PARTIES TO THE PROCEEDING AND CORPORATE STATEMENT

19-6548

Petitioner

Julian Marcus Raven 'pro se'

Not a corporate party

ORIGINAL

Respondents

The USA,

The Smithsonian National Portrait Gallery

Director Kim Sajet
&
Dr. Richard Kurin
&
The Board of Regents

Are defendants in the District Court

And appellees in the Court of Appeals

10

PETITION FOR A WRIT OF CERTIORARI

Petitioner, 'pro se' Julian Marcus Raven respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The order granting Summary Affirmance to Respondents is attached at to this filing. A
The Denial of Rehearing 'en banc' is attached to this filing. B
The 'Mandate' of the Court is attached. C
The District Court Opinion is attached to this filing. D

JURISDICTION OF THE COURT

This Court has jurisdiction over the instant case pursuant to:

28 U.S.C. Section 1254(1) Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Supreme Court Rule 10(a) A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

The United States Court of Appeals for the District of Columbia Circuit rendered its order granting Respondent's motion for Summary Affirmance on **May 17th, 2019**

Petitioner then filed both a Petition for Rehearing by the Appeals Court Panel and a Petition for Rehearing 'en banc'. The Petition for Rehearing 'en banc' was denied on **August 12th, 2019**.

The Petition for Panel Rehearing received a 'Mandate' on the **23 of August 2019** stating that the original order of the court is the formal mandate of this court.

JURISDICTON OF THE COURT OF ORIGINAL INSTANCE

Supreme Court Rule 14(g)(ii) Jurisdiction in the court of first instance:
U.S. Code § 1331: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.
§11- 501 Civil Jurisdiction (c) relating to the execution or validity of wills devising real property within the District of Columbia, and of wills and testaments properly presented for probate in the United States District Court for the District of Columbia, and the admission to probate and recording of those wills;

PROVISIONS OF THE CONSTITUION AND OF LAW

This case involves:

1. The **'FREE SPEECH'** clause to the **1st Amendment** to the United States Constitution: "Congress shall make no law...abridging the freedom of speech"

2. The **'DUE PROCESS'** clause of the **5th Amendment** to the United States Constitution:
"No person shall be... deprived of life, liberty, or property, without due process of law; "
5th Amendment to the United States Constitution

3. The **'EQUAL PROTECTION UNDER THE LAW'** provision in the **5th Amendment** to the United States Constitution: "No person shall be... deprived of life, liberty, or property, without due process of law;"

4. The **'COMMON LAW OF TRUSTS'** expressed in the District of Columbia's Uniform Trust Code and the Restatement of Trusts.

TABLE OF CONTENTS

TABLE OF CONTENTS CONTINUED

APPENDIX TABLE OF CONTENTS

AUGUST 23RD,
2019.....C

DISTRICT COURT FOR THE DISTRICT OF COLUMBIA '**MEMORANDUM OPINION**'- 17-CV-01240-TNM JUDGE TREVOR N. MCFADDEN SEPTEMBER 19TH,
2019.....D

LETTERS OF REFERENCE BY ELECTED OFFICIALS ETC

CONGRESSMAN TOM REED, NEW YORK 23RD
SENATOR TOM OMARA, 58TH DISTRICT
ASSEMBLYMAN CHRIS FRIEND, 124TH ASSEMBLY
ELMIRA MAYOR DANIEL MANDELL
NEW YORK REPUBLICAN PARTY CHARIMAN ED COX
CHEMUNG COUNTY REPUBLICAN CHAIRMAN RODNEY STRANGE
SCHUYLER COUNTY REPUBLICAN PARTY CHAIRMAN LESTER CADY
SANDRA KING, YATES COUNTY REPUBLICAN CHAIRWOMAN
JOSEPH SEMPOLINSKI, STEUBEN COUNTY REPUBLICAN CHAIRMAN
FRANK ACOMB RADIO HOST, FRANKLY SPEAKING AM 1230/FM 106.9
ART COLLECTORS ANDREA GATES AND BRAD DAVIS

SMITHSONIAN RELATED DOCUMENTS

DIRECTOR KIM SAJET REJECTION LETTER BISHOP E.W. JACKSON
DR. RICHARD KURIN REJECTION LETTER
SENATOR CHUCK GRASSLEY LETTER TO CHANCELLOR JOHN ROBERTS
2007 IRC REPORT TO THE BOARD OF REGENTS ON FIDUCIARY DUTY
SMITHSONIAN MODERNIXATION ACT 2015

TABLE OF AUTHORITIES

iii

ADDITIONAL AUTHORITIES

ENTITY STATUS INTRODUCTION

On its face the instant case, Raven v. The Smithsonian National Portrait Gallery, is remarkably similar in fact and principle to **LeBron v. National Railroad Passenger Corporation, 513 U.S. 374**, that was decided in 1995 in favor of LeBron, with a 8-1 Supreme Court majority including Justices Thomas, Ginsburg and Breyer. The instant case involves a different government run entity that is waiting for a Supreme Court determination as to its entity status and constitutional and legal responsibilities. The instant case is unprecedented, thus making the instant case worthy of the Supreme Court granting a Writ of Certiorari.

The critical national importance of the instant case is crying out for the entity status and constitutional implications to be determined since they are necessary to align the actions of the Federal Government and its officers to the appropriate laws against which Petitioners and any other Citizen's claims can be tested. "A contrary holding would allow government to evade its most solemn constitutional obligations...," **cf. *Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia, 353* U. S. 230, 231**

THE NATURE AND HISTORY OF THE SMITHSONIAN INSTITUTION

In the instant case, Petitioner has dug deep into the history, founding documents, Congressional Acts and case law regarding the Smithsonian Institution, which paint a completely different picture compared to the Department of Justice in its arguments in Defense of the Smithsonian Respondents. The District Court and the Appeals Court have not even cited the Smithsonian Act

of Congress[1], the Smithsonian Values and Code of Ethics[2] in their decisions. Where as in LeBron v. Amtrak we read:

> "The Supreme Court considered the history of passenger rail, the history of government-owned and government-controlled corporations, the congressional statute that created Amtrak, and Amtrak's organizational structure before concluding that Amtrak "is an agency or instrumentality of the United States for the purpose of individual rights guaranteed against the Government by the Constitution." *Id.* at 394. ***White Coat Waste Project v. Greater Richmond Transit Co.*, Civil Action No. 3:17cv719, at *13 n.16 (E.D. Va. Sep. 25, 2018)**

STARE DECISIS & STEPHEN GIRARD'S TRUST AND THE JAMES SMITHSON TRUST

Although the Smithsonian entity status question before the Court remains unanswered, providence had guided Petitioner to discover a parallel case, already decided by this Court. God is particularly interested in last wills and testaments, and the fulfillment of fiduciary duty by trustees as established throughout the Old and New Testaments, which is the basis for the common law of trusts, as expressed in the Magna Charta from the year 1215.

The Smithsonian Institution was established in 1846, Girard College in 1848 so even their similar historical origins are of interest when considering their entity status. Girard was one of the richest men in America, Smithson a very wealthy man from the United Kingdom. The trustees were the United States/Congress/Board of Regents in Smithson's case and the State of Pennsylvania/Pennsylvania legislature/Board of Directors Of City Trusts in Girard's case. Both involve legislature appointed boards of governance. The Supreme Court decision in ***Pennsylvania v. Board of Trusts*, 353 U.S. 230, (1957)** is controlling in the instant case

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[1] https://www.loc.gov/law/help/statutes-at-large/29th-congress/session-1/c29s1ch178.pdf

[2] https://www.si.edu/content/governance/pdf/Statement_of_Values_and_Code_of_Ethics.pdf

regarding the constitutional accountability the government has when acting as trustee of a private trust.

> "Stephen Girard, by a will probated in 1831, left a fund in trust for the erection, maintenance, and operation of a "college." The will provided that the college was to admit "as many poor white male orphans, between the ages of six and ten years, as the said income shall be adequate to maintain." The will named as trustee the City of Philadelphia. The provisions of the will were carried out by the State and City and the college was opened in 1848. Since 1869, by virtue of an act of the Pennsylvania Legislature, the trust has been administered and the college operated by the "Board of Directors of City Trusts of the City of Philadelphia." Pa. Laws 1869, No. 1258, p. 1276; Purdon's Pa. Stat. Ann., 1957, Tit. 53, § 16365. ***Pennsylvania v. Board of Trusts*, 353 U.S. 230, (1957)**

SMITHSONIAN INSTITUTION ENTITY STATUS

As a result of the District Court's denial of Petitioner's motion to amend his complaint with breach of trust claims and subsequent petition for such claims to be tested against the common law of trusts, that did: "...no more than state an alternative theory for recovery." and "Rule 15(a) declares that leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded." ***Foman v. Davis*, 371 U.S. 178, 182 (1962)** The Smithsonian's trust status was dissolved unlawfully by the District Court.

Petitioner was requesting his breach of trust claims be tested against the common law of trusts expressed in the Uniform Trust Code for the District of Columbia, for breaches of fiduciary trust by trustee delegates of the Smithson trust since the Smithsonian itself declares:

> "The Smithsonian Institution is a **public trust** whose mission is the increase and diffusion of knowledge. The Smithsonian was established by the United States Congress to carry out the **fiduciary responsibility** assumed by the United States in accepting the bequest of James Smithson to create the Smithsonian Institution. We are accountable to the general public as well as to the Smithsonian's multiple stakeholders in carrying out this responsibility. We recognize that the public interest is paramount.(Bold added.)" **Smithsonian Statement of**

Values And Code of Ethics[3]

"...the Smithsonian concedes it is, at least insofar **as the United States, as trustee**, holds legal title to the original Smithson trust property and later accretions.(Bold added.)" ***Dong v. Smithsonian Institution*, 125 F.3d 877, 883 (D.C. Cir. 1997)**

"Although Edes Home is technically a charitable corporation chartered by Act of Congress, the trial court concluded, and the parties agree, that rules applying **to charitable trusts** govern the standing issue.(Bold added.)" ***Hooker v. Edes Home*, 579 A.2d 608, 611 n.8 (D.C. 1990)**

"Once we have determined that **a fiduciary obligation** exists by virtue of the governing statute or regulations, it is well established that we then look to the **common law of trusts**, particularly as reflected in the Restatement (Second) of Trusts, for assistance in defining the nature of that obligation.(Bold added.)" **WMATribe v. U.S., 249 F.3d 1364, 1377 (Fed. Cir. 2001)**

Again, Respondents represented by the Department of Justice and both lower Courts have denied every effort by Petitioner to test his claims against the common law of trusts by denying the simple fact that the Smithsonian Institution is a public trust that is merely 'run' by the federal government as trustee as written in the **1846 Smithsonian Act of Congress**:

"...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..." **Preamble to the Smithsonian Act of Congress of 1846**:

Acting as chancellor of the Smithsonian, Chief Justice William Taft declared, in documents created by the Department of Justice that attempt to define the Smithsonian's entity status, that: "the Smithsonian Institution is **not** and has **never** been considered a government bureau. It is a **private institution** under the guardianship of government.(Bold added.)"[4] and yet the Department of Justice representing the Smithsonian and the lower courts have ignored these facts

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3 https://www.si.edu/content/governance/pdf/Statement_of_Values_and_Code_of_Ethics.pdf

4 https://www.justice.gov/file/24096/download

claiming the Smithsonian is an agency of the Federal Government as if created by the Federal Government for a government objective, whose decisions are not constrained by the constitution because of its 'government speech' powers and that it does not owe a Petitioner a fiduciary duty as trustee, thus denying all of Petitioners constitutional and breach of trust claims.

NO LAW APPLIES TO THE SMITHSONIAN INSTITUTION!

It is bizarre how in LeBron, Amtrak argued that Amtrak was absolutely 'not' the government to skirt its constitutional constraints and in the instant case the government is arguing that the Smithsonian is so much part of the government that is does not comport to the constitution when acting to skirt its constitutional responsibilities claiming 'government speech' powers and equating itself with the State of Texas! And yet the facts clearly state that the Smithsonian is a private institution, created by a private will, not created for a government objective as Amtrak was, thus even less 'government' than Amtrak and thus a public trust that is merely 'run' by the government as trustee.

UNITED STATES ACTING AS MERELY TRUSTEE

The United States nonetheless is constrained by the United States Constitution for its actions as Smithson Trustee:

> "The Constitution constrains governmental action "by whatever instruments or in whatever modes that action may be taken." *Ex parte Virginia*, 100 U.S. 339, 346 347 (1880)" ***Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374, 392 (1995)**

> "Therefore, even though the Board was **acting as a trustee**, its refusal to admit Foust and Felder to the college because they were Negroes was discrimination by the State. Such discrimination is forbidden by the Fourteenth Amendment. ***Brown* v. *Board of Education*, 347 U.S. 483**."(Bold added) ***Pennsylvania v. Board of Trusts*, 353 U.S. 230, 231 (1957)**

Therefore the Federal Government/Smithsonian Officers owe *every* fiduciary and constitutional duty and obligation incumbent upon trustees according to the constitution and the common law of trusts to the American People and in the instant case Petitioner.

As a private trust simply 'run' by the government, the Smithsonian does not need to comply with the Privacy Act, the Freedom of Information Act, the Federal Advisory Committee Act or The Administrative Procedure Act[5] etc. because it is not part of the government and yet at the same time since it is 'run' by the government, its actions are constrained by the constitution.

> "We have held once, *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961), and said many times, that actions of private entities can sometimes be regarded as governmental action for constitutional purposes. See, *e.g.*, *San Francisco Arts Athletics, Inc.* v. *United States Olympic Comm.*, 483 U.S. 522, 546 (1987); *Blum* v. *Yaretsky*, 457 U.S. 991, 1004 (1982); *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 172 (1972)." ***Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374, 378 (1995)**

Founding Smithsonian secretary Joseph Henry clearly hammered this fact right at the beginning of and into the founding Smithsonian organizational document, the 'Programme of Organization'[6], for the simple reason that even at the Smithsonian's establishing, government overreach already existed. In clause number two we read:

> "The bequest is for the benefit of mankind. The Government of the United States **is merely a trustee** to carry out the design of the testator." 3: "The institution in **not a national establishment, as is frequently supposed**, but **the establishment of an individual**, and is to bear and perpetuate his name.(Bold added)"

And to galvanize these legal facts, the Board of Regents, comprising then of the President of the United States, the Supreme Court Chief Justice, three members of Congress and three members

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[5] https://www.si.edu/ogc/legalhistory

[6] https://siarchives.si.edu/collections/siris_sic_481

of the Senate and appointed members of the public etc. acting as trustees of the Smithson will, ratified this document on December 13th, 1847[7]. It seems redundant to have to say this, but those men knew what they were doing and they knew what the Smithsonian was and what the Smithsonian was not.

But as time passed, that clear entity status understanding and definition would become lost, causing the speech writer for Chief Justice Warren Burger in 1971 to ask;

> "But just what is the Smithsonian Institution? Why does it look and operate the way it does? It most certainly **is not a government agency**, nor a component of the executive branch of the federal government. It is not a part of the Congress or the Judiciary. Instead, it is administered independently by a Board of Regents, much like a private board of trustees... Moreover, the Smithsonian Institution, as a trust instrumentality, **continues to confuse members of Congress, the courts, and the executive branch**. With surprising regularity, elements of the executive or legislative branches discover the fact that the Smithsonian is a **non-governmental institution**...If this all seems ambiguous, then I must say it is an ideal ambiguity. In similar fashion, the Smithsonian has made and will continue to make its most significant research and educational contributions to the needs of the public precisely because **it is not an organizational part of the federal government.**[8](Bold added.)"

As can be seen, time and error have long passed, causing what Justice Benjamin Cardozo called the 'disintegrating erosion', so that even egregious free speech violations and breaches of fiduciary trust by federal officials are minimized and justified as an entire institution is redefined in order to deprive Petitioner of his benefits and owed duties as a trust beneficiary and of his 1st and 5th Amendment constitutional rights. The end result being the public ridicule, libel and mockery of Petitioner for even 'daring' to sue the 'sacred' institution and the immunization of federal officials from their fiduciary and constitutional duties and from prosecution.

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[7] https://siarchives.si.edu/history/this-day-smithsonian-history/december

[8] "*a speech William W.Warner (CC ï¿½83) drafted for Chief Justice Warren Burger*"

> "Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. **Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior** (bold added). As to this there has developed a tradition that is **unbending and inveterate. Uncompromising rigidity** has been the attitude of courts 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 at a level higher** than that trodden by the crowd. **It will not consciously be lowered by any judgment of this court.**" (Bold added.) ***Meinhard v. Salmon*, 249 N.Y. 458, 464 (N.Y. 1928)**

The Smithsonian Institution's entity status is crystal clear, as can be seen from the volume of official documentation presented and yet in contrast, the lower courts have done nothing but further muddy the waters as to the correct entity status definition, leaving Petitioner in his grieved and injured condition without relief, that cries out to the Supreme Court for justice!

UNITED STATES COURT OF APPEALS ORDER[9]:
SUMMARY AFFIRMANCE GRANTED!

> **APPELLATE COURT ORDER:** "The merits of the parties actions are **so clear** as to warrant summary action. (Bold added)"

Without the critical question as to the entity status of the Smithsonian Institution having been answered by the Supreme Court, which one would think is required for 'clarity' and yet the Appeals court can declare 'clarity'? The Supreme Court needed to answer the very same question in LeBron because, "Effectively, Amtrak's agency status served as the hook for its liability." ***Am. Premier Underwriters, Inc. v. Nat'l R.R. Passenger Corp.*, 709 F.3d 584, 588 (6th Cir. 2013)**

> **APPELLATE COURT ORDER:** "Appellant has **not** demonstrated that the district Court erred in dismissing his First Amendment claim.(Bold added.)"

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[9] U.S. Court of Appeals For the District of Columbia Circuit ORDER, No. 18-5346 September term, 2018, Filed May 17, 2019 SEE APPENDIX TABLE OF CONTENTS

Firstly, the Court of Appeals in denying Petitioner his appeal, by granting Summary Affirmance to Respondents, failed to heed the Supreme Court's injunction when dealing with cases raising 1st Amendment issues. The appeals court just went along with the District Court's dismissal without making an independent examination of the whole record as the appellate record shows. No statement by the Appeals Court declares that they have made an independent examination of the whole record, in contrast, the same court in 1984 declared:

> "In making this determination, we are guided by the Supreme Court's recent decision in *Bose Corp. v. Consumers Union*, 466 U.S. 485 (1984)...In *Bose,* the Court set out the responsibility of an appellate court in cases raising first amendment issues: "an appellate court has **an obligation** to make an independent examination of the **whole record** in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression. (Bold added.)" *Id.* (citations and quotation marks omitted). *See National Association of Letter Carriers v. Austin,*418 U.S. 264, 282, 94 S.Ct. 2770, 2780, 41 L.Ed.2d 745 (1974); *Greenbelt Cooperative Publishing Ass'n v. Bresler,*398 U.S. 6, 11, 90 S.Ct. 1537, 1540, 26 L.Ed.2d 6 (1970). ***Lebron v. Washington Metro. Area Transit Auth*, 749 F.2d 893, 897 (D.C. Cir. 1984)**

The District Court denied Petitioner his constitutional rights having his political free speech silenced by a government trustee delegate, by redefining the trust entity status. Petitioner argued exhaustively as to his 1st, 5th and Equal Protection constitutional case and the Supreme Court supports Petitioner's contentions because as declared:

> "In ***Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia*, 353 U.S. 230 (1957)*(per curiam)***, we held that Girard College, which had been built and maintained pursuant to a **privately erected trust**, was nevertheless a governmental actor for constitutional purposes because it was operated and controlled by a board of state appointees,...(Bold added.)" ***Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374, 397 (1995)**

The District Court had to unlawfully dissolve the controlling influence of the common law of trusts over the Smithson trust, which is an active and passive public trust with codified

participatory rights for a 'special interest'[10] limited class of trust beneficiaries, in the instant case Artists at the 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 added)" 20 U.S.C. § 75b
>
> "Because the Smithsonian is a government entity and the Gallery's art selection decisions constitute government speech, the First Amendment does not limit the Gallery's ability to say what it wants to say" ***Raven v. Sajet*, 334 F. Supp. 3d 22, 28 (D.D.C. 2018)**

And since the Smithsonian entity status was clearly distorted by the Department of Justice's arguments and the District Court's granting 'government speech' powers to a private institution, thus violating Petitioner's 1st Amendment free speech rights etc., it is frustratingly exhausting, and seemingly impossible to demonstrate. It is like trying to convince someone that the color blue is actually blue when they have learned since childhood that blue is actually red. To argue to the contrary, when the trustees, the Department of Justice and the defenders of trusts, the Courts trample the will of the testator James Smithson and unilaterally and magically dissolve the trust, thus destroying its entity status to exempt it from it duties and refuse to defend trust beneficiaries, We The People, explains according to the appeals court Petitioner's supposed inability to demonstrate anything, because to the courts, the color blue is actually red!

> **APPELLATE COURT ORDER:** "The District Court correctly held that because of