

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5051
Minority (202) 225-5074

September 22, 2009

The Honorable Valerie Jarrett
Senior Advisor to the President
The White House
Washington, D.C. 20500

Dear Ms. Jarrett:

On behalf of the White House Office of Public Engagement, National Endowment for the Arts (“NEA”) Communications Director Yosi Sergant invited a group of “artists, producers, promoters, organizers, influencers, marketers, tastemakers, leaders, or just plain cool people” to participate in a conference call.¹ The specific purpose of the call was to allow the White House Office of Public Engagement to encourage the art community’s involvement in the President’s *United We Serve* program. As you know, *United We Serve* is designed to support four key components of the President’s recovery agenda through national service - health care, energy independence, education and community and economic renewal.²

The call took place on August 10, 2009. Mr. Sergant informed participants that the call was part of an effort to engage the art and entertainment community in a “brand new conversation ... to really bring this community together to speak with the government.”³

In addition to Mr. Sergant, call participants heard from Nell Abernathy, Director of Outreach for United We Serve, and Buffy Wicks, Deputy Director of the White House Office of Public Engagement.⁴ In their official capacities as representatives of agencies of the United States government and of the White House itself, they urged approximately

¹ Conference call invitation from Yosi Sergant, Aug. 6, 2009.

² United We Serve Fact Sheet, available at www.Serve.gov (last visited Sept. 15, 2009).

³ Transcript of NEA Conference Call, Aug. 10, 2009 [hereinafter Transcript].

⁴ Call participants also heard from Thomas Bates, Vice President of Civic Engagement for Rock the Vote; and filmmaker Michael Skolnik, representing hip-hop mogul Russell Simmons.

75 members of the art and entertainment community to promote the President's agenda by creating art consistent with the goals of *United We Serve*.⁵

Ms. Wicks told participants that the White House appreciated their work during then-candidate Obama's campaign and urged them to continue creating art to support the President's agenda. She explained that participants should use their campaign activities as the model for their involvement in *United We Serve*.⁶ Wicks told participants that the White House "need[s] your guys' help to promote this."

Ms. Abernathy provided an even more specific explanation of the White House's expectations for the art and entertainment community. She cited specific examples of art and music created to support Mr. Obama's presidential campaign, including the "Hope" poster, created by call participant Shepard Fairey, and the "Yes We Can" song and music video, created by will.i.am.⁷ Participants were asked to support the President's agenda "with the same enthusiasm and with the same energy that we all saw in each other during the campaign."⁸

Mr. Sargent told participants that the White House's request for support represents "an amazing opportunity for each of us not only to do what we do daily but to do it within an infrastructure and framing of a national program. ... This is a chance for us to partner with the White House and the Corporation for National and Community Service in immediately affecting some change in our communities."⁹

On behalf of the NEA, Mr. Sargent delivered the call's formal "ask" of the art and entertainment community. He instructed participants to "pick something, whether it's health care, education, the environment ... then apply your artistic, creative community's utilities. ... Take photos. Take videos. Post it on your blogs. Get the word out. Like I said, this is a community that knows how to make a stink. ... Call on other producers, marketers, publicists ... artists, people from within our community and get them engaged."¹⁰

It is inappropriate for representatives of the White House, NEA and CNCS to formally ask artists and entertainers to use their talents to support the President's agenda because many of these people rely on NEA grants to subsidize their livelihoods. NEA is the largest annual national funder of the arts.¹¹ Funding for artists from NEA is often worth more than the value of the grant - each grant dollar typically generates up to seven

⁵ Patrick Courrielche, "The National Endowment for the Art of Persuasion," Big Hollywood, Aug. 25, 2009.

⁶ Transcript.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ NEA website, available at <http://www.nea.gov/about/Facts/AtAGlance.html> (last visited Sept. 15, 2009).

times more in matching funds.¹² NEA's entire budget (\$155 million for FY 2009) is derived from federal funds.¹³

When Mr. Sergeant told participants "we want to encourage you to take advantage of this opportunity," he was intentionally or unintentionally signaling that failure to participate could affect their status as NEA grantees.¹⁴ It is no surprise that just three days after the August 10 conference call, 21 arts groups signed a press release endorsing the President's health care plan.¹⁵ Of those, 16 either directly received grants from NEA or are affiliated with groups that received NEA grants within the previous four months.¹⁶

In 1965, NEA was established by Congress as "a public agency dedicated to supporting excellence in the arts, both new and established; bringing arts to all Americans; and providing leadership in arts education."¹⁷ Clearly, using NEA's grant-making authority to pressure artists into supporting a political agenda was not Congress's intent.

Moreover, using NEA to promote the Administration's agenda circumvents federal and constitutional law controlling certain types of agency communication. Federal law prohibits the use of federal funds to pay for public relations campaigns absent a specific appropriation for that purpose.¹⁸ This law is consistent with Article I, Section 7, clause 7 of the U.S. Constitution, which requires that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."¹⁹

The White House and NEA recognize the possible legal implications of their alliance. During the call, Ms. Abernathy responded to a question about how participants might coordinate their activities with *Organizing for America* ("OFA"), the successor to the President's campaign operation now under the operation of the Democratic National Committee.²⁰ Ms. Abernathy acknowledged *United We Serve* and OFA use the same techniques and strategies to support partisan goals and offered to put participants in touch with "the right person" at OFA.²¹ Ms. Abernathy was unable to offer more help "because in my role at a federal agency, I am precluded from going too far ..."²² As an employee of a federal agency, Ms. Abernathy is forbidden from providing material support for the partisan political activities of OFA in her official capacity.²³

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Americans for the Arts, News, available at http://www.artsusa.org/news/afta_news/default.asp (last visited Sept. 15, 2009).

¹⁶ "NEA Scandal Timeline," WASH. TIMES, Sept. 14, 2009.

¹⁷ *Id.*

¹⁸ 5 U.S.C. § 3107 (1913).

¹⁹ U.S. CONST. art. I, § 7.

²⁰ *Transcript.*

²¹ *Id.*

²² *Id.*

²³ 18 U.S.C. § 1913 (1919).

Mr. Sergeant wrapped up the August 10 call by notifying participants of concerns about “what [this] looks like legally.”²⁴ Mr. Sergeant further notified callers of NEA’s and the White House’s intention to continue a dialogue with the art community, asking them to “bear with us as we learn the language so that we can speak to each other safely.”²⁵

Publicly, NEA has issued a single statement to address the concerns raised by the conference call. In that statement, NEA tacitly acknowledged that using the call to promote the President’s agenda would be inappropriate and/or unlawful while simultaneously denying that the call was meant to promote the President’s agenda:

On August 10th, the National Endowment for the Arts participated in a call with arts organizations to inform them of the president's call to national service. The White House office of public engagement also participated in the call, which provided information on how the Corporation for National and Community Service can assist groups interested in sponsoring service projects or having their members volunteer on other projects. **This call was not a means to promote any legislative agenda and any suggestions to that end are simply false.**²⁶

NEA’s characterization of the August 10, 2009 conference call as not being intended to promote a legislative agenda stands in stark contrast to the call’s transcript. In fact, participants were specifically told the White House “need[s] you and [is] going to come at you with some very specific asks ... to bolster civic engagement with [the] *United We Serve* effort.” Pressed by various media outlets to explain, the Administration has remained silent.

Using the largest national funder of the arts to apply pressure on its grantees to create art in support of the White House’s agenda is clearly inappropriate. Furthermore, using taxpayer dollars and federal employees to create an alliance whereby the NEA becomes the de facto strategic communications firm of the White House is unlawful. Federal law is in place to prevent the political machinery of a campaign from carrying over to the White House after an election. Activating artists and art groups reliant on NEA funds under the implied threat of withholding future grants is a Chicago-style tactic that should have been left on the campaign trail.

The Committee on Oversight and Government Reform is the principal oversight and investigative committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. In order to assist the Committee with its investigation of this matter, please provide the following information by close of business on Friday, October 2, 2009:

²⁴ Transcript.

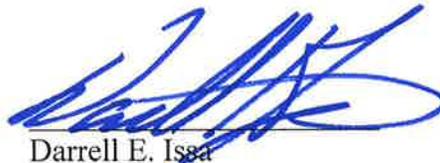
²⁵ *Id.*

²⁶ NEA Press Release, Sept. 10, 2009 (emphasis added).

1. A full and complete list of all participants on the August 10, 2009 conference call.
2. A full and complete explanation of how invitees to the August 10, 2009 conference call were selected.
3. A full and complete description of any consultation of, or opinion provided by, the Office of the White House Counsel or any other advisor regarding the legal implications of the August 10, 2009 conference call specifically and/or the relationship between the White House and NEA generally.
4. A full and complete description of how the August 10, 2009 conference call was arranged, including which White House staff initiated contact with, or were contacted by, NEA staff, the role of the White House Office of Public Engagement, and the role of the Corporation for National and Community Service.
5. A full and complete explanation of the White House's expectations for call participants in response to the August 10, 2009 conference call.
6. A full and complete list of any material produced by call participants in response to the August 10, 2009 conference call.

Thank you for your attention to this important matter. If you have any questions regarding this request, please contact Jonathan Skladany of the Committee staff at (202) 225-5074.

Sincerely,



Darrell E. Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman