UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIAN RAVEN, Plaintiff, v. DONALD J. TRUMP, et al., Defendants.	Civil Action No. 25-2332 (TSC)

COMBINED MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AND IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Defendants in the above captioned matter, by and through undersigned counsel, respectfully oppose Plaintiff Julian Raven's ("Plaintiff") motion for a preliminary injunction, ECF No. 10 ("Pl's Mot."), and, pursuant to Federal Rules of Civil Procedure ("Rules") 12(b)(1) and 12(b)(6), move to dismiss the amended complaint, ECF No. 11, ("Am. Compl.").

BACKGROUND

Plaintiff, appearing pro se, filed his motion for a preliminary injunction on August 19, 2025, and his amended complaint the same date, both of which were entered on the docket on August 21, 2025. At base, Plaintiff is complaining of executive interference with and control of the Smithsonian Institution ("Smithsonian"). *See generally*, Am. Compl.; Pl's Mot. Plaintiff has named the following Defendants in his motion and amended complaint: Donald J. Trump, in his official capacity as President of the United States; the U.S. Congress; the United States of America; John G. Roberts, Jr., in his official capacity as Chancellor of the Smithsonian; Lonnie Bunch III,

in his official capacity as Secretary of the Smithsonian; Dr. Richard Kurin, in his former official capacity as Smithsonian Under Secretary;[1] and the Smithsonian's Board of Regents. *Id.*

I. Plaintiff's Motion

According to Plaintiff's motion, "[t]his case arises from unlawful Executive Branch interference in the Smithsonian Institution, a private charitable trust established under the 1829 [w]ill of James Smithson and codified by Congress in the Smithsonian act of 1846." Pl's Mot. at 3. Plaintiff claims to be an American citizen and thus a "public beneficiary of the Smithson Trust[.]" *Id.* He petitions the Court for a preliminary injunction "restraining President Donald J. Trump and the Executive Office of the President from any further unlawful intervention in the Smithsonian." *Id.* Plaintiff claims the President has "violated fundamental trust law and exceeded [his] constitutional authority." *Id.* Plaintiff asks this Court for equitable relief, to "preserve the will of James Smithson, vindicate the rights of public beneficiaries, and protect the Institution's integrity from partisan distortion." *Id.*

Plaintiff claims he "is a lawful beneficiary with standing to enforce the trust." *Id.* He asks that the Court: enjoin the Defendants from directing, reviewing, altering, or interfering in Smithsonian affairs; declare the Smithsonian a private charitable trust under Congressional trusteeship; affirm that the Executive Branch has no fiduciary authority over the trust; and "[m]aintain this injunction pending certification to the U.S. Supreme Court of the Smithsonian's legal entity status[.]" *Id.* at 6.[2]

[1] Dr. Kurin is currently Smithsonian Distinguished Scholar and Ambassador-at-Large.

[2] Pursuant to 28 U.S.C. § 1254(2), cases may be reviewed by the Supreme Court upon certification only by a court of appeals.

II. Plaintiff's Amended Complaint

Plaintiff claims to bring this action "to resolve longstanding questions surrounding the Smithsonian Institution's legal status, to remedy continuing breaches of fiduciary duty and unlawful interference with a private charitable trust, and to protect the rights of beneficiaries" of the trust. Am. Compl. at 2. Plaintiff cites Adam and Eve as the first fiduciary trustees and that partaking of the apple was the first conversion of trust property leading to the "long history of human misery born of violated trusts . . . ." *Id*. Plaintiff then proceeds to discuss Cain and Abel, Moses and the "[c]odification of [s]tewardship", Christendom and the Magna Carta, John Locke, the Founding Fathers and the Constitution, and testamentary gifts. *Id*. at 3-4. Plaintiff summarizes his amended complaint as follows at pp. 7 and 10:

> In sum: From Eden's trusteeship and Moses' land laws, through Magna Carta's liberties and Locke's theories, to the Bill of Rights and the American courtroom, property is not the enemy of the public good; faithless stewardship is. The Smithsonian is the legal expression of one man's settled will for the benefit of the many. This suit asks only what stewardship always asks of courts: restore the terms of the trust, restrain the breaches, and let the donor's voice be heard. *Id*. at 7.
>
> This Complaint arises from a long-standing and systemic pattern of fiduciary breach, institutional negligence, and constitutional disregard by trustees charged with preserving the legacy, purpose, and public benefit of the Smithson Trust. Plaintiff Julian Raven, an American citizen and lawful trust beneficiary, brings this action to restore the legal sanctity of the Smithson trust and vindicate his rights under federal and trust law.

Id. at 10.

Distilled to its essence, Plaintiff's fifty-two page amended complaint alleges that the Defendants, including Congress and the Chief Justice, have failed in their fiduciary duties of care and loyalty to private citizens, such as Plaintiff, in their oversight of the Smithsonian and as trustees and guardians of James Smithson's bequest. Am. Compl. at 10, 16. His causes of action include breach of fiduciary duty (Count I); constructive fraud and misrepresentation (Count II); institutional nonfeasance and trustee dereliction (Count III); fiduciary nonfeasance and inaction

by Congress (Count IV); executive overreach and violation of donor intent (Count V); and institutional nonfeasance combined with executive interference (Count VI). *Id.* at 19-26. He asks that the Attorney General of the District of Columbia be compelled to enforce the integrity of the trust and protect the public interest, and if he does not then Plaintiff should be allowed to proceed. *Id*. at 27-31.

Additionally, Plaintiff seeks to have the "trustees" removed, including Chief Justice Roberts, Secretary Bunch, Dr. Kurin, and the Board of Regents for their alleged breach of fiduciary duties. *Id.* at 32-38, 41. In their place he seeks to have President Trump appointed as "constructive trustee of the Smithsonian trust." *Id*. at 38, 46.[3]

Regarding Chief Justice Roberts, Secretary Bunch, Dr. Kurin and the Board of Regents, Plaintiff not only seeks their removal but also "compensatory damages for [nine] years of harm caused by their misconduct and punitive damages . . . for Defendants[] support of egregious and malicious misconduct[.]" *Id.* at 42. He seeks the "dissolution and reconstitution of the Smithsonian Board of Regents" and appointment of an "interim authority to prevent further compromise of donor intent." *Id*. at 44. As to Congress, he seeks to "[r]emove the U.S. Congress as Trustee of the Smithsonian[.]" *Id.* at 45.

