

# THE PEOPLE'S SMITHSONIAN AMENDMENT AND REFORM BILL

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*A Petition to Amend the Smithsonian Act of Congress of 1846*

- A Draft

***We the People*** of the United States of America, beneficiaries of the will of James Smithson, petition the trustees of the Smithson trust, elected representatives, and members of the United States Congress, according to the 1846 Smithsonian Act of Congress, to create a bill by the name of ***The People's Smithsonian Reform Bill***.

The Smithsonian Act of Congress of 1846 declares in SEC. 11.: "That there is reserved to Congress the right of altering, amending, adding to, or repealing, any of the provisions of this act," paving the way for this current amendment of said, in its fully realized and lawful version to be fully considered and passed into law.

The repeated scandals, corruption, and ongoing legal confusion about the Smithsonian Institution's entity status and the ongoing failed reform bills submitted by Congresswoman Eleanor Holmes Norton and Senator Chuck Grassley have failed to rectify these and other pressing issues. Congresswoman Holmes Norton stated that she

introduced similar legislation in the three prior Congresses: H.R. 2622 (113th), H.R. 1786 (112th), and H.R. 4775 (111th). In the 110th Congress, Senator Chuck Grassley (R-IA) introduced a similar bill in the Senate, S. 3276, the Open and Transparent Smithsonian Act of 2008. No further action was taken on any of these bills.

As a result of these and other failed reform efforts, *We the People* of the United States of America now intervene as citizens and trust beneficiaries.

In Section 1 of the Smithsonian Act of Congress, we read:

James Smithson, esquire, of London, in the Kingdom of Great Britain, having by his last will and testament given the whole of his property 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; and the United States having, by an act of Congress, received said property and accepted said trust; Therefore, For the faithful execution of said trust, according to the will of the liberal and enlightened donor...

For the United States of America to receive James Smithson's bequest, there was a need for a trust to be created and for trustees to be appointed to carry out Smithson's will. This role of fiduciary trustee the U.S. Congress accepted as the representatives of the People of the United States, the beneficiaries. Hence it is the duty of Congress as trustee to act in the best interests of both the testator, James Smithson, and of the beneficiaries of the Smithson trust, *We the American People*.

For Congress to faithfully carry out this fiduciary obligation today, individual congressional representatives must take up their fiduciary duty and write a bill or cosponsor another bill calling for the amendment of the Smithsonian Act of Congress. This action is warranted for a multitude of reasons, including the multiple failed attempts to reform the Smithsonian Institution via failed bills. Serving as an example and bolstering this popular demand, in 2015, Congresswoman Eleanor Holmes Norton stated some of the systemic deficiencies crying out for a reform bill:

"The Smithsonian Institution could not continue as the nation's foremost cultural institution without the 70 percent of its budget that comes from federal taxpayers," Norton said. "There is no reason why its operations and deliberations should be kept from the public. The Smithsonian is not a private club. Even publically-traded corporations must have public meetings, save specifically named exceptions. FOIA requirements are quite ordinary rules that all federal agencies in an open and democratic society must follow, such as making board meetings and administrative records, among others, publically available, except for traditionally confidential matters, such as internal personnel issues and trade secrets. The recent history of mismanagement at the Smithsonian took place out of sight in a tax-supported entity whose meetings and proceedings were closed to the public. The fiduciary responsibility of the Smithsonian Regents demands not only considerable attention to ensure appropriate oversight,

but also ensuring the public the opportunity to assess both the tax-supported entity and its federal overseers.”

This statement should compel a special bipartisan committee to be formed to review the recommended amendments and then refine them according to appropriate laws. Once created, the bill must pass through the processes necessary to convert the amendments into law.

Not that American citizens need standing in Congress, but serving as legal support for this citizen intervention, the Supreme Court in Hawaii, in *Kapiolani Park v. City County*, ruled that “members of the public, as beneficiaries of the trust, have standing to bring the matter to the attention of the court.”

The U.S. Supreme Court in *Raven v. Smithsonian* refused to hear Raven’s case and answer the unanswered question of federal law, which was mandated by the Uniform Trust Code for the District of Columbia in § 19–1302.01, which reads: “(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.”

It is clear that both as American citizens and beneficiaries of the Smithsonian trust, we have standing and the right to appeal to the United States Congress, as Smithsonian trustees, to act according to our wishes.

Also, according to the Uniform Trust Code for the District of Columbia, the trustee must administer the trust solely in the interest of the beneficiaries, the People of the United States of America. And when that duty has been violated, it is the right of the beneficiaries to call the trustee (in this case, the U.S. Congress) to account.

#### § 19–1308.01. Duty to administer trust.

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

### Amendment Goals and Considerations

#### *Entity Status and Relationship between the Smithsonian and the Federal Government*

Definition of the entity status of the Smithsonian Institution: This definition must include the Smithsonian Institution’s legal composition, structure, and laws under which the Smithsonian Institution must function (i.e., Is the Institution a private institution to carry out the private will of its founder or a government institution to carry out the will of the federal government?). The

definition must determine the role of Congress in relation to the Smithsonian Institution. The definition must specify the boundary of Smithsonian property ownership between the trust, the trustee, and the beneficiaries.

The independent and exhaustive 392-page investigation into Smithsonian Secretary Small's corrupt conduct in the 2007 IRC (Independent Review Committee) Report commissioned by the Smithsonian Board of Regents found (on page 29): "Unlike the vast majority of nonprofit organizations whose governance is informed by applicable state statutes and common law of fiduciary duties, there is no developed body of federal common law setting forth the duties and obligations of the Board." These non-profit experts identified the glaring cause at the root of the then-current Smithsonian scandal and others, that no laws apply to the Smithsonian because the status of the Smithsonian Institution has not been defined by Congress, and the U.S. Supreme Court has refused to take up the matter.

The federal courts have continued to confuse the Smithsonian Institution's identity. In Federal Case number No. 1:17-cv-01240 (TNM), Judge McFadden ruled: "The Smithsonian is a government institution through and through," contradicting Supreme Court Justice William Taft, who declared in his capacity as Smithsonian chancellor that the "The Smithsonian Institution is not, and never has been considered a government bureau. It is a private institution under the guardianship of the Government."

#### *Board of Regents*

Be it Enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the recommendations of the June 18, 2007, Independent Review Committee Report commissioned by the Smithsonian Board of Regents be adopted and implemented. Included in Congresswoman Holmes Norton's 2015 Smithsonian Modernization Bill is the dissolution of the Board of Trustees (the current members of the Board of Regents, being government officials, are far too busy to manage the Smithsonian properly) as it presently exists, to be replaced by twenty-one competent private-citizen trustees, who are professionals in all of the general fields of learning embraced by the Smithsonian Institution. Their composition, appointments, duration, and legal accountability to Congressional oversight require definition.

The objectives and other appropriate elements of the Holmes Norton and Grassley bills must be reconstituted in this new bill in light of the precise legal definition, including the submission of the Smithsonian Institution to the U.S. Constitution and all appropriate laws applying to public trusts that are administered by the federal government.

### *The Constitution and Free-Speech Rights in the Smithsonian Institution*

The recommendation in support of the First Amendment's free-speech rights applying to the Smithsonian, written in the U.S. House of Representatives Committee on Government Reform staff report from December 2006, was titled "Intolerance and Politicization of Science at the Smithsonian" and said, "Because of the Smithsonian's continuous refusal to take action in the Sternberg case, Congress should consider statutory language that would protect the free-speech rights regarding evolution of scientists at all federally funded institutions." The Congressional report's recommendation conflicts with the ruling in *Raven v. Sajat*, where Judge McFadden declared the First Amendment doesn't apply to the Smithsonian Institution, denying Mr. Raven his First Amendment free-speech rights.

The question of who is speaking when the Smithsonian Institution's officers make executive decisions needs to be answered. Is it government speech or constitutionally protected private free speech? Does the Smithsonian violate the separation-of-powers doctrine when making decisions, since the Board of Regents is composed of members of all three branches of the federal government? In *Raven v. The Smithsonian*, the court ruled Smithsonian decisions constitute federal-government speech.

### *Transparency*

Be it further enacted: That all Smithsonian business meetings are to be open to the public, and that all records, minutes, resolutions, etc., be available upon request by beneficiaries and members of the public. That the Freedom of Information Act (FOIA) apply as well as the Uniform Trust Code for the District of Columbia §19-1308 regarding the Duty to Inform and Report (a).

### *Participation Rights*

Be it further enacted: That the committee clearly defines the role of Smithsonian Trust beneficiaries as participants in the will of Smithson and their rights therein. The Smithsonian Trust beneficiaries have been actively participating in the trust since its inception and must continue to do so. That clearly written participatory criteria in every field of learning to be "increased" should be established for the Smithsonian beneficiaries.

### *Smithsonian Property Disclosure and to Whom Does It Belong?*

Be it further enacted: That the Smithsonian property in the amount of \$541,379.63 loaned to the federal government at 6 percent interest per annum in 1836 (Smithsonian Act of Congress SEC. 2) be accounted for in the amount of approximately \$28,000,000,000. The Smithsonian property or its interest should be returned to the trust fund to be used specifically for the operation of the

Smithsonian Institution as initially directed. That amount may be sufficient for further institution operations, removing the necessity for yearly appropriations from the taxpayers. (See H.R.2979 - Public Broadcasting Self-Sufficiency Act of 1996.)

Clarification of the entity status will pave the way for appropriations accountability, ensuring that taxpayer money, if still needed after the return of the Smithsonian property, will be available for public scrutiny. As a result, the question of whether or not appropriations should even continue will then need to be answered. The American taxpayer should not be subsidizing a private, legally unaccountable organization wherein partisan agendas are pursued without any legal restraints.

In *Raven v. Smithsonian*, Judge Trevor McFadden erroneously claimed that the Smithsonian Institution and its buildings belong to the federal government:

First, the National Portrait Gallery has historically communicated messages from the government, in the sense that it compiles the artwork of third parties for display *on government property* [emphasis added].

And yet, the Smithsonian Institution is known to be a private entity whose attorneys have claimed, for example, here in the *Washington Post*:

Yet Peter G. Powers, the Smithsonian's general counsel, said yesterday that virtually all Smithsonian properties, including the museums on the Mall in Washington, *legally belong to the Institution and not the federal government* [emphasis added].

#### *Will of James Smithson*

In the light of Secretary Joseph Henry's original "Programme of Organization" from 1847, we find a clear and concise interpretation and definition of the will, purpose, and goals of the Smithsonian Institution. Be it further enacted: That all relevant knowledge on controversial subjects deemed acceptable to be increased and diffused under the trust according to the original Smithsonian "Programme of Organization" be given equal funding and exhibition space. That specific trustees be appointed to manage a new (to be created) Smithsonian Department of Controversial Subject Matter.

The chief goal of the People's museum is to "increase and diffuse knowledge," thus ensuring the People have the choice of deciding what side of the issues of controversy they come down on based upon the best available information from differing points of view.

If the federal government wants to get its own National Portrait Gallery for its own agenda, speech, and governmental artistic objectives to be expressed, then let the government build its own

gallery and call it, for example, the National Portrait Gallery, not to be confused with the Smithsonian National Portrait Gallery.



**Please fill out the letter below with the date, year, then your full name, state, address, and congressional district.**

Dear Honorable Congressional Representative.....,

On this date, ..... in the year ....., I .....,  
citizen of the United States of America, of the State of....., residing at,  
....., in the..... congressional  
district, urge you, my elected U.S. Congressional Representative to act immediately and without  
delay on this petition to reform the Smithsonian Institution via the **Smithsonian People’s  
Reform Bill**, by creating new legislation that will cause or become the amendment of the  
Smithsonian Act of 1846, in harmony with the issues raised above. I solemnly trust, that you  
Congressman/Congresswoman ....., the lawfully elected representative  
of my will as a citizen of these United States, will give unwavering attention to this matter. I  
respectfully request, in writing, your acknowledgment of the reception of this letter, and periodic  
updates of your progress in compelling reform at *our* Smithsonian Institution.

Yours sincerely,

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(Sign above this line)

## PRINTING AND MAILING INSTRUCTIONS

(YOU DO NOT NEED TO MAIL THIS PAGE)

1. YOU WILL NEED 2 REGULAR ENVELOPES
2. PRINT AND SIGN 2 COPIES OF **THE PEOPLE'S SMITHSONIAN REFORM BILL** DOCUMENT
3. MAIL 1 COPY TO YOUR ELECTED CONGRESSIONAL REPRESENTATIVE
4. MAIL THE 2ND COPY TO: **THE RAVEN SOCIETY, 714 BALDWIN ST. ELMIRA, NEW YORK, 14904 (WE WILL GATHER ALL COPIES TO PERSONALLY DELIVER BY THE TRUCKLOAD TO CONGRESS AT A FUTURE DATE. SIGN UP AT THE [WWW.THERAVENSOCIETY.ORG](http://WWW.THERAVENSOCIETY.ORG) TO KEEP UP WITH THE REFORM BILL'S PROGRESS.)** (PLEASE CLEARLY MARK THE LETTER ON THE OUTSIDE IDENTIFYING IT AS THE REFORM BILL COPY)
5. FOLLOW UP WITH A WEEKLY PHONE CALL TO YOUR REPRESENTATIVE TO CONFIRM THE RECEPTION OF YOUR LETTER. (MARK YOUR CALENDAR)
6. UPON ACKNOWLEDGEMENT, MARK YOUR CALENDAR AND WAIT 15 DAYS AND CALL AGAIN TO REQUEST WHEN YOU CAN EXPECT YOUR REPRESENTATIVE TO MOVE ON YOUR LETTER. (MARK YOUR CALENDAR AGAIN)
7. AFTER 30 DAYS IF YOU HAVE NOT HEARD ANYTHING FROM YOUR REPRESENTATIVE, PRINT, SIGN, AND DATE ANOTHER COPY OF THE REFORM BILL AND MAIL IT TO YOUR REPRESENTATIVE. **GO BACK TO NUMBER 5 AND START AGAIN**, AND KEEP CALLING AND MAILING UNTIL YOU HEAR BACK. (***DO NOT STOP UNTIL WE HAVE COMPELLED THE LAW TO CHANGE.***)
8. ANOTHER OPTION IS TO PERSONALLY VISIT THE OFFICE OF YOUR REPRESENTATIVE AND HAND DELIVER YOUR LETTER.
9. INFORM YOUR FRIENDS, FAMILY, NEIGHBOURS, COLLEAGUES, PASTOR, RABBI, OR BUSINESS ASSOCIATES AND ENCOURAGE THEM TO READ 'ODIOUS AND CERBERUS' AND TO ACT ON THE BILL AS YOU HAVE DONE.