

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Julian Marcus Raven,  
*Plaintiff,*

v.

CHIEF JUSTICE JOHN G. ROBERTS, in his official capacity as CHANCELLOR OF THE  
SMITHSONIAN INSTITUTION, et al.,  
*Defendants.*

Case No. 25-cv-02332-TSC

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PRELIMINARY MOTION FOR CERTIFICATION TO THE UNITED STATES SUPREME  
COURT OF A CONTROLLING UNRESOLVED QUESTION OF FEDERAL LAW  
CONCERNING THE SMITHSONIAN INSTITUTION'S LEGAL ENTITY STATUS

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TO THE HONORABLE TANYA S. CHUTKAN:

Plaintiff respectfully submits this preliminary motion requesting that this Court **certify to the United States Supreme Court the unresolved and fundamental question of the Smithsonian Institution's legal status**, prior to further briefing or adjudication of the present matter.

This motion is rooted in **public necessity, jurisprudential clarity, and constitutional due process**, and arises from a legal and structural anomaly that continues to compromise the proper adjudication of all matters involving the Smithsonian Institution.

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## I. THE CONTROLLING QUESTION PRESENTED

**What is the legal entity status of the Smithsonian Institution?**

Specifically:

- Is the Smithsonian Institution a federal agency, a public trust governed by common law fiduciary principles, a sui generis hybrid creature of Congress, or an entirely private charitable trust administered under congressional acceptance of a testamentary bequest?

This question is not merely academic. It is **central to whether the Institution is governed by common law fiduciary duties, protected by sovereign immunity, or acting as a private trust body beyond the reach of federal separation-of-powers constraints** and of course for the public interest, whether the Smithsonian Institution is **subject to constitutional constraints expressed in 1st and 5th Amendments and any other applicable statutes contained in the U.S. Constitution and Federal Law.**

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## II. THE URGENT NEED FOR CERTIFICATION

The present case, and others before it, have been hamstrung by conflicting representations and judicial uncertainty concerning this very issue. Indeed, in **Case No. 17-cv-01240-TNM**, Judge Trevor McFadden created an unstable and unprecedented legal fiction—declaring, without citation or doctrinal support, that “Congress ratified the Smithsonian” and that it is **“the government through and through.”**

This ruling was **neither based in trust law, constitutional law, nor consistent with the Institution’s own public declarations of operational independence.** Even more critically, it

**enabled the circumvention of the Plaintiff's First Amendment rights**, under the theory that the Smithsonian's actions constituted protected "government speech," despite its simultaneous assertion that it is independent from the federal government.

If it is **truly "government through and through,"** then the Institution's structure—in which all three branches of government sit alongside unelected private citizens to issue policy as a single deliberative body—**violates the separation-of-powers doctrine in ways that are institutionally unsustainable.**

If, on the other hand, it is a **private trust**, then it cannot claim sovereign immunity or cloak itself in government speech protections. See **Pennsylvania v. Board of Trustees, 353 U.S. 230 (1957)**

This ambiguity has **created a dangerous legal void**—one that has now expanded beyond the courtroom into public confusion.

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### **III. THE PUBLIC INTEREST AND NATIONAL IMPLICATIONS**

The question's urgency is underscored by a **recent national controversy** involving the **attempted dismissal of Smithsonian National Portrait Gallery Director Kim Sajet**. When the White House ordered her termination following public controversy, no one—**no agency, no court, no legal scholar**—could definitively answer the simple question: ***Can the President of the United States fire a Smithsonian employee?***

Media outlets speculated wildly amplifying the legal confusion that exists. Legal analysts demurred. The Smithsonian claimed "independence." The Director later resigned.

The Washington Post's Maura Judkis echoed the lingering confusion stating, "Some observers may have rolled their eyes at Raven's litigation...but it did seek to elucidate the Smithsonian's

curious legal status...So, is the Smithsonian part of the government? Or is it a private entity that has government officials on its boards?” **The Washington Post, June 8, 2025**

But the **absence of any governing legal answer**—and the conflicting claims of authority between the Secretary, Board of Regents, and the President—exposed the constitutional crisis at the heart of the Institution’s identity.

This vacuum cannot persist. The American people, who are the **named beneficiaries** of James Smithson’s 1826 bequest, deserve an answer.

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#### **IV. THE SACRED DUTY OF TRUSTEES AND THE EQUITABLE ROLE OF THIS COURT**

James Smithson bequeathed his fortune to the United States “**to found at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men.**” That trust was accepted by Congress in 1846, and the Institution operated as a self-funded **public trust**. But congress had borrowed the principal, deciding to operate the museum solely on the 6% interest they were paying on the loan. But over time, as the legal entity identity drifted, and the 6% fell short, congress blurred the lines leading to overreach and eventually drawing from the public treasury in the form of appropriations, purporting to serve the American people.

Subsequently, no bill was created, or law was ever passed, no congressional amendment to the Smithsonian Act of 1846 was ever written that dissolved the trust, modified the trust, transformed the trust redefined the trust, or repurposed the trust, or as claimed in 17-cv-01204

TNM, nationalized the Smithsonian trust. Judge McFadden, without any legal reference, wildly claimed “congress ratified it,” whatever that means,

Thus, The Smithsonian remains in the same legal entity status it was created. Therefore, in trust law, **trustees owe the immutable and unbending fiduciary duties of loyalty, care, and impartiality to the beneficiaries**—in this case, the American public. One of America’s greatest jurists, judge Benjamin Cardozo, when at the New York appellate level stated unequivocally the definition of the fiduciary responsibility, ruling in **Meinhard v. Salmon, 249 N.Y. 458, 464 (N.Y. 1928)**:

“Many are the forms of conduct permissible in a workaday world for those acting at arms length, are ***forbidden to those bound by fiduciary ties***.(Bold & Italics added) A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is ***unbending and inveterate. Uncompromising rigidity*** (Italics & bold added.) has been the attitude of the court of equity when petitioned to undermine the rule of undivided loyalty by the “disintegrating erosion” of particular exceptions, (**Wendt v. Fischer, 243 N.Y. 439, 444**). Only thus has the level of conduct for fiduciaries been kept to a higher level than that trodden by the crowd. ***It will not consciously be lowered by any judgment of this court.***”(Bold & italics added.)

Any ambiguity about whether these duties apply in the instant case cannot be swept aside by legal abstraction or contradictory labels.

This Court, as a court of equity, is uniquely situated to recognize that **the sacred duty to execute a trust faithfully, according to the testator’s intent, is a matter of public right and moral obligation**. Trustees cannot insulate themselves from accountability through self-serving characterizations.

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## V. CERTIFICATION IS THE ONLY PATH TO FINALITY AND JUDICIAL INTEGRITY

To allow this case to proceed without resolution of the Smithsonian's legal nature is to **invite circular argument, further constitutional distortion, and the continued evasion of judicial scrutiny.**

Even Assistant Smithsonian Secretary and Pulitzer prize winner William Werner confessed in a speech drafted for Smithsonian Chancellor and Chief Justice Warren Burger on September 6th, in 1971 for the 125th Anniversary of the Smithsonian saying, "Moreover, the Smithsonian Institution, as a trust instrumentality of the United States, ***continues*** (italics 7 bold added) to confuse members of Congress, ***the courts***, and the executive branch. Nevertheless, the founding fathers knew exactly what they were doing..." William Werner for Chancellor Burger, **"the Smithsonian Institution and Science"**

Plaintiff respectfully requests that this Court **exercise its equitable discretion to certify this constitutional question to the United States Supreme Court**, pursuant to its inherent authority and the exceptional importance of the issue under 28 U.S.C. § 1254(2) and related doctrines.

Doing so would:

1. **Preserve judicial resources** by avoiding unnecessary litigation built on doctrinal sand;
2. **Provide clear trust law and constitutional guidance** not only to this Court, but to Congress, the Department of Justice, and the American public;

3. **Protect Plaintiff's rights**, and the rights of all Americans, from being suspended in a liminal space defined by institutional confusion and legal inconsistency;
  4. **Restore integrity and coherence** to the legal foundations of the Smithsonian Institution and similar federally chartered bodies.
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## **VI. CONCLUSION: THE MOMENT FOR CLARITY HAS COME**

This is a rare opportunity for this Honorable Court to courageously initiate a moment of historic significance: to bring light to a question shrouded in institutional ambiguity, and to finally determine whether the Smithsonian is **an arm of government or a public trust**, whether it speaks with the force of sovereign authority or the humility of fiduciary obligation.

**Judge Chutkan is in a unique position to be the first to break this legal stalemate and elevate this question to the only body that can resolve it definitively—the United States Supreme Court.**

Plaintiff respectfully requests that this Court certify the question presented to the Supreme Court in the interests of **constitutional clarity, fiduciary integrity, and public trust**.

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**Respectfully submitted,**

Julian Marcus Raven, Pro Se