Plaintiff's motion and amended complaint confuse the fact that the Smithsonian is a trust instrumentality of the United States as somehow indicating that the Smithsonian is a trustee for the people of the United States generally, i.e., Plaintiff as a member of the public and a citizen or due to his status as an artist. Mot. at 4; Am. Compl. at 10. To the contrary "[t]he Smithsonian is a cultural and research institution, established in 1846 pursuant to a trust bequest of James

[3] This is at odds with Plaintiff's request in his motion that President Trump be restrained from further unlawful intervention in the Smithsonian and his claim that the President has violated fundamental trust law and exceeded his constitutional authority. Pl's Mot. at 3.

Smithson, and dedicated to 'the increase and diffusion of knowledge among men.'" *Dong v. Smithsonian*, 125 F.3d 877, 882 (D.C. Cir. 1997) (quoting 20 U.S.C. § 41). The "United States, as trustee, holds legal title to the original Smithson trust property and later accretions." *Id.* at 883. Mr. Smithson's will did not indicate that the Smithsonian would serve as trustee for all the people of the United States or U.S. citizens such as Plaintiff; rather, it provided that Mr. Smithson would "bequeath the whole of [his] property subject to [one exception] to the United States of America, to found at Washington, under the name of the Smithsonian Institution, an Establishment for the increase & diffusion of knowledge among men." Smithsonian, *Last Will and Testament, October 23, 1826*, https://siarchives.si.edu/history/featured-topics/stories/last-will-and-testament-october-23-1826.

III. Plaintiff's History with the Smithsonian

This action is Plaintiff's third lawsuit against the Smithsonian. In 2017, he filed a suit against the United States and the Smithsonian's then Director of the National Portrait Gallery, Kim Sajet, and its Acting Provost, Dr. Kurin. *See Raven v. United States*, 334 F. Supp. 3d 22 (D.D.C. 2018) ("*Raven I*"). In 2022, Plaintiff again sued Kim Sajet. *See Raven v. Sajet*, Civ A. No. 22-2809 (CRC), 2024 WL 5118228 (D.D.C. Dec. 16, 2024) ("*Raven II*"). Both cases were dismissed.

In *Raven I*, Plaintiff brought an action over the Portrait Gallery's refusal to exhibit his portrait of then-President-elect Donald Trump. Mr. Raven claimed that the decision was motivated by political bias, in violation of his rights under the First and Fifth Amendments. The Court determined that Plaintiff's constitutional claims failed as a matter of law, "[b]ecause the Smithsonian is a government entity and the Gallery's art selection decisions constitute government speech, the First Amendment does not limit the Gallery's ability to say what it wants to say." 334 F. Supp. 3d at 28. As to the Fifth Amendment claim, it was determined that Plaintiff had no

protected liberty or property interest in having his portrait accepted, as the Gallery had "complete discretion in choosing portraits." *Id*. at 33. Indeed, the Court in *Raven I* went even further, holding that even if "the increase and diffusion of knowledge" was originally a private goal of the Smithson will, "Congress ratified it, and the United States now has complete discretion in how to fulfill it." *Id*. at 29.

After his loss in *Raven I,* Plaintiff mentioned Kim Sajet in a tweet about purported corruption at the Smithsonian, and she thereafter blocked him from her Twitter account. Plaintiff then filed *Raven II*, asserting that Kim Sajet's Twitter account was a public forum and that her blocking him violated his First Amendment rights. It was held that Plaintiff did not plausibly allege that Kim Sajet's use of her Twitter account involved government action necessary to make out a First Amendment claim. 2024 WL 5118228 at *5.

Plaintiff remains perturbed by both decisions and mentions both *Raven I* and *Raven II* in his amended complaint, claiming that the court in *Raven II* "legitimized a digital tool of censorship and deepened the violation of [Plaintiff's] rights as citizen beneficiary of the Smithson Trust." Am. Compl. at 6. The instant action continues Plaintiff's futile and long running quixotic campaign against the Smithsonian.

IV. The Smithsonian's Unique Status Within the Federal Government

The Smithsonian was established by an act of Congress in 1846 "for the increase and diffusion of knowledge among men." 20 U.S.C. § 41. The Smithsonian conducts its business through a Board of Regents composed of the Vice President, the Chief Justice of the United States, six members of Congress, and nine citizens appointed by joint resolution of Congress. *Id*. §§ 42(a), 43.

Congress has delegated to the Secretary of the Smithsonian's Board of Regents the sole authority to "discharge the duties of librarian and of keeper of the museum" and to "take charge of

the building and property of the institution." 20 U.S.C. § 46. Congress has defined the Smithsonian's buildings and grounds and established rules governing the operations of such grounds. 40 U.S.C. §§ 6301, 6303. The Smithsonian's current federal appropriation is more than $1 billion. The Smithsonian is approximately 62% federally funded (an annual congressional appropriation and federal grants and contracts). The remainder of the budget is funded with contributions from private sources and business revenue. *See* https://www.si.edu/newsdesk/factsheets/facts-about-smithsonian-institution-short. Among other things, the Smithsonian operates nineteen museums and the National Zoo, visited by millions of people every year. https://www.si.edu/newsdesk/about/stats.

The Smithsonian is thus a unique establishment within the Federal Government and has a long and storied history. *See Dong*, 125 F.3d at 879 ("It is plain that the Smithsonian is not an establishment in the executive branch. To begin with, nine of the seventeen members of its governing Board of Regents are appointed by joint resolution of Congress, 20 U.S.C. § 43, and six of the remaining eight are members of Congress, 20 U.S.C. § 42. (The other two are the Vice President and the Chief Justice of the United States, *id.*).").

In his last will and testament, James Smithson "bequeath[ed]" a large sum of money "to the United States of America, to found at Washington, under the name of the Smithsonian Institution, an Establishment for the increase and diffusion of knowledge among men." Smithsonian Institution Archives, Last Will and Testament, October 23, 1826, https://siarchives.si.edu/history/featured-topics/stories/last-will-and-testament-october-23-1826; *O'Rourke v. Smithsonian Inst. Press*, 399 F.3d 113, 117 (2d Cir. 2005). Congress accepted the

money,[4] incorporating the Smithsonian by federal statute as "an establishment . . . for the increase and diffusion of knowledge among men." 20 U.S.C. § 41.

Thus, the Smithsonian's form and functions are inextricably intertwined with the United States government, making it a government entity. In *Crowley v. Smithsonian Institution*, 636 F.2d 738, 744 (D.C. Cir. 1980), the D.C. Circuit repeatedly referred to the Smithsonian as "government" for First Amendment purposes, rejecting an Establishment Clause challenge to two exhibitions on evolution. The Smithsonian is an "independent establishment of the United States," and thus a "federal agency" under the Federal Tort Claims Act. *Expeditions Unlimited Aquatic Enters., Inc. v. Smithsonian Inst.*, 566 F.2d 289, 296 (D.C. Cir. 1977) (citing 28 U.S.C. § 2671). The court reasoned: "[a]lthough the Smithsonian has a substantial private dimension . . . the nature of its function as a national museum and center of scholarship, coupled with the substantial governmental role in funding and oversight, make the institution an 'independent establishment of the United States,' within the 'federal agency' definition." *Id.* The Second Circuit has reached a similar conclusion in *O'Rourke*, 399 F.3d at 122 ("We conclude that the Smithsonian is within the term "the United States" in 28 U.S.C. § 1498(b).").

Additional D.C. Circuit authority establishes the Smithsonian as a government entity. In *Foster v. Smithsonian Institution*, 645 F. 2d 1142 (D.C. Cir. 1981), it was held that an employee's termination from the Smithsonian Science Information Exchange, Inc., an operating unit of the Smithsonian, constituted state action. The D.C. Circuit in *Foster* noted, "[r]ather than being a case of a clearly private institution which receives some support from the government, this is a case of an institution which has always had a pervasive public character." *Id.* at 1147.

---

[4] *See* Act of July 1, 1836, 5 Stat. 64 (authorizing the appointment of an agent to represent the United States in England's Court of Chancery to claim the money); *see also* the preamble of the act of Aug. 10, 1846, ch. 178, § 5, 9 Stat. 104.

In a First Circuit case, *Benima v. Smithsonian*, 471 F. Supp. 62, 66 (D. Mass. 1979), the court dismissed Fifth Amendment claims asserted by a former Smithsonian employee because the Smithsonian, like the United States, was immune from suit. *See also Misra v. Smithsonian Astrophysical Observatory*, 248 F. 3d 37, 39 (1st Cir. 2001) ("[t]he Smithsonian is a federal agency which enjoys sovereign immunity from suit.").

Thus, Plaintiff's initiation of this suit "to resolve longstanding questions surrounding the Smithsonian Institution's legal status", Am. Compl. at 2, is misguided, as the Smithsonian's legal status has long been settled. Indeed, as held in *Raven I*, as discussed above, the United States has complete discretion in how best to increase and diffuse knowledge as directed by the Smithson will. 334 F. Supp. 3d at 29. Plaintiff should not be allowed to intrude on that discretion via his motion and amended complaint.

LEGAL STANDARDS

I. Preliminary Injunction

A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008) (quotation marks omitted). An injunction should be entered only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims; (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that the balance of equities tips in its favor; and (4) that the proposed injunction is in the public interest. *Id.* at 20. The same substantive standards apply for both temporary restraining orders and preliminary injunctions. *See, e.g., Sterling Com. Credit-Mich., LLC v. Phoenix Indus. I, LLC*, 762 F. Supp. 2d 8, 13 (D.D.C. 2011) (Friedman, J.) (denying motion); *Hall v. Johnson*, 599 F. Supp. 2d 1, 4 (D.D.C. 2009) (same); *Experience Works, Inc. v. Chao*, 267 F. Supp. 2d 93, 96 (D.D.C. 2003) (same).

II. Dismissal Pursuant to Rule 12(b)(1)

In a motion brought under Rule 12(b)(1), the plaintiff—including a pro se plaintiff—bears the burden of establishing that the court has subject matter jurisdiction. *Fontaine v. JPMorgan Chase Bank, N.A.*, 42 F. Supp. 3d 102, 106 (D.D.C. 2014) ("even a pro se plaintiff must meet his burden of proving that the Court has subject matter jurisdiction over the claims"). A court must accept as true all factual allegations contained in the complaint when reviewing a motion to dismiss pursuant to Rule 12(b)(1). *Banneker Ventures, LLC v. Graham*, 798 F.3d 1119, 1129 (D.C. Cir. 2015) ("As it must on motions to dismiss for failure to state a claim, a district court considering a motion to dismiss for lack of subject matter jurisdiction accepts the allegations of the complaint as true."). However, "[w]here necessary to resolve a jurisdictional challenge under Rule 12(b)(1), 'the court may consider the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.'" *Id*. (quoting *Herbert v. Nat'l Acad. of Scis.*, 974 F.2d 192, 197 (D.C. Cir. 1992)).

Under Rule 12(b)(1), a plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). A court may examine materials outside the pleadings as it deems appropriate to resolve the question of its jurisdiction. *See Herbert*, 974 F.2d at 197.

III. Dismissal Pursuant to Rule 12(b)(6)

A motion to dismiss under Rule 12(b)(6) "tests the legal sufficiency of a complaint." *Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation omitted). "A claim crosses from conceivable to plausible when it contains factual allegations that, if proved, would allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."

Banneker Ventures, 798 F.3d at 1129 (citations and quotations omitted). A court must "draw all reasonable inferences from those allegations in the plaintiff's favor," but not "assume the truth of legal conclusions." *Id.* "In determining whether a complaint fails to state a claim, [a court] may consider only the facts alleged in the complaint, any documents either attached to or incorporated in the complaint and matters of which [a court] may take judicial notice." *Hurd v. District of Columbia*, 864 F.3d 671, 678 (D.C. Cir. 2017) (quoting *EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997)).

Because Plaintiff is pro se, his complaint must be "liberally construed" and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Nevertheless, the ultimate standard remains the same. The plaintiff "must plead 'factual matter' that permits the court to infer 'more than the mere possibility of misconduct.'" *Atherton v. D.C. Off. of Mayor,* 567 F.3d 672, 681-82 (D.C. Cir. 2009) (quoting *Iqbal*, 556 U.S. at 679). A court is not required to accept as true conclusory allegations or unwarranted factual deductions. *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. Likewise, a court need not "accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

IV. Sovereign Immunity

Sovereign immunity bars all suits against the United States except in accordance with the explicit terms of the statutory waiver of such immunity. *Cox v. Sec'y of Lab.*, 739 F. Supp. 29, 30 (D.D.C. 1990); *see also United States v. Testan*, 424 U.S. 392, 399 (1976); *United States v. Mitchell*, 445 U.S. 535, 538 (1980); *Kline v. Republic of El Salvador*, 603 F. Supp. 1313, 1316 (D.D.C. 1985). Congressional consent to suit in this Court, a waiver of the government's traditional immunity, must be explicit and strictly construed. *See, e.g., Libr. of Cong. v. Shaw*, 478 U.S. 310, 318 (1986); *Mitchell*, 445 U.S. at 538. A waiver of sovereign immunity, therefore,

cannot be implied, but must be expressed "unequivocally" by Congress. *Testan*, 424 U.S. at 399; *United States v. King*, 395 U.S. 1, 4 (1969). Thus, absent clear Congressional consent to entertain a claim against the United States, the District Court lacks authority to grant relief. *Testan*, 424 U.S. at 399; *United States v. Sherwood*, 312 U.S. 584, 586 (1941). "A party bringing suit against the United States bears the burden of proving that the government has unequivocally waived its immunity for the type of claim involved." *Hayes v. United States*, 539 F. Supp. 2d 393, 397 (D.D.C. 2008).

ARGUMENT

Plaintiff is not entitled to a preliminary injunction, and the Court should deny Plaintiff's motion as he cannot satisfy any of the requirements for injunctive relief. This Court also lacks jurisdiction over this case and Plaintiff fails to plausibly state claims against the Defendants. Thus, the amended complaint should be dismissed.

I. Plaintiff is Not Entitled to a Preliminary Injunction

A. Plaintiff Is Unlikely to Succeed

1. Plaintiff Lacks Standing to Bring this Action

The jurisdiction of this Court, like all other federal courts, is limited to "cases" and "controversies." *See* U.S. Const. art. III. A plaintiff must have "standing" to bring a claim, and constitutional standing has three elements: (1) the plaintiff "must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) 'actual or imminent'"; (2) "there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court'"; and (3) "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan*, 504 U.S. 555, 560-61 (1992) (citations omitted).

Based on the allegations in his motion and amended complaint, Plaintiff lacks constitutional standing to proceed.

Plaintiff's requests for relief that he seeks in his motion and amended complaint fail at the outset because he lacks the necessary standing to proceed. Plaintiff has not identified the required imminent concrete and particularized injury. Plaintiff clearly bases his claim of standing upon his status as a citizen taxpayer and member of the public, and that he as a citizen is a beneficiary of the Smithson will and trust. *See generally* Pl's Mot.; Am. Compl. However, this does not provide a valid basis for standing as Plaintiff does not establish a particularized injury that these Defendants caused. Additionally, the relief Plaintiff requests is not redressable via this suit. Thus, Plaintiff fails to demonstrate Article III standing.

Standing concerns whether a plaintiff "has alleged such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth v. Seldin*, 422 U.S. 490, 498–99 (1975) (quotation marks omitted). Built on separation-of-powers principles, standing "serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). If a plaintiff is "not directly subjected" to the agency action they challenge, then "standing is substantially more difficult to establish." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 914 (D.C. Cir. 2015) (quotation marks omitted).

A Plaintiff must show actual or threatened injury in fact that is fairly traceable to the alleged illegal action and likely to be redressed by a favorable court decision. *Id.* at 919 (quoting *Equal Rights Ctr. v. Post Props., Inc.*, 633 F.3d 1136, 1138 (D.C. Cir. 2011)). The party invoking federal jurisdiction bears the burden of establishing standing. *See Lujan*, 504 U.S. at 561. "[B]ecause standing is a necessary predicate to any exercise of the Court's jurisdiction, the plaintiff and its

claims have no likelihood of success on the merits, if the plaintiff lacks standing." *Arpaio v. Obama*, 27 F. Supp. 3d 185, 207 (D.D.C. 2014), *aff'd*, 797 F.3d 11 (D.C. Cir. 2015) (cleaned up). Similarly, an absence of standing "dooms the plaintiff's ability to show irreparable harm." *Id.* Thus, when a plaintiff lacks standing, the Court must deny a preliminary injunction motion and also dismiss the case outright. *Id.* That is what should happen in this case.

Plaintiff addresses standing in both his motion and his amended complaint but applies the theory incorrectly. Pl's Mot. at 4; Am. Compl. at 27-31. In his motion, Plaintiff claims that "[a]s a member of the public, [he] is a trust beneficiary." Mot. at 4. He incorrectly cites a decades old case from the Supreme Court of Hawai'i, not binding on this Court, *Kapiolani Park Preservation Soc. v. City of Honolulu*, 751 P.2d 1022 (Haw. 1988). *Id.* In his amended complaint, Plaintiff asserts that the D.C. Attorney General must move to enforce a charitable trust "as guardians of the beneficiaries of all charitable trusts operating within the District, including the Smithsonian Institution." Am. Compl. at 27. Plaintiff then posits that if the D.C. Attorney General fails to act, Plaintiff can pursue his claims as a member of the public and due to his "special interest status as an artist and by the equitable necessity of preventing a trust without a guardian", again incorrectly citing *Kapiolani*. *Id.* at 27-31.

The Smithsonian is not a trustee to the American public at large or to an artist such as Plaintiff, but rather is "a cultural and research institution dedicated to 'the increase and diffusion of knowledge among men.'" *McKinney v. Caldera*, 141 F. Supp. 2d 25, 33 (D.D.C. 2001) (quoting *Dong*, 125 F.3d at 882); *see also* 20 U.S.C. § 41. While the Smithsonian readily acknowledges that it "is a trust instrumentality of the United States," *O'Rourke*, 399 F.3d at 114, that does not mean that it is a trustee to Americans broadly such as Plaintiff or to specific artists. *See also Dong*, 125 F.3d at 882 ("The Smithsonian is a cultural and research institution, established in 1846

pursuant to a trust bequest of James Smithson, and dedicated to 'the increase and diffusion of knowledge among men.'") (quoting 20 U.S.C. § 41). If any American would have standing to file a lawsuit over the contents of the Smithsonian's collections, one would expect a long line of such cases, but such cases are few and far between. *See Crowley v. Smithsonian*, 462 F. Supp. 725, 728 (D.D.C. 1978) (rejecting challenge to the Smithsonian's exhibits on evolution).[5]

Where the United States subjects itself to a trust relationship, it does so specifically. *See, e.g.*, *United States v. Navajo Nation*, 537 U.S. 488, 505–06 (2003) ("Although 'the undisputed existence of a general trust relationship between the United States and the Indian people' can 'reinforc[e]' the conclusion that the relevant statute or regulation imposes fiduciary duties, that relationship alone is insufficient to support jurisdiction under the Indian Tucker Act."); *Harvest Inst. Freedman Fed'n v. United States*, 80 Fed. Cl. 197, 200 (2008) (former tribal slaves did not have breach of trust claim against the United States, noting "it is 'not enough to rely on the general trust relationship between the Native Americans and the [G]overnment[;]'" and strictly construing terms of treaty that supposedly gave rise to trust).

Plaintiff here provides no evidence to support the assertion that the Smithsonian entered a trust relationship with the American public at large or to him individually as an artist whereby any citizen can bring a motion to enjoin Smithsonian action he or she disagrees with and file a related complaint.

First, Plaintiff has not set forth a concrete and particularized injury. Plaintiff claims that he has been injured as a member of the public, a citizen, and a beneficiary of Smithson's bequest.

---

[5] In *Crowley*, the Smithsonian likewise argued that the plaintiff lacked standing. *See Crowley*, 462 F. Supp. at 726 ("While the defendants challenge plaintiffs' standing to make this statutory claim, the Court will assume standing and proceed because the merits go clearly against plaintiffs.").

The Supreme Court has "consistently held that a plaintiff raising only a generally available grievance about government . . . and seeking relief that no more directly and tangibly benefits" her than it does the general populace lacks standing. *Lujan*, 504 U.S. at 573-74. Such a general interest "of all citizens in constitutional governance" is not a sufficiently particularized injury to establish standing. *Id.* at 575 (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 217 (1974). In other words, it is not enough for Plaintiff to assert that he is a citizen and beneficiary of the bequest and thus complain about the administration of the Smithsonian.

It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of governmental action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public. *Ex parte Levitt*, 302 U.S. 633, 634 (1937).

This fundamental element of standing—the requirement of a concrete injury more particularized than one affecting the general public—has been upheld consistently. *See, e.g.*, *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (plaintiff who claims "only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large" lacks standing); *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997) (plaintiffs' interests "shared generally with the public at large in the proper application of the Constitution" do not create standing).

Simply put, Plaintiff must do more than insist that he is a citizen and beneficiary of the trust and allege mismanagement of the Smithsonian in the administration of the trust. In requiring that a party has suffered a concrete and particularized injury to have standing to sue, Article III limits the federal judicial power to those disputes which confine federal courts to a role consistent

with a system of separated powers and which are traditionally thought to be capable of resolution through the judicial process. *Maloney v. Murphy*, 984 F. 3d 50, 58-59 (D.C. Cir. 2020).

Here, Plaintiff's motion and amended complaint bring claims that intrude upon the operation of government and do not present the Court with claims capable of resolution through the judicial process.

Further, Plaintiff has not alleged injuries traceable to these Defendants nor has he set forth any injuries that are redressable. The second element of the standing inquiry is causation: "the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560 (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41-42 (1976)) (cleaned up). The third element of the standing inquiry is redressability: a plaintiff must show that her injury will "likely . . . be redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (citing Simon, 426 U.S. at 38). Plaintiff has shown neither. Plaintiff has not established that the named Defendants caused him any injury in his motion or amended complaint, and this lawsuit cannot address his alleged injury in any event.

Plaintiff fails to meet his burden on redressability because he cannot establish that an order by this Court—or any other—would be enforceable against these Defendants or that they could provide the myriad relief he has requested. *See Mississippi v. Johnson*, 71 U.S. 475, 500 (1866) ("Congress is the legislative department of the government; the President is the executive department. Neither can be restrained in its action by the judicial department[.]"); *Hearst v. Black*, 87 F.2d 68, 71-72 (D.C. Cir. 1936) ("[T]he universal rule, so far as we know it, is that the legislative discretion in discharge of its constitutional functions, whether rightfully or wrongfully exercised, is not a subject for judicial interference."); *Hastings v. U.S. Senate*, 716 F. Supp. 38, 41

(D.D.C. 1989) (rejecting injunction against Senate because "[t]he relief sought by plaintiff . . . would be utterly foreign to our system of divided powers"), *aff'd*, 1989 WL 122685, at *1-2 (D.C. Cir. Oct. 18, 1989) ("[W]e have not found any case in which the judiciary has issued injunctive or declaratory relief intercepting ongoing proceedings of the legislative branch.").

Here, Plaintiff is asking this Court to intrude on the Board of Regents and the Secretary's management of the Smithsonian and Congressional oversight thereof. Plaintiff has not shown a likelihood that the requested relief can be achieved through his motion and amended complaint and therefore he fails to establish standing.

Further as to the redressability issue, even attempting to redress Plaintiff's alleged injuries would raise substantial separation of powers concerns, as indicated above. Effectively, Plaintiff is asking this Court to interfere with the operation of the Smithsonian by suing Executive officials, the United States Congress, and the United States itself. But interrupting and interfering with co-equal branches of government about government programs and the operation of the Smithsonian would be an act "utterly foreign to our system of divided powers[.]" *Hastings*, 716 F. Supp. at 41. ("[W]e have not found any case in which the judiciary has issued injunctive or declaratory relief intercepting ongoing proceedings of the legislative branch."). Thus, Plaintiff has failed to show he has standing under the traditional standing test.

Plaintiff also has no taxpayer standing to bring his motion or the amended complaint. Plaintiff's main claim to standing is that as a citizen he essentially has taxpayer standing. *See generally* Mot.; Am. Compl. But Plaintiff does not meet the standard for taxpayer standing, as he fails to meet his burden of establishing that he fits into the "narrow exception to the general constitutional bar on taxpayer suits" and thus does not have standing. *In re Navy Chaplaincy*, 534 F.3d 756, 761 (D.C. Cir. 2008). Indeed, the mere fact that a plaintiff is a taxpayer was rejected as

a basis for standing more than a century ago. *See Frothingham v. Mellon*, 262 U.S. 447, 487-88 (1923).

As recently stated, "federal taxpayers only have standing to challenge a 'legislative enactment [that] expressly authorizes or appropriates funds' violating the Establishment Clause." *Penkoski v. Bowser*, 486 F. Supp. 3d 219, 230 (D.D.C. 2020) (citation modified; quoting *Navy Chaplaincy*, 534 F.3d at 762). For a plaintiff to successfully assert taxpayer standing, she must challenge a "a specific congressional appropriation or expenditure made under Congress's Article I, § 8 powers." *Id.* (citing *Flast v. Cohen*, 392 U.S. 83, 102 (1968)). Plaintiff clearly does not have taxpayer standing to bring his claims. To hold otherwise would allow every citizen the ability to bring claims against the Smithsonian.

Due to his lack of standing, and on that basis alone, Plaintiff's motion for a preliminary injunction should be denied and his amended complaint dismissed. There are additional grounds which counsel in favor of this Court reaching the same conclusion.

2. Plaintiff's Claims are Barred by Sovereign Immunity

This Court also lacks subject matter jurisdiction regarding Plaintiff's motion and amended complaint because the Defendants are protected from suit by sovereign immunity. The Court can deny Plaintiff's motion and dismiss the amended complaint on this basis.

Sovereign immunity must be unequivocally and expressly waived. "Sovereign immunity shields the United States from suit absent a consent to be sued that is 'unequivocally expressed.'" *United States v. Bormes*, 133 S. Ct. 12, 16 (2012) (citing *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33-34 (1992)); *FDIC v. Meyer*, 510 U.S. 471, 475 (1994); *Dep't of Energy v. Ohio*, 503 U.S. 607, 615 (1992); *United States v. Mitchell*, 463 U.S. 206, 212 (1983); *United States v. Sherwood*, 312 U.S. 584, 586 (1941). A statute waiving the sovereign immunity of the United States must be construed strictly in favor of the retention of sovereign immunity. *Libr. of Cong. v.*

Shaw, 478 U.S. 310, 318 (1986); *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 685-686 (1983). Indeed, such a waiver is to be read no more broadly than its terms require. *Ruckelshaus*, 463 U.S. at 685.

The named Defendants in Plaintiff's motion and the amended complaint are Donald J. Trump, in his official capacity as President of the United States; the U.S. Congress; the United States of America; John G. Roberts, Jr., in his official capacity as Chancellor of the Smithsonian; Lonnie Bunch III, in his official capacity as Secretary of the Smithsonian; Dr. Richard Kurin, in his former official capacity as Smithsonian Under Secretary; and the Smithsonian's Board of Regents. Each of the foregoing Defendants is either an official of the federal government, sued in their current or former official capacities, or a federal agency. *See generally*, Pl's Mot.; Am. Compl. Plaintiff makes no allegations against the Defendants in their individual capacities and pursues his claims against the Defendants only for their actions as either official government actors or as agencies related to the operation of the Smithsonian. By doing so, Plaintiff has sued the United States, but he identifies no express waiver of sovereign immunity. Because each of the Defendants and the complained of actions are protected by sovereign immunity, this Court lacks subject matter jurisdiction and should therefore deny Plaintiff's motion and dismiss the case.

As alleged throughout the motion and the amended complaint, the Smithsonian is a trust instrumentality of the United States. Without deciding the issue, the D.C. Circuit has noted "[s]everal elements of the Smithsonian's congressional design" suggesting "that it does have sovereign immunity." *Forman*, 271 F.3d at 295. As discussed above, the Smithsonian operates under a federal charter, 20 U.S.C. §§ 41, *et seq*., its Board of Regents is composed of or selected by federal officials, and it is authorized to receive appropriations from Congress and disbursements for payments of debt are submitted to the Treasury. This "would suggest that Congress's interest

in safeguarding the public fisc from money judgments is no less significant with respect to the Smithsonian than any federal agency." *Id*. (assuming, without deciding, that the Smithsonian is entitled to sovereign immunity); *Voyles v. Smithkline Beecham Corp*., 524 F.3d 249, 252 n.2 (D.C. Cir. 2008) (citing *Forman*); s*ee also Misra*, 248 F.3d at 39 ("The Smithsonian . . . enjoys sovereign immunity from suit.").

Similarly, in *Expeditions Unlimited*, the D.C. Circuit, while not reaching the issue of the Institution's immunity status at common law, held that the Federal Tort Claims Act applied to the Smithsonian as a whole (i.e., to the torts attributable to either its civil service or trust employees) because it was within the definition of "independent establishments of the United States," thus allowing the Smithsonian to share in the immunities of the United States in a suit for libel. 566 F.2d at 296. *See also O'Rourke*, 399 F.3d at 119 (Smithsonian Institution is "the United States" for purposes of 28 U.S.C. Section 1498(b), which vests exclusive jurisdiction over copyright claims against "the United States" in the Court of Federal Claims). The D.C. Circuit, moreover, affirmed a decision by this Court dismissing an action asserting constitutional tort claims against the Smithsonian on the basis that the "Smithsonian Institution . . . [is] entitled to sovereign immunity unless that immunity is waived by the Federal Tort Claims Act." *Beck v. United States*, No. 18-5253, 2019 U.S. App. LEXIS 27947, at *1 (D.C. Cir. Sept. 17, 2019). Accordingly, as a threshold matter, this action cannot even proceed unless Plaintiff establishes that sovereign immunity has been waived for the claims in his motion and amended complaint.

Clearly, there is no clear Congressional expression of intent to waive sovereign immunity under the Smithsonian's enabling act. The Smithsonian was established by an act of Congress in 1846 "for the increase and diffusion of knowledge among men." 20 U.S.C. § 41. The Smithsonian conducts its business through a Board of Regents composed of the Vice President, the Chief Justice

of the United States, six members of Congress, and nine citizens appointed by joint resolution of Congress. *Id*. §§ 42(a), 43. Congress has delegated to the Secretary of the Smithsonian's Board of Regents the sole authority to "discharge the duties of librarian and of keeper of the museum" and to "take charge of the building and property of the institution." 20 U.S.C. § 46.

A review of 20 U.S.C. § 41, *et seq*, reveals no clear Congressional waiver of sovereign immunity which would allow Plaintiff to bring his claims regarding the oversight and operation of the Smithsonian. It is the Plaintiff's burden to establish both the Court's jurisdiction and the government's waiver of sovereign immunity. *Am. Road & Transp. Builder's Ass'n v. EPA*, 865 F. Supp. 2d 72, 80 (D.D.C. 2012). Plaintiff has failed to do so.

Sovereign immunity, which shields from suit the federal government, its agencies, and federal officials acting in their official capacities, is "jurisdictional in nature." *FDIC v. Meyer*, 510 U.S. 471, 475 (1994) (the federal government and its agencies); *Jackson v. Donovan*, 844 F.Supp.2d 74, 75–76 (D.D.C.2012) (citing *Kentucky v. Graham*, 473 U.S. 159 (1985)) (federal officials in their official capacities); *see also United States v. Mitchell*, 463 U.S. 206 (1983) ("It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction"). "A waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text, and will not be implied." *Lane v. Pena*, 518 U.S. 187, 192 (1996) (citations omitted). "Indeed, the '[statutory] terms of [the United States'] consent to be sued in any court define that court's jurisdiction to entertain the suit.' " *Meyer*, 510 U.S. at 475 (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). By the same token, because "the inferior courts of the United States . . . are creatures of statute," *Owens v. Republic of Sudan*, 531 F.3d 884, 887 (D.C. Cir. 2008), which "may not exercise jurisdiction absent a statutory basis," *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546 (2005), the terms of

jurisdiction-conferring statutes both define and limit a federal court's authority to hear a given case. The plaintiff bears the burden of establishing both the court's statutory jurisdiction and the government's waiver of its sovereign immunity. *See Kokkonen v. Guardian Life Ins. Co*., 511 U.S. 375 (1994); *Tri-State Hosp. Supply Corp. v. United States*, 341 F.3d 571, 575 (D.C. Cir. 2003) ("A party bringing suit against the United States bears the burden of proving that the government has unequivocally waived its immunity."); *Jackson v. Bush*, 448 F.Supp.2d 198, 200 (D.D.C. 2006) (noting that "a plaintiff must overcome the defense of sovereign immunity in order to establish the jurisdiction necessary to survive a Rule 12(b)(1) motion to dismiss").

Thus, pursuant to a sovereign immunity analysis, Plaintiff's motion should be denied and his amended complaint dismissed since Plaintiff has failed to establish that sovereign immunity has been waived by the United States. This Court thus lacks jurisdiction to entertain Plaintiff's motion and amended complaint.

B. Plaintiff Will Not Suffer Irreparable Harm

A party moving for a preliminary injunction must demonstrate that he or she is "likely to suffer irreparable harm in the absence of preliminary relief." *Abdullah v. Obama*, 753 F.3d 193, 197 (D.C. Cir. 2014); *Wis. Gas Co. v. Fed. Energy Regul. Comm'n*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam) ("The basis for injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies") (citations and quotations omitted). A court may not issue "a preliminary injunction based only on a possibility of irreparable harm . . . [since] injunctive relief [i]s an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

The "standard for irreparable harm is particularly high in the D.C. Circuit." *Fisheries Survival Fund v. Jewell*, 236 F. Supp. 3d 332, 336 (D.D.C. 2017) (Chutkan, J.). If a party makes no showing of imminent irreparable injury, the Court may deny the motion for injunctive relief

without considering the other factors. *CityFed Fin. Corp. v. Off. of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995); *Wis. Gas*, 758 F.2d at 674 (explaining that because movants could not establish irreparable harm, the court need not address any of the other applicable factors). A movant must substantiate that the irreparable injury is "likely" to occur in the absence of relief. *See, e.g.*, *Nat'l Parks Conservation Ass'n v. U.S. Forest Serv.*, Civ. A. No. 15-1582 (APM), 2016 WL 420470, at *8 (D.D.C. Jan. 22, 2016) ("The movant bears the burden of substantiating, with evidence, that the injury is certain, imminent, great, and beyond remediation"). The Local Civil Rules underscore the need for the movant to present such proof, requiring that "[a]n application for a preliminary injunction . . . be supported by all affidavits on which the plaintiff intends to rely" and prohibiting the filing of "[s]upplemental affidavits" without "permission of the Court." *See id.* (citing LCvR 65.1(c)). "Bare allegations of what is likely to occur are of no value" because the district court must make the determination of "whether the harm will *in fact* occur." *Wis. Gas*, 758 F.2d at 674 (emphasis in original).

Here, Plaintiff does not meet his burden to demonstrate irreparable harm to him. Rather, he has an issue concerning the operation and management of the Smithsonian and requests a complete overhaul of its operation to correlate with his beliefs. He has shown no irreparable harm should his requested injunction not be granted and should the Smithsonian continue operating per its present structure.

C. The Equities Strongly Favor the Defendants

A plaintiff must show that the balance of equities tips in his favor and that the injunction is in the public interest. *Winter*, 555 U.S. at 20. The Court "should pay particular regard for the public consequences" of injunctive relief. *Id.* at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)). These factors strongly favor the Smithsonian and the Defendants in this case.

If the Court were to entertain Plaintiff's claims in his motion and order the required relief, the entire operation and management of the Smithsonian would cease. Thus, equity is strongly in favor of the Defendants. This is particularly true given the number of museums under the Smithsonian banner and the millions of people who enjoy its offerings.

D. The Proposed Injunction is Not in the Public Interest

The proposed injunction that Plaintiff seeks is most definitely not in the public interest. Plaintiff basically seeks a wholesale change in the oversight and management of the Smithsonian based on his personal grievances and asks this Court to fundamentally change the Smithsonian as it has been operated and known to the public since its inception. He wants to enjoin the Defendants, including Congress, the Chief Justice, and the Smithsonian's Board of Regents, from "directing, reviewing, altering, or interfering in Smithsonian affairs." Pl's Mot. at 6. He asks this Court to declare the Smithsonian a private charitable trust and order the dissolution of the Board of Regents. *Id.*

The granting of such unprecedented and unwarranted injunctive relief pursuant to the whims of one man would cause irreparable damage to the Smithsonian, a large and complex American institution which has been enjoyed by hundreds of millions of Americans since its inception. Indeed, the public interest calls for a denial of Plaintiff's motion and the dismissal of his amended complaint.

E. Plaintiff Should be Ordered to Post Security in Connection with any Provisional Injunctive Relief

For the reasons stated above, Defendants submit that the Court can and should deny Plaintiff's motion in its entirety. However, should the Court be inclined to order any injunctive relief, the Court should also order Plaintiff to post security. Under Rule 65(c), the Court may issue a preliminary injunction "only if the movant gives security" for "costs and damages sustained" by

Defendants if they are later found to "have been wrongfully enjoined." In the event the Court issues an injunction here, the Court should require Plaintiff to post an appropriate bond commensurate with the scope of any injunction. *See DSE, Inc. v. United States*, 169 F.3d 21, 33 (D.C. Cir. 1999) (stating that Rule 65(c) places "broad discretion in the district court to determine the appropriate amount of an injunction bond").

II. Plaintiff's Amended Complaint Should Be Dismissed

A. The President is Not a Proper Party to this Litigation

Although Plaintiff alleges claims against the President, he is not a proper defendant in this case. Plaintiff may not obtain—and the Court may not order—injunctive or declaratory relief directly against the President for his official conduct. Therefore, the Court should dismiss all of Plaintiff's claims against President Trump in the motion and the amended complaint.

To maintain the constitutional separation of powers, courts have long recognized that the non-ministerial conduct of the President when he acts in his official capacity cannot be enjoined. In *Mississippi v. Johnson*, 71 U.S. 475, 501 (1866), the Supreme Court held that it had "no jurisdiction of a bill to enjoin the President in the performance of his official duties." *Id*. In refusing to enjoin President Andrew Johnson from executing the Reconstruction Acts, the Court reasoned that when presidential action requires "the exercise of judgment," "general principles . . . forbid judicial interference with the exercise of Executive discretion." *Id*. at 499.

A majority of the Court in *Franklin v. Massachusetts*, 505 U.S. 788 (1992), later reaffirmed these fundamental principles. In *Franklin*, a district court issued an injunction requiring the President to take certain actions related to the census. *Id*. at 791. Writing for a four-Justice plurality, Justice O'Connor explained that "the District Court's grant of injunctive relief against the President himself [was] extraordinary, and should have raised judicial eyebrows." *Id*. at 802 (citation omitted). The plurality reiterated that "in general, '[the] court has no jurisdiction of a bill

to enjoin the President in the performance of his official duties.'" *Id*. at 802-03 (quoting *Mississippi*, 71 U.S. at 501).

In line with *Mississippi* and *Franklin*, courts in this and other circuits have rejected demands to enjoin the President in the performance of his official duties, regardless of the claim at issue. *See, e.g.*, *Doe v. Trump*, 319 F. Supp. 3d 539, 542 (2018); *Hawaii v. Trump*, 859 F.3d 741, 788 (9th Cir.), vacated & remanded on other grounds, 138 S. Ct. 377 (2017); *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 557, 605 (4th Cir.), *vacated & remanded on other grounds*, 138 S. Ct. 353 (2017); *Day v. Obama*, Civ. A. No. 15-0671, 2015 WL 2122289, at *1 (D.D.C. May 1, 2015); *Nat'l Ass'n of Internal Revenue Emps. v. Nixon*, 349 F. Supp. 18, 21–22 (D.D.C. 1972). For example, in *Swan v. Clinton*, 100 F.3d 973 (D.C. Cir. 1996), a former member of the National Credit Union Administration Board sued the President and two subordinates after the President removed him from his position. *Id*. at 975. The court recognized that the Supreme Court in *Franklin* had "'left open the question whether the President might be subject to a judicial injunction requiring the performance of a purely ministerial duty.'" *Id.* at 977 (quoting *Franklin*, 505 U.S. at 802). Although the Court found that the President's duty to comply with the removal restrictions in the agency's statute was "ministerial and not discretionary," it nonetheless determined that injunctive relief against the President was not appropriate. *Id*. The Court reiterated the Supreme Court's "stern admonition" from *Franklin* that "injunctive relief against the President personally is an extraordinary measure not lightly to be undertaken." *Id.* at 978. The rationale behind this doctrine, the Court found, was "painfully obvious[:]"

> the President, like Congress, is a coequal branch of government, and for the President to 'be ordered to perform particular executive . . . acts at the behest of the

> Judiciary,' at best creates an unseemly appearance of constitutional tension and at worst risks a violation of the constitutional separation of powers.

Id. (quoting *Franklin*, 505 U.S. at 827 (Scalia, J., concurring in part & concurring in the judgment)); see also *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) (concluding that "[w]ith regard to the President, courts do not have jurisdiction to enjoin him and have never submitted the President to declaratory relief (citations omitted)).

The foregoing cases underscore that the President is not a proper defendant in this case. It is undisputed that Plaintiff sued the President in his official capacity, challenging actions his administration took concerning the Smithsonian. It is also undisputed that Plaintiff effectively seeks declaratory and injunctive relief against the President. Pl. Mot. at 3. Accordingly, because this Court cannot issue a declaratory judgment or an order enjoining the President for his official, discretionary action, the Court should dismiss any claims against President Trump in the motion and the amended complaint

B. This Court Lacks Jurisdiction Over Plaintiff's Amended Complaint and He Fails to State Plausible Claims

Plaintiff's amended complaint should be dismissed under Rules 12(b)(1) and 12(b)(6) as this Court lacks jurisdiction to hear it and he fails to make any plausible claims against these Defendants. Defendants incorporate their arguments set forth above in opposition to Plaintiff's motion for injunctive relief which demonstrate that Plaintiff lacks standing to bring his claims, and that the claims are barred by sovereign immunity. Thus, this Court lacks jurisdiction to hear Plaintiff's amended complaint and it should be dismissed under Rule 12(b)(1).

Not only does Plaintiff lack standing and he cannot overcome the bar of sovereign immunity, but a review of his amended complaint also demonstrates that it is frivolous. Despite the length of the amended complaint, Plaintiff identifies no cognizable cause of action against the

Defendants. Because he has failed to state a claim for relief, this Court should dismiss the amended complaint under Rule 12(b)(6).

Plaintiff's amended complaint fails to state plausible claims against the Defendants. It is well-settled that a court cannot exercise subject matter jurisdiction over a frivolous and incoherent complaint. *Hagans v. Lavine*, 415 U.S. 528, 536–37 (1974) ("Over the years, this Court has repeatedly held that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are 'so attenuated and unsubstantial as to be absolutely devoid of merit.'") (quoting *Newburyport Water Co. v. Newburyport*, 193 U.S. 561, 579 (1904)); *Tooley v. Napolitano*, 586 F.3d 1006, 1010 (D.C. Cir. 2009) (examining cases dismissed "for patent insubstantiality," including where the plaintiff allegedly "was subjected to a campaign of surveillance and harassment deriving from uncertain origins."). A court may dismiss a complaint as frivolous "when the facts alleged rise to the level of the irrational or the wholly incredible," *Denton v. Hernandez*, 504 U.S. 25, 33 (1992), or "postulat[e] events and circumstances of a wholly fanciful kind," *Crisafi v. Holland*, 655 F.2d 1305, 1307–08 (D.C. Cir. 1981).

Plaintiff is basically alleging that he, as a citizen of the United States and a beneficiary of the Smithson will and trust, is therefore entitled to sue the United States so that the Smithsonian will be operated in accordance with his wishes. At base, the entirety of Plaintiff's case is that he does not like the way the Smithsonian is being run, and he seeks to fundamentally change the way the government operates one of its most revered institutions.

Plaintiff's amended complaint fails to establish a basis for this Court's jurisdiction and makes claims that are inherently frivolous. A reading of the amended complaint demonstrates that the Court not only lacks a legal and factual basis to exercise subject matter jurisdiction over it per

Rule 12(b)(1), but also that Plaintiff has failed to state any plausible claims against the Defendants that survive analysis under Rule 12(b)(6).

CONCLUSION

For the foregoing reasons, Defendants request that the Court deny Plaintiff's motion for a preliminary injunction and that the amended complaint be dismissed. A proposed order is attached.

Dated: September 9, 2025
Washington, DC

Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

BRIAN P. HUDAK, D.C. Bar #90034769
Chief, Civil Division

By: */s/ Thomas W. Duffey*
THOMAS W. DUFFEY
Assistant United States Attorney
601 D Street, NW
Washington, DC 20530
(202) 252-2510

Attorneys for the United States of America

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the pro se Plaintiff this date via first class mail at the following address on the docket:

Julian Raven
714 Baldwin Street
Elmira, NY 14901

/s/ Thomas W. Duffey