

RAVEN

DEFENDER OF THE SMITHSON TRUST

V

**PRESIDENT TRUMP,
U.S. CONGRESS,
CHANCELLOR ROBERTS,
SECRETARY BUNCH III,
DR. KURIN
&
THE SMITHSONIAN INSTITUTION**

1:25-cv-02332 TNM

PLAINTIFF’S MOTION FOR LEAVE TO FILE A SUR-REPLY

To Defendants’ Reply in Support of Motion to Dismiss and Opposition to Preliminary Injunction

TABLE OF CONTENTS

Table of Authorities.....	2
Overview.....	3
Motion for Leave to file Sur Reply.....	6
Proposed Order.....	8
Plaintiff's Sur Reply.....	9
I. Plaintiff Seeks Equitable Relief, Not Damages	9
II. Sovereign Immunity and the Ultra Vires Doctrine	9
III. Executive Overreach Confirms Need for Injunctive Relief	10
IV. Irreparable Harm from Ongoing Breaches of Trust	10
V. Defendants Do Not Rebut Fiduciary or First Amendment Claims	11
VI. Plaintiff Has Standing as a Public Trust Beneficiary	11
VII. Injunctive Relief Is Proper Under Winter v. NRDC	12
Conclusion	13
Proposed Order.....	14
Verification of Service.....	16

TABLE OF AUTHORITIES

Supreme Court of the United States

Board of Regents v. Southworth, 529 U.S. 217 (2000)
Elrod v. Burns, 427 U.S. 347 (1976)
Erickson v. Pardus, 551 U.S. 89 (2007)
Ex parte Young, 209 U.S. 123 (1908)
Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682 (1949)
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)
Winter v. Natural Resources Defense Council, 555 U.S. 7 (2008)

United States Courts of Appeals

Chamber of Commerce v. Reich, 74 F.3d 1322 (D.C. Cir. 1996)
Fox v. American Airlines, Inc., 389 F.3d 1291 (D.C. Cir. 2004)

United States District Courts

Ben-Kotel v. Howard Univ., 319 F.3d 532 (D.C. Cir. 2003)
Crummey v. Social Security Administration, 794 F. Supp. 2d 46 (D.D.C. 2011)
Doe v. Exxon Mobil Corp., 69 F. Supp. 3d 75 (D.D.C. 2014)
United States ex rel. Pogue v. Diabetes Treatment Centers of America, Inc., 238 F. Supp. 2d 270 (D.D.C. 2002)

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In re Estate of Rothko, 372 N.E.2d 291 (N.Y. 1977)
Kapiolani Park Preservation Society v. City & County of Honolulu, 751 P.2d 1029 (Haw. 1988)

Statutes and Constitutional Provisions

20 U.S.C. § 75b
U.S. Const. amend. I
U.S. Const. art. II

Rules

Federal Rule of Civil Procedure 1
Federal Rule of Civil Procedure 12(b)(1)
Federal Rule of Civil Procedure 12(b)(6)
Local Civil Rule 7(d) (D.D.C.)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Julian Raven,

Plaintiff,

vs.

Lonnie Bunch III, Richard Kurin, et al.,

Defendants.

Civil Action No. 1:25-cv-02332 (TNM)

I. OVERVIEW OF PLAINTIFF'S ORIGINAL CLAIMS AND LEGAL THEORIES

In his complaint and opposition filings, Plaintiff Julian Raven asserts multiple causes of action against the President of the United States and the Smithsonian Institution and its fiduciary leaders (including the U.S. Congress, Chief Justice Roberts, Secretary Lonnie Bunch III, and Dr. Richard Kurin) for breaches of fiduciary duty, constructive fraud, and institutional nonfeasance. Central to the plaintiff's legal arguments are the following:

1. **Breach of Fiduciary Duty:** Plaintiff claims that the Smithsonian violated trust law by failing to administer the Smithson Trust impartially and loyally. Notably, the decision to retain Kim Sajet, despite prior judicial findings of partisanship, is presented as evidence of partisan favoritism and administrative misconduct.
2. **Constructive Fraud:** The plaintiff argues that public statements by Smithsonian officials regarding neutrality and fiduciary responsibility were deliberately misleading and used to mask partisan conduct and institutional failure.
3. **Institutional Nonfeasance:** Plaintiff accuses the Board of Regents and its delegates of refusing to act on credible misconduct claims, thereby violating the duty to enforce the donor's trust purpose.
4. **Executive Overreach and Violation of Separation of Powers:** Documented and publicly available evidence of President Trump's repeated executive orders and incursions into the private Smithsonian trust governance structure under the trusteeship of the U.S. Congress, attempting to direct, control and censor Smithsonian content that the president finds disagreeable.
5. **Standing & Public Interest:** Raven asserts standing under common law trust doctrines, citing Kapiolani Park precedent and emphasizing the Smithsonian's legal duty to serve the American people.
6. **Relief Sought:** Comprehensive institutional reform, termination of Sajet and other fiduciaries, and realignment of Smithsonian governance with the original mandate.

II. DOJ's Initial Motion to Dismiss

In their initial filing, the DOJ advanced several key defenses:

1. **Lack of Standing:** DOJ claims Raven lacks Article III standing and is not a proper party to enforce the Smithsonian Trust.
2. **Sovereign Immunity:** The United States has not waived sovereign immunity, and the fiduciary duties Plaintiff alleges are not judicially enforceable.
3. **Failure to State a Claim:** DOJ asserts that none of the alleged fiduciary breaches rise to actionable claims under federal law.
4. **Political Question Doctrine:** DOJ contends that the court should abstain due to the political nature of decisions relating to museum curation and institutional policy.

III. Plaintiff's Opposition Highlights

In response, Plaintiff refutes each point, particularly:

- Emphasizing the Supreme Court's historic role in trust enforcement (*United States v. Nobles*),
- Arguing the Smithsonian's structure is that of a charitable trust with enforceable fiduciary duties,
- Citing Sajat's partisan behavior and Roberts' recusal as concrete indicators of bias and misconduct,
- Asserting violations of both trust and constitutional law.

IV. DOJ's Recent Reply and New Arguments

The DOJ reply brief includes several **newly raised arguments**, warranting a sur-reply:

1. **Mischaracterization of Relief Sought:** DOJ now incorrectly asserts that Plaintiff is seeking monetary damages, whereas Plaintiff's filings focus on injunctive and equitable relief to restructure governance.
2. **New Emphasis on Precedent:** DOJ shifts its reliance to new case law not cited in the motion to dismiss, potentially requiring rebuttal.
3. **Minimization of Sajat's Role:** DOJ attempts to distance the Institution from Sajat's actions, contrary to previously acknowledged governance responsibilities.
4. **Strained Sovereign Immunity Application:** DOJ expands its sovereign immunity arguments into areas where precedent (e.g., *Restatement of Trusts*, *IRC Reports*) suggests fiduciary enforceability.

V. Inconsistencies and Weaknesses in DOJ's Position

- The DOJ struggles to reconcile Sajeet's documented partisanship with the Smithsonian's claims of neutrality.
- Their claim that Plaintiff seeks damages is clearly rebutted by the equitable focus of the complaint (see Prayer for Relief).
- DOJ provides no meaningful answer to Judge McFadden's prior ruling labeling Sajeet's behavior as "odious and partisan."
- DOJ ignores substantial evidence of misconduct post-2018, including President Trump's 2025 call for Sajeet's firing.

VI. Grounds for Sur-Reply

Given the new legal positions and mischaracterizations introduced in DOJ's reply, Plaintiff should seek leave to file a sur-reply on the following grounds:

1. To correct the DOJ's false assertion regarding damages sought.
2. To respond to the new case law introduced without opportunity for rebuttal.
3. To clarify factual misrepresentations surrounding Sajeet's actions and the Plaintiff's standing.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Julian Raven,

Plaintiff,

vs.

President Trump, Chancellor John Roberts, et al.,

Defendants.

Civil Action No. 1:25-cv-02332 (TSC)

PLAINTIFF'S MOTION FOR LEAVE TO FILE SUR-REPLY

Plaintiff Julian Raven respectfully moves this Court for leave to file a sur-reply in opposition to Defendants' Reply (ECF No. 16) in support of their Motion to Dismiss and Opposition to Plaintiff's Motion for Preliminary Injunction, pursuant to Local Civil Rule 7(d) of the U.S. District Court for the District of Columbia and controlling case law.

I. Legal Standard for Sur-Reply

Under **LCvR 7(d)**, "a surreply may be filed only by leave of Court," and such leave is appropriate when the reply brief raises new arguments or evidence that were not presented in the original motion. Courts in this jurisdiction consistently grant leave when a reply introduces new legal theories or factual contentions that prejudice the nonmovant's ability to respond. See, e.g., **Ben-Kotel v. Howard Univ.**, 319 F.3d 532, 536 (D.C. Cir. 2003); **United States ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.**, 238 F. Supp. 2d 270, 276–77 (D.D.C. 2002).

II. Grounds Supporting Sur-Reply

1. **Mischaracterization of Relief Sought:** In their reply, Defendants falsely assert that Plaintiff seeks monetary damages. This claim appears for the first time in their reply and is unsupported by any citation to the complaint. Plaintiff's prayer for relief (ECF No. 1, at 60–62) exclusively requests equitable and injunctive remedies. Courts have found such mischaracterizations material grounds for sur-reply. See **Doe v. Exxon Mobil Corp.**, 69 F. Supp. 3d 75, 85–86 (D.D.C. 2014).
2. **Introduction of New Legal Authority:** Defendants' reply introduces new case law and doctrines, particularly expanding their sovereign immunity argument and relying on precedent not previously cited. These new authorities alter the analytical framework and exceed the scope of their original motion, warranting Plaintiff's opportunity to respond. See **Crummey v. Soc. Sec. Admin.**, 794 F.

Supp. 2d 46, 62 (D.D.C. 2011) (court may permit sur-reply when new legal arguments are raised).

3. **Minimization of Material Facts and Ongoing Misconduct:** Defendants attempt to diminish the role and impact of Director Kim Sajet's conduct—a central component of Plaintiff's allegations regarding breach of fiduciary duty and institutional capture. This revision of fact and argumentation is novel in their reply and undermines Plaintiff's right to confront the record fully and accurately.
4. **Plaintiff's Pro Se Status and Due Process Considerations:** As a pro se litigant, Plaintiff is entitled to liberal construction of his pleadings and procedural protections to ensure access to justice. See **Erickson v. Pardus, 551 U.S. 89, 94 (2007)**. Denial of leave to respond to new arguments would risk fundamental unfairness and compromise the integrity of adversarial process.

III. Necessity of Sur-Reply to Preserve the Record

Allowing Plaintiff to file a sur-reply ensures the Court is presented with a complete and accurate record, consistent with **Fed. R. Civ. P. 1**'s mandate to "secure the just, speedy, and inexpensive determination of every action." A narrowly tailored sur-reply limited to five (5) pages will address the new and misleading assertions in Defendants' reply without burdening the Court.

WHEREFORE, Plaintiff respectfully requests that this Court grant leave to file a sur-reply not exceeding five (5) pages, for the limited purpose of addressing new arguments and correcting factual misstatements raised in Defendants' reply.



Respectfully submitted,
Julian Raven, Plaintiff Pro Se

[PROPOSED] ORDER GRANTING PLAINTIFF LEAVE TO FILE SUR-REPLY

Upon consideration of Plaintiff's Motion for Leave to File a Sur-Reply, Defendants' Reply in Support of their Motion to Dismiss and Opposition to Plaintiff's Motion for Preliminary Injunction, and the entire record herein, it is hereby

ORDERED that Plaintiff's Motion for Leave to File a Sur-Reply is GRANTED; and it is further

ORDERED that Plaintiff may file a sur-reply not to exceed five (5) pages, limited to addressing new arguments, authorities, and mischaracterizations raised for the first time in Defendants' reply; and it is further

ORDERED that Plaintiff's sur-reply shall be filed within ____ days of the date of this Order.

The Court finds that Defendants' reply introduced new legal arguments and authorities not presented in their original motion, and that permitting a narrowly tailored sur-reply will assist the Court in resolving the pending motion on a complete and accurate record, consistent with Local Civil Rule 7(d) and Federal Rule of Civil Procedure 1.

SO ORDERED.

Date: _____, 2025

HON. TREVOR N. McFADDEN

United States District Judge

PLAINTIFF'S SUR-REPLY TO DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS AND OPPOSITION TO PRELIMINARY INJUNCTION

Julian Raven, pro se, respectfully submits this Sur-Reply pursuant to Local Civil Rule 7(d) of the U.S. District Court for the District of Columbia to address new arguments and mischaracterizations raised by Defendants in their Reply (ECF No. 16).

I. Plaintiff Seeks Equitable Relief, Not Damages

Defendants falsely assert that Plaintiff seeks monetary damages, thereby invoking sovereign immunity as a jurisdictional defense. This is incorrect. The Amended Complaint explicitly and repeatedly seeks injunctive and equitable relief, including the removal of conflicted fiduciaries, judicial oversight of governance breaches, and protections against further ultra vires acts. Any references to compensatory language are ancillary and were not pleaded as relief under Rule 8(a)(3). No recovery from the Treasury is sought. Therefore, sovereign immunity is inapplicable under the standard set in *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949) and *Dugan v. Rank*, 372 U.S. 609 (1963).

II. Sovereign Immunity and Ultra Vires Doctrine

Defendants raise new sovereign immunity arguments and case law not previously cited, such as *Misra v. Smithsonian Astrophysical Observatory*. These should be excluded from consideration. Even if considered, Plaintiff's claims fall squarely within the *ultra vires* exception. Smithsonian officials and the President have exceeded their legal

authority by interfering in fiduciary governance and violating clear and specific fiduciary duties. The Supreme Court in *Ex parte Young*, 209 U.S. 123 (1908), and the D.C. Circuit in *Chamber of Commerce v. Reich*, 74 F.3d 1322 (D.C. Cir. 1996), confirm that courts may issue equitable relief to prevent unlawful executive actions without violating sovereign immunity.

III. President Trump's May 30, 2025 Removal Order and Ongoing Executive Orders Confirms Need for Injunctive Relief

The President's unilateral attempt to remove Director Kim Sajet on May 30, 2025, breached constitutional separation of powers and fiduciary neutrality, directly violating the trust's private governing structure. The Board of Regents refuted the President's authority, affirming that such action is unlawful. The attempted firing, tied to Sajet's prior rejection of Plaintiff's artwork and her curatorial ideology, constitutes clear First Amendment retaliation. These are not hypothetical harms; they are real and ongoing, reinforcing Plaintiff's request for injunctive relief under *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Further, ongoing executive orders directed at the Smithsonian Institution for content review and compliance continue to violate the private Smithson Trust corpus and Will of James Smithson, a private citizen.

IV. Irreparable Harm from Ongoing Breaches of Trust: When fiduciaries breach their duties or outside parties subvert a trust, the harm that results is quintessentially irreparable. This is not a case of trivial losses or purely monetary injuries; it concerns the integrity and purpose of the Smithsonian Institution – something that, once compromised, cannot simply be fixed by a later damages award or post hoc review.

Courts have consistently held that breaches of fiduciary duty and diversion of trust property cause harm “not compensable by ordinary damages”. For example, in *In re Estate of Rothko*, a famous case involving art executors breaching their duty, the court emphasized that the executors’ disloyal acts distorted the very purpose of the trust and that such injury could not be made whole with money. Similarly, the Hawaii Supreme Court in *Kapiolani Park* underscored that “the injury to the public trust interest cannot be measured in money,” thus an injunction was the only adequate remedy.

V. Defendants Do Not Rebut Fiduciary and First Amendment Claims

Defendants fail to substantively address Plaintiff’s core constitutional and fiduciary arguments. They ignore Count V’s Executive Overreach claims and the fiduciary duties outlined in the Restatement (Third) of Trusts. Silence constitutes concession (*Fox v. Am. Airlines, Inc.*, 389 F.3d 1291, 1294 (D.C. Cir. 2004)). Plaintiff has adequately pleaded actionable breaches of loyalty and impartiality, and viewpoint discrimination, supported by *Board of Regents v. Southworth*, 529 U.S. 217 (2000).

VI. Plaintiff Has Standing as a Public Trust Beneficiary

The Smithsonian trust’s beneficiaries are the American people. Plaintiff has standing under both Article III (*Laidlaw*, 528 U.S. 167 (2000)) and trust law principles recognized in *Kapiolani Park Preservation Soc’y v. City & County of Honolulu*, 751 P.2d 1029 (Haw. 1988). Plaintiff is a direct participant, as a member of a special interest category and named group of National Portrait Gallery beneficiaries, as an artist under **U.S. 20 §75b**. (“Establishment of National Portrait Gallery;...a) There is established in the Smithsonian Institution a bureau which shall be known as the National Portrait Gallery.....(b) The

Gallery shall function as a free public museum for the exhibition and study of portraiture and statuary depicting men and women who have made significant contributions to the history, development, and culture of the people of the United States **and of the artists who created such portraiture** and statuary.”(Bold, italics and underline added.) and user of the Smithsonian and was denied access due to amply documented partisan retaliation. Where the D.C. Attorney General has declined action, Plaintiff as a public beneficiary is entitled to seek judicial enforcement.

VII. Injunctive Relief is Proper

Plaintiff meets the four-factor test from *Winter v. NRDC*, 555 U.S. 7 (2008):

1. **Likelihood of Success:** Fiduciary breach and ultra vires conduct are well-supported.
2. **Irreparable Harm:** Viewpoint discrimination and trust breaches cannot be remedied retroactively or monetarily.
3. **Balance of Equities:** Relief would preserve neutrality and impose no burden on lawful officials.
4. **Public Interest:** Preventing political interference in a national trust aligns with the rule of law and democratic accountability.

Conclusion

Defendants' reply introduces new and flawed arguments while failing to rebut Plaintiff's core claims. Plaintiff respectfully asks the Court to consider this Sur-Reply, deny the motion to dismiss, and grant preliminary injunctive relief to safeguard the public trust, uphold the Constitution, and halt ongoing governance abuses.

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Respectfully submitted,
Julian Raven, Pro Se
714 Baldwin St.
Elmira, New York. 14901
December 19, 2025

[PROPOSED] ORDER DENYING DEFENDANTS' MOTION TO DISMISS

Upon consideration of Defendants' Motion to Dismiss (ECF No. 8), Plaintiff's Opposition (ECF No. 12), Defendants' Reply (ECF No. 16), and Plaintiff's Sur-Reply, it is hereby ORDERED:

1. That Defendants' Motion to Dismiss is DENIED.
2. The Court finds that Plaintiff has sufficiently alleged standing to assert claims for fiduciary breach and constitutional violations as a public beneficiary of the Smithsonian Institution, a congressionally mandated public trust governed under 20 U.S.C. § 75b and related provisions.
3. The Court finds that the relief sought by Plaintiff is equitable and injunctive in nature, and thus not barred by the doctrine of sovereign immunity under *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949), or its progeny.
4. The Court further finds that Plaintiff has pleaded plausible claims for breach of fiduciary duty, constructive fraud, First Amendment retaliation, and ultra vires conduct based on well-established trust principles, constitutional jurisprudence, and federal statutory authority.
5. The Court finds that Defendants' Reply raises new legal arguments and authorities not previously included in the Motion to Dismiss, and Plaintiff's Sur-Reply appropriately addresses these new matters.
6. Because Plaintiff has plausibly alleged facts that, if proven, would demonstrate irreparable harm, a likelihood of success on the merits, and significant public interest in the preservation of fiduciary neutrality and constitutional protections,

the Court will proceed to consider Plaintiff's Motion for Preliminary Injunction on the merits.

SO ORDERED.

Dated: _____, 2025

HON. TREVOR N. MCFADDEN
UNITED STATES DISTRICT JUDGE

I, Julian Raven do hereby verify and swear that a full copy of this motion has been served on defendants.

A handwritten signature in blue ink, appearing to read "Julian Raven". The signature is stylized with a large, looping initial "J" and a long, sweeping horizontal stroke at the end.

Julian Raven

Plaintiff, Pro Se

714 Baldwin St.,

Elmira, New York, 14901

Dated: December 19, 2025