

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

JULIAN MARCUS RAVEN,

Plaintiff-Appellant,

V.

No. 26-5081

THE SMITHSONIAN INSTITUTION, et al.,

Defendants-Appellees.

**BRIEF OF AMICUS CURIAE DR. LAURENCE A. JARVIK IN SUPPORT
OF APPELLANT'S OPPOSITION TO APPELLEES' MOTION FOR
SUMMARY AFFIRMANCE**

INTEREST OF AMICUS CURIAE

Amicus Curiae is a published author and researcher in American culture, whose work has focused upon public institutions, museums and other cultural institutions,

fiduciary governance, constitutional government, the law of charitable trusts, and the preservation of the rule of law.

Amicus holds a M.F.A and Ph.D. and has published books about the National Endowments for the Arts and Humanities, the Public Broadcasting Service, and Mobil Masterpiece Theater. He has testified before House and Senate Committees and consulted with the Executive Branch in relation to national cultural agencies, as well as investigated issues related to the Smithsonian Institution for the office of Senator Ted Stevens (R-AK) in the 1990s. Amicus lived in Washington, DC from 1991-2020 and so is personally familiar with the Smithsonian Institution's museums.

Further, Amicus researched trusts, foundations and nonprofit organizations, including the question of donor intent, while working for the Capital Research Center, where he founded and edited the newsletter *Foundation Watch*. He studied cultural agencies at The Heritage Foundation and as Washington Director of The Center for the Study of Popular Culture. Amicus taught at The Johns Hopkins University's Carey Business School and the University of Maryland Global Campus (previously UMUC), was Fulbright Scholar at the University of World Economy and Diplomacy in Tashkent, Uzbekistan, as well as a visiting professor

and director of the Russo-American Center at Russian State Humanitarian University (RGGU) for a brief period.

Amicus is personally familiar with nonprofit cultural organizations through service on boards including The Arts Club of Washington, as past-president of THIS for Diplomats (now Cultural Exchange for Diplomats) and vice-president of the Pinellas Opera League.

In addition to being an author, Amicus is an artist who won awards in juried exhibitions at The Arts Club of Washington, editor and publisher of the Washington Books and Penny-a-Page imprints, blogs at *LaurenceJarvikOnline*, hosts the Substack *Philosophical Investigations*, produced and directed the historical documentary *Who Shall Live and Who Shall Die?* and was featured interview in the documentary *The Trump Effect: Deprogramming the American Mind*. Amicus has also published an endorsement which is included in Appellant's book: *Odious and Cerberus: An American Immigrant's Odyssey and His Free-Speech Legal War Against Smithsonian Corruption*.

In conclusion, Amicus has academic and artistic credentials as well as personal experience relevant to Appellant's complaint.

This brief is not submitted to advocate for any political position, museum exhibition, or particular work of art. Nor does Amicus ask this Court to determine that Appellant ultimately prevails on the merits.

Instead, Amicus respectfully submits that this appeal presents an unresolved public-interest question of exceptional institutional importance concerning the legal character of the Smithsonian Institution itself—a question that reaches beyond the interests of the parties and affects the future character of one of the Nation's most peculiar public institutions.

A ruling as to the legal character of the institution is especially necessary because priorities in the Smithsonian Institution's 2027 Strategic Plan *Our Shared Future* may not be consistent with the donor intent of a private trust, legal responsibilities of a federal agency, nor fiduciary obligations a hybrid organization. That is, without a strict legal definition of the character of the Smithsonian Institution, by the courts, it may be impossible to exercise reasonable oversight on behalf of the donor, American taxpayers, or the American public. This would suggest that the organization is essentially lawless, due to endless legal transmogrification resulting from failure to clearly define the terms of its incorporation. Obviously, neither James Smithson nor Congress could have intended such a dangerous, reckless and unconstitutional result. It is in the interest of the Smithsonian Institution and

American public to resolve lingering legal ambiguities as soon as possible, especially since the Executive Branch has issued a scathing critique of management. Further confusion helps neither the Smithsonian, nor American taxpayers who provide approximately one billion dollars a year to the organization through Congressional appropriations.

Because the threshold legal question of organizational character has not yet been definitively resolved, summary affirmance would be inappropriate.

SUMMARY OF ARGUMENT

This appeal presents an unusual circumstance.

The Department of Justice asks this Court to affirm dismissal on Article III standing grounds before the judiciary has determined the legal identity of the institution whose status allegedly defines the existence—or absence—of the legal interests Appellant asserts.

That sequencing should concern every court committed to orderly judicial decision-making.

For nearly a decade, Appellant Julian Raven has consistently advanced the same fundamental legal question:

What is the precise character of The Smithsonian Institution under American law?

Is it:

- a federal executive branch agency;
- a public charitable trust;
- a trust instrumentality of the United States;
- an independent establishment;
- a hybrid constitutional institution;
- or some combination of those characteristics?

The answer matters. The answer determines the nature of fiduciary duties. The answer determines the source of legally protected interests. The answer determines whether trust principles apply. The answer determines who owes duties to whom. The answer determines what constitutes injury. The answer determines what remedies are available.

And most importantly, the answer determines who has standing to file a lawsuit.

Yet remarkably, the underlying question remains unresolved.

Instead, litigation diverted into debates over standing -- before any legal basis for standing has been properly identified.

A recent White House report concerning the Smithsonian Institution dramatically illustrates the continuing uncertainty surrounding the Institution's legal character.

SAVING AMERICA'S STORY: How Ideological Capture at the Smithsonian Institution's National Museum of American History Erases Our Heritage, released by the Domestic Policy Council, devotes extensive discussion to the Institution's fiduciary responsibilities, trust-instrumentality status, statutory framework, and unique constitutional structure.

The report repeatedly describes the Smithsonian as a "**trust instrumentality of the United States,**" discusses its **fiduciary responsibilities**, acknowledges its hybrid governmental structure, and details the constitutional roles played by Congress, the Chief Justice, the Vice President, the Board of Regents, and the Secretary of the Smithsonian.

Whether one agrees or disagrees with every conclusion contained within that report is beside the point. The significance is that an official report from the Executive Branch itself confirms that the legal status of the Smithsonian Institution remains unclear. It is, *de facto*, a "peculiar institution."

That circumstance alone demonstrates why summary affirmance is inappropriate.

ARGUMENT

I. THIS CASE PRESENTS AN EXTRAORDINARY QUESTION OF INSTITUTIONAL LAW THAT HAS NEVER BEEN FULLY RESOLVED.

The Smithsonian Institution occupies a singular place within American government. Created pursuant to the will of James Smithson, accepted by Congress in 1836, and organized by statute in 1846, the Institution has long resisted easy legal classification.

First Smithsonian Secretary Joseph Henry, Chief Justice Howard Taft, Chief Justice Warren Burger and the Courts have variously described the Smithsonian (and by implication the US government's role) as:

- merely a trustee,
- the Smithsonian is not a national establishment,
- the Smithsonian is a private institution under the guardianship of the government,
- no part of the federal government,

- a trust,
- a trust instrumentality,
- an independent establishment,
- a governmental entity,
- a non-agency,
- and a unique federal institution.
- the government through and through.

These descriptions are inconsistent, contradictory, overly vague, and confusing.

They reveal that the Smithsonian cannot simply be analyzed as though it were an ordinary executive department. Indeed, in **Dong v. Smithsonian Institution**, this Court recognized that the Smithsonian's peculiar structure distinguished it from ordinary executive agencies and discussed its origin in the Smithson charitable bequest and its trust character.

SAVING AMERICA'S STORY likewise devotes an entire chapter to "**The Smithsonian's Fiduciary Responsibilities**," describing the Institution as a trust instrumentality charged with carrying out the purposes established by James Smithson and implemented by Congress.

Whether the Executive Branch's legal claims ultimately prove correct is not the issue at stake. The important point is this:

If the Executive Branch itself finds it necessary to devote dozens of pages to attempt to clarify the Smithsonian's legal status, then it can hardly be said that Appellant's appeal presents no substantial legal question worthy of full briefing.

Summary affirmance exists for clear cases.

This is on its face not a clear case. It manifestly requires legal clarification by a Court ruling.

II. THE JUDICIARY HAS THE CONSTITUTIONAL DUTY TO DECLARE THE LAW AND THE HISTORIC EQUITABLE DUTY TO COMPEL THE EXECUTION OF TRUSTS.

This appeal concerns not merely Article III standing, but the historic role of the federal judiciary in defining legal relationships and enforcing trusts.

More than two centuries ago, Chief Justice John Marshall articulated the Judiciary's constitutional responsibility in terms that have become foundational to American law:

"It is emphatically the province and duty of the judicial department to say what the law is."

***Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).**

That constitutional duty is complemented by an equally well-established principle of equity. In **Hunter v. United States**, the Supreme Court declared:

"It is the peculiar province of equity, to compel the execution of trusts."

Hunter v. United States, 30 U.S. 5 Pet. 173 173 (1831)

Together, these principles define the Court's dual responsibility in a case such as this. Before a court may conclude that a plaintiff lacks a legally protected interest arising from an alleged charitable trust, *it must first identify the legal character of the institution whose status gives rise to—or defeats—that asserted interest.* A court cannot faithfully determine whether an alleged trust injury is cognizable while declining to determine whether the institution at issue is, in law, a charitable trust, a trust instrumentality of the United States, a federal agency, or some hybrid thereof.

That is precisely the question asked by the Appellant.

Appellant has argued that the Smithsonian Institution's peculiar legal status governs the existence and scope of fiduciary obligations, beneficiary interests, and the availability of equitable remedies. Appellees, while acknowledging the Smithsonian's status as a "trust instrumentality" for certain purposes, contend that

such status has no legal consequence for standing. The District Court dismissed the action without resolving this antecedent question.

The judiciary's constitutional obligation "to say what the law is," *Marbury*, and its historic equitable jurisdiction "to compel the execution of trusts," *Hunter*, require more. Where the legal identity of an institution is itself the predicate to determining whether a legally protected interest exists, judicial silence cannot substitute for judicial decision. The Court need not agree with Appellant's ultimate theory to recognize that it must first determine the governing legal framework before concluding that no cognizable trust-based injury exists.

This appeal therefore presents more than a dispute between litigants. It presents a threshold question of institutional law that falls squarely within the Judiciary's constitutional and equitable responsibilities.

III. THE DOJ'S OWN BRIEF DEMONSTRATES THE NEED FOR FULL APPELLATE REVIEW.

Perhaps the most striking feature of Appellees' Motion for Summary Affirmance is that it simultaneously relies upon—and minimizes—the Smithsonian's peculiar legal status.

On one hand, Appellees cite **Dong** and acknowledge the Smithsonian's trust-instrumentality character.

On the other, they contend that this status carries no meaningful consequence for Appellant's asserted trust-based injuries.

Amicus submits that the Government's own presentation illustrates why summary affirmance is inappropriate.

If the Smithsonian's legal character is sufficiently unusual to require reliance upon a line of cases distinguishing it from ordinary federal agencies, then that very peculiarity counsels against resolving the appeal through an expedited procedural device intended only for cases in which "the merits are so clear as to warrant summary action."

The Government's argument is sophisticated. The Appellant's argument is substantial. Their disagreement concerns first principles. That is precisely the sort of legal dispute that benefits from full adversarial briefing rather than abbreviated disposition. Otherwise this issue will continue to fester, and critics of the Institution would have no recourse but to move for Congress defund it entirely, as they have done with the Corporation for Public Broadcasting.

IV. CONCLUSION

This case presents a question whose significance in the interest of the public extends well beyond the interests of the parties.

The Smithsonian Institution is one of the most peculiar legal entities in the American constitutional system. Created pursuant to a private charitable bequest, accepted by Congress, governed by federal statute, administered by a Board of Regents composed of constitutional officers and congressional appointees, supported by federal appropriations while simultaneously maintaining trust funds and trust employees, and repeatedly described by courts, Congress, the Executive Branch, and the Smithsonian itself as a "trust instrumentality of the United States," the Institution occupies a peculiar place in American law.

Yet the legal consequences of that peculiar status remain unsettled.

SAVING AMERICA'S STORY devotes extensive analysis to the Smithsonian's fiduciary responsibilities, trust structure, statutory mission, governance, and constitutional relationships. Whether one agrees or disagrees with every conclusion reached in that report is immaterial. The report itself demonstrates that the questions presented by this appeal are not at all frivolous, and remain unsettled. They are substantial questions of institutional law currently engaging every branch of the Federal Government—Executive, Judicial and Legislative.

Against that backdrop, Appellees ask this Court to dispose of the appeal through the extraordinary procedure of summary affirmance by characterizing Appellant's claims as presenting no substantial question. Respectfully, the Government's own briefing proves the opposite.

While acknowledging aspects of the Smithsonian's peculiar trust-instrumentality status, Appellees urge the Court to conclude that such peculiar status has no meaningful bearing upon the existence of legally protected interests asserted by Appellant. Whether that position is ultimately correct is not the question presently before the Court. The question is whether it is so obviously correct on its face that further briefing is unnecessary.

It is obviously not.

This appeal relies upon basic principles articulated by the Supreme Court for nearly two centuries. It is "the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). It is likewise "the peculiar province of equity, to compel the execution of trusts."

Hunter v. United States, 30 U.S. 5 Pet. 173 173 (1831). Such complementary principles, declared contemporaneously with the establishment of the Smithsonian, counsel against resolving this appeal by relying upon erroneous assumptions rather than reasoned argument.

The Judiciary need not accept Appellant's theory of the case to recognize that the legal identity of the Smithsonian Institution bears directly upon the source, scope, and existence of the legally protected interests he asserts. Where the legal character of the institution itself remains central to the standing inquiry, summary affirmance risks deciding the jurisdictional question before the governing legal framework has been fully examined.

The responsibility of an appellate court includes articulation of governing law. The Smithsonian's peculiar constitutional, statutory, and fiduciary character presents an issue of exceptional public interest deserving of careful consideration through the ordinary appellate process.

For these reasons, **Amicus Curiae respectfully urges this Court to deny Appellees' Motion for Summary Affirmance and permit this appeal to proceed to full briefing on the important and unresolved legal questions regarding the status of the Smithsonian Institution, as presented.**

Respectfully submitted,

Dr. Laurence A. Jarvik