mid-size*	Large*
Angelico, Ellen	Yea	Yea	Yea	Yea	Yea	Yea
Bell, Darek	Yea	Yea	Yea	Yea	Yea	Yea
Brewer, Dexter	Yea	Yea	Yea	Yea	Yea	Yea
Bucy, Sheri	Yea	Yea	Yea	Yea	Yea	Abstain
Byrd, Marianne	Yea	Yea	Yay	Yea	Yea	Abstain
Cheek, William	Yea	Yea	Yea	Yea	Yea	Abstain
Edward, Clarence	Yea	Yea	Yea	Yea	Yea	Yea
Kurtz, Janet	Yea	Yea	Yea	Yea	Abstain	Abstain
Love, Leah	Yea	Yea	Yea	Yea	Yea	Yea
McCoy, Carol	Yea	Yea	Yea	Yea	Abstain	Yea
Perez, Diana	Yea	Yea	Yea	Yea	Yea	Yea
Polycarpou, Paul	Yea	Yea	Yea	Yea	Yea	Yea
Powell, Matia	Yea	Yea	Yea	Yea	Yea	Yea
Schmidt, Jim	Yea	Yea	Yea	Yea	Abstain	Yea
West, Campbell	Absent					

*\*This chart was constructed from the [Metro Nashville YouTube recording](#). Allocations for Thrive through Medium organizations all passed on unanimous voice votes as called for "all in favor" and "all opposed." Commissioner Kurtz asked during the Mid-size allocation vote about recusals or abstentions, indicating she needs to be marked as recusing from the vote. The Chair agreed, and the remaining two votes for Mid-size and Large allocations asked for abstentions in addition to those in favor and opposed. It is possible some*

*Commissioners may have abstained from votes on Thrive through Medium allocations, but it is impossible to discern from the video. The minutes do not include a record of individual Commissioner votes.*

Several Commissioners – including those on both sides of the votes – reflected on the inherent subjectivity and grey areas of COIs. One Commissioner who voted in favor of the equitable scenarios said, *“there’s always relationships and there’s a difference between a COI and relationships – it’s a small town. People know everyone in these organizations.”* A Commissioner who voted against the equitable scenario similarly stated, *“we all have associations with various organizations. And when you do, you have friends in those places. It’s hard for that not to be a part of your feelings and thought patterns. But I think that’s natural.”*

The MHRC does not have the authority to adjudicate conflict of interest violations. Allegations of ethical rule violations may be submitted to the Metro Clerk for the Ethical Conduct Board to deliberate and judge. However, we will end this section by raising a question and commenting on the larger context in which these situations arise.

### *Funding Scenario COI vs. Financial Allocation COI*

At its most straightforward, a conflict of interest occurs when a person directly benefits financially or otherwise from a decision in which they take part. However, the process of allocating and rescinding of Metro Arts funding reveals other forms of conflict of interest that disproportionately effect small organizations, collectives, or artists, while maintaining the structural power imbalance in favor of larger arts organizations.

Several Commissioners stated the COI policy is sufficient because Commissioners who have relationships with specific organizations that apply for fundings recuse themselves during the allocation of grants. One Commissioner described: *“Because of how the grant process is, it’s hard for any Commissioner to go to bat for a specific organization... We don’t vote on most grantees individually, we usually vote in groups, so it’s hard to manipulate that in one way or another.”* These group allocation votes occur after the funding scenarios were approved. In this sense, the most impactful vote in July and August were those on the funding scenarios (A, 1, or 4). Therefore, we ask: should Commissioners recuse themselves from voting on funding formula/scenarios, since Commissioners may advocate for those with whom they have relationships, when the funding scenario vote determines the award size that recipients receive? These allocation votes after the funding-scenario votes are more a matter of procedure – necessary to authorize funding to specific parties, but inconsequential in terms of what funding policy and scenarios had passed. With the exception of Commissioner Cheek’s nay votes in those allocations, it appears customary that these votes receive across the board approval. Because the decision on funding scenarios impacts the actual grant amounts – for some with differences in the tens of thousands of dollars between competing scenarios – we raise the question as to whether the conflict of interest policy should apply to votes on funding scenarios, in addition to allocation votes.

Commissioners are not eligible for Thrive awards. This has at times been conflated with broader misunderstandings that artists either cannot or are discouraged from serving as Arts Commissioners. Regardless, the minimal representation of Thrive and/or other independent artists on the Commission puts them at a disadvantage, while giving an advantage to

organizations with powerful boards and creating different conflicts of interest that are broader than just direct financial or personal benefit. While artists tend to not have direct representation on the Commission, larger organizations are represented by their board members or people in social proximity to them. As seen in this case, Commissioners who recused themselves from votes due to COIs may not stand to benefit personally from their votes, but the organizations they represent do benefit, while unrepresented organizations and artists receive less funding.

Board members utilize their professional networks, political capital, and access to Metro officials to influence decisions that benefit the organizations they represent. This particular conflict of interest is legal and an accepted practice because it does not provide personal benefit; nevertheless, the organizational benefit from it causes structural and financial inequities. As demonstrated by this case, arts organizations with representation on the Metro Arts Commission have a greater advantage and stand to benefit, as their board members can influence policy, processes, and metrics for funding and other resources. To the contrary, individual and collective artists without representation of power and influence have an unfair advantage. Thus, the allocation of funds and access to resources are inequitable.

Those professional networks, political capital, and access to Metro officials are shown through this case. Professional networks are often reflected through Commissioners' resumes and disclosed conflicts of interests. Take for example Commissioner McCoy, who described the depth of her experience in serving on more than 20 professional and organization boards throughout her career. Past experience does not create direct conflicts of interest. However, when public bodies are composed of individuals who have these experiences, it is not uncommon that resource distribution is likely to reflect the types of professional and social networks of those individuals. Second, established and well-resources organizations have more political capital than individuals. For instance, the [2023 Metro Lobbyist](#) list includes registered lobbyists for Cheekwood, the National Museum of African American Music and TPAC. This is not to say that the lobbyists for these organizations influenced this funding decision (we did not investigate that question), but to show that large and legacy organizations tend to have their interests represented in the political sphere. Finally, Legal Director Dietz confirmed at least one conversation he had with Commissioner Cheek about the Commissioner's concerns over the legality of the vote. While this conversation violated no policy, it is unreasonable to believe that any of the hundreds of Board and Commission members in Nashville would have direct access to the head of the city's law department.

### Summary & Takeaway

Arts Commissioners are appointed by the mayor. By the time the public process is initiated through the Council interviews and approval, there is little opportunity to evaluate nominees for their qualifications or fit. The conflict of interest policy is applied to votes regarding financial allotment of awards to specific organizations, but not on broader policy decisions that determine how resources are distributed. Historically, the Arts Commission was chartered to support long-standing arts organizations in Nashville. Though not all, a number of Commissioners have relationships with those organizations, regardless as to whether they have direct financial conflicts. Taken together, the acceptance and presence of these conflicts of interest undermines equitable decision making. While it may be impossible to eliminate all conflicts of interest,

greater acknowledgement should be given to the ways that not all COIs operate and hold the same weight and influence. Their presence is a contributing factor for the persistence of inequitable and unequal systems.

## **ANALYSIS SECTION 6: Other Contributing Factors**

Over the course of this investigation, we identified additional contributing factors that undergird some of the Commission's conflicts and general functioning. Improvements are underway in some of these areas, whereas others will be important to address as the Arts Commission and Metro Arts continue their work. Briefly, contributing factors include:

- **Commissioner onboarding.** Many Commissioners lacked information needed for their role. This included technical information, like understanding the rules and parameters of what is permissible under the open meeting act or meeting procedure. More importantly, some Commissioners did not seem to have a grasp on why changes to the grants were being prioritized last year, or the history of Metro Arts' work and its evolution. Without sufficient training (initial and ongoing) and relationship building between the Director and Commissioners, and amongst Commissioners, systemic change will continue to be difficult.
- **Commissioner commitment.** Several Commissioners shared statements in their interviews that demonstrated a lack of knowledge about the processes Metro Arts and the Commission were moving through to update the funding models. Several stated they found the work to be confusing and unclear. One Commissioner described their service as "just one day a month." On the other hand, a number of Commissioners described the multiple opportunities they were given to digest, wrestle with, ask questions and learn about the changes; several of whom specifically pointed to Dana Parsons' availability to work one-on-one with Commissioners. There has been a tension over how much time and capacity an individual should have or needs to effectively serve as a Commissioner. If Commissioners are not able to commit time to prepare for meetings, and plus any follow up work outside meetings, then they should evaluate whether it is the correct time for them to serve in this role. At the same time, the Director has a responsibility to effectively engage Commissioners to provide the information they need, including one-on-one work outside meetings as needed.
- **Director Singh.** Director Singh was hired in August 2022 with a strong equity charge. Much has been said or circulating about the conduct of Director Singh in the operation of Metro Arts. An assessment of the Director's performance is not in the purview of this report. Nonetheless, over the course of this investigation, the Director and his actions are also a contributing factor worthy of note. Described earlier, Director Singh did not have a realistic understanding of the budget process, which caused confusing and frustrating outcomes among staff, Commissioners, and community members. It appears that the relationships between the Director and some of the Commissioners were not, or have not been, developed to the point of mutual trust and respect needed in those roles. This has hampered the efficiency of the Commissions' operations toward their strategic goals. Finally, while contact between Commissioners with some staff is necessary and very often appropriate, it appears there has not been a clear line between the Commissioners and staff with regard to governance and operations. At times it has appeared that the role of the Commission being responsible for governance in the sense of strategic plans, authorizing authority and approval; and the staff with operationalizing those decisions, has become at times complicated. While specific trainings may not have prevented any or

all of these conflicts, we believe Metro has a responsibility for developing an intentional training program for new Executive Directors.

- **Alignment of principles and vision.** Commissioners hold different visions and disagreements about what Metro Arts should prioritize and how it should do its work. While not exhaustive or detailed, we identify at least three broad areas where different opinions exist among Commissioners, and/or between/among Commissioners and the Director.
  - One tension is between artistic excellence and access. This is expressed by how success is evaluated and assessed, by whom, and on what standards. This comes through in deliberations about whether the Commission should continue to fund legacy organizations, citing their success as a justification for continued support, even if it is at the expense of distributing funding to less established, smaller, or less known (to the Arts Commission) organizations. Until more funding is budgeted to Metro Arts, these tensions will continue among Commissioners.
  - A second tension is with the concept of trust-based processes versus institutional or traditional processes. The simplification of the application process and removal of barriers like matching funds is about increasing access through trust-based processes, which assumes a level of risk taking in order to reach those goals. Changes to these procedures and requirements challenge traditional processes (which often include barriers to entry) and will often mean some traditional authorities may have less control over every step of the process and the specificity of what is included in it.
  - A third tension, demonstrated through the Title VI complaint and report, is over how to evaluate equity, how to measure impact from an equity standpoint, and how to prioritize support based on those measures.

Disagreements over these and other factors both within the Commission and between some Commissioners and the Director have and will continue to contribute to a difficult environment to develop and implement systemic changes.

- **Metro Legal's assistance.** There are clear ways Metro Legal can improve its service to the Commission. Recent meetings have lacked guidance and consistency on proper parliamentary procedures. At times discussions strayed away from the noticed agenda, while at other times Commissioners were not given options to suspend the rules if there was something that desired discussion when not on the agenda. Commissioners have also stated confusion over Legal's guidance of what communication outside of meetings is permissible. As described in a previous section, Legal should more clearly articulate its relationship to the Commissioners, differentiating the ways it serves as a legal advisor or an authorizing body.
- **Metro Arts operations.** There were some procedural details that made parts of this investigation difficult, including the inconsistency of meeting recordings, inconsistent use of the microphone in meetings, the timeliness and availability of meeting minutes and inaccuracies or unclear information in minutes.



## **CLOSING STATEMENT**

Based on this thorough report, the extensive legal analysis by Melody Fowler-Green, and the Metro Code that empowers the MHRC to investigate and take actions to prevent future discriminatory actions, we recommend the following:

1. MHRC staff requests that the Commission move to convene a public hearing in this case.
2. The Title VI complainants be awarded the initial grant amounts as voted on in July 2023.
3. That a funding model be established by the Arts Commission and approved by the Metro Council to ensure that future allocations of taxpayer funds will be distributed equitably.
4. That Metro Legal produce a detailed procedure guide to be distributed to all Boards and Commissions detailing the authority and the various roles that Metro Legal occupies in the operation of the city and Boards and Commissions. In addition, special emphasis should be placed on conflicts and potential conflicts and their resolutions that arise between Legal and Boards and Commissions.