

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

Julian Marcus Raven

Plaintiff(s)

V.

John G Roberts, Lonnie Bunch III, Richard Kurin,
The Smithsonian Board of Regents &
The United States

Defendant(s)

Civil Action No. 25-cv-02332 TSC

AMENDED PRELIMINARY MOTION FOR CERTIFICATION TO THE UNITED STATES SUPREME COURT

COMES NOW Plaintiff and respectfully moves to amend the pending Motion for Certification, adding the following pivotal grounds necessitating review by the United States Supreme Court.

I. ADDITIONAL ISSUE FOR CERTIFICATION

Whether legal and procedural principles permit beneficiaries to sue the trustees of the Smithsonian Institution—a federal trust instrumentality—when:

1. The Smithsonian asserts contradictory statuses: both “*government through and through*” and “*independent...trust instrumentality*” lacking a clear, legally consistent entity classification;

2. Rule 4(i)(2) mandates service upon the United States when a federal agency, or officer is sued—yet this requirement directly clashes with the Smithsonian’s own self-proclaimed independence;
3. The only conceded waiver of sovereign immunity(if it even applies) exists under the Federal Tort Claims Act (FTCA)—and solely for narrow personal injury or property damage torts (e.g., “if a Smithsonian employee breaks your foot”), leaving no waiver for:
 - Breaches of fiduciary duty;
 - Breaches of charitable trust;
 - Constitutional violations by Smithsonian trustees;
4. Smithsonian senior officials receive substantial federal compensation, confirming their civil-service status, yet claim to be an *independent* authority—effectively acting as private citizens absent federal agency powers;
5. Unelected Citizen Regents, members of congress, the Vice President and the Chief Justice serve without salary, are reimbursed for expenses, and hold positions that blur the distinction between unpaid trustees, designees of a public trust and federal officers;
6. Principal–Delegate Liability under D.C. Trust Law: The Board of Regents, as principal trustees, is liable for breaches of fiduciary duty by any trustee-delegates or trust directors unless it can demonstrate prudent selection, proper scope and terms of delegation, and ongoing monitoring (D.C. Code § 19-1308.07; Restatement (Third) of Trusts § 80). Trustee-delegates and “trust directors” are held to the same fiduciary duty and liability as trustees under D.C.’s Uniform Directed Trust Act, effective 2025;
7. No statutory waiver of sovereign immunity has been articulated for trust law claims, creating a remedial vacuum for trust beneficiaries—unlike Indian trust cases (e.g., *Mitchell II*, *White Mountain Apache*, *Cobell*) where Congress expressly waived immunity;
8. The District of Columbia Probate Court provides a structured forum for trust accountability—and, if the Smithsonian is truly independent, or as former Smithsonian

Chancellor, Chief Justice and President William Howard Taft declared, “The Smithsonian is not and has never been considered a government bureau, it is a private institution under the guardianship of the government,” the Attorney General of D.C., not the DOJ, may be the appropriate defending authority;

9. Without resolution, these contradictions create a jurisdictional and procedural impasse, denying beneficiaries any forum for redress and rendering it impossible to proceed with the present case.

II. INHERENT CONTRADICTIONS UNDER RULE 4(i)(2)

Federal Rule of Civil Procedure 4(i)(2) requires service on the United States when suing a federal agency or officer in their official capacity.

- If the Smithsonian is truly a federal entity, Rule 4(i)(2) applies—requiring service on the federal government;
- If the Smithsonian is independent, service on the U.S. is improper, and the correct venue is the D.C. Probate Court against a private trustee.

This unresolved status blocks consistent application of service rules, obstructing judicial accountability.

III. COMPENSATION VS. STATUS: A FACTUAL TENSION

The Secretary of the Smithsonian and senior officers receive federal salaries, supporting their classification as federal employees, yet in public assert independent status recently rebuffing

even the President of the United States, but in litigation assert government through and through status.

Citizen Regents, by contrast, serve unpaid (except for expense reimbursement) and are not under federal supervision—functioning as private trustees.

This duality results in federally paid officials without clear federal authority, undermining institutional accountability.

IV. FTCA AND THE ABSENCE OF TRUST LAW REMEDIES

The FTCA's waiver of sovereign immunity is narrowly limited to physical injury or property damage. It provides no remedy for:

- Breach of trust;
- Breach of fiduciary duty;
- Enforcement of charitable trust purposes;
- Constitutional violations by Smithsonian trustees.

In contrast, Indian trust litigation (*Mitchell II*, 463 U.S. 206; *White Mountain Apache*, 537 U.S. 465; *Cobell*) shows that when immunity is waived, courts apply mainstream trust principles—selection, monitoring, accounting, surcharge—to the sovereign trustee. The Smithsonian trust lacks such a waiver, leaving beneficiaries without any equivalent path.

V. PRINCIPAL–DELEGATE LIABILITY UNDER D.C. TRUST LAW

D.C. Code § 19-1308.07 (UTC § 807) imposes a duty on trustees to prudently select agents, set clear terms consistent with the trust, and monitor performance. Failure to do so is a breach, and agents accepting delegation submit to D.C. jurisdiction and owe a fiduciary duty to the trust.

Under the D.C. Uniform Directed Trust Act, any “trust director” has “the same fiduciary duty and liability” as a sole trustee, and a directed trustee must follow lawful instructions unless doing so would constitute willful misconduct.

Chancellor John Roberts and the board of Regents commissioned this Smithsonian self assessment that concluded, “Although the Smithsonian is a unique entity, Congress has made clear that it is to be regarded as a charitable trust, subject to the fiduciary principles of the common law of trusts. This means the Regents, as trustees, owe duties of loyalty, care, and obedience to the trust’s purposes, and the Institution must be administered in accordance with those principles.” A REPORT TO THE BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION, June 18, 2007, The Honorable Charles A. Bowsher, The Honorable Stephen D. Potts, A.W. “Pete” Smith, Jr.

Accordingly:

- Regents and the Secretary cannot escape liability for breaches by delegated officials or curators if they failed in their monitoring duties;
- Trustee-delegates and functional trust directors (e.g., curatorial decision-makers) are equally liable for breaches.

VI. LOCAL TRUST FORUM AND AUTHORITY

Under D.C. law, the Probate Division has jurisdiction over trust enforcement, trustee removal, equitable surcharge, and construction of trust terms.

If the Smithsonian is an independent public trust, the D.C. Attorney General—not the DOJ—should defend it.

VII. REQUEST FOR SUPREME COURT GUIDANCE

This duplicity and procedural contradiction:

- Deprives trust beneficiaries of any remedy;
- Undermines public trust law recognized by the IRS and federal courts;
- Reinforces institutional immunity from fiduciary accountability.

Only the Supreme Court can resolve:

1. Whether the Smithsonian is bound by federal procedural rules or domicile-based trust law;
2. Whether Rule 4(i)(2) applies;
3. Whether sovereign immunity is waived for trust enforcement;
4. Whether principal trustees are liable for the breaches of their delegates under D.C. trust law;
5. Who—the United States or the D.C. Attorney General—is the proper recipient of service and defending authority.

Only the Supreme Court can clarify:

1. Whether the Smithsonian trust instrumentality is subject to federal procedural rules or domicile-based trust law;
2. Whether the U.S. Congress which is the Smithsonian Trust's principal trustee according to the Smithsonian Act of 1846 should be sued in probate court as trustee because of the actions of trustee delegates, the Board of Regents and its officers.
3. Congress is trustee, not the Smithsonian Board of Regents composed of both private citizens and elected/appointed officials and Smithsonian officials, which are federal employees, thus demanding clarification for claims of breaches of trust claims.
4. If Rule 4(i)(2) applies or should be interpreted differently;
5. Whether sovereign immunity is waived, is even appropriate or remains intact;
6. Who—the U.S. or D.C. AG—is the proper recipient of service and defending authority?
7. Order transfer of case to Probate Division to adjudicate claims under the D.C. Trust Code if appropriate.

Respectfully submitted,

Affidavit of Service

I, Julian Marcus Raven, do hereby swear that a full copy of this motion has been served on defendants, counsel and the U.S. Attorney General.

Monday, August 11th, 2025

Sincerely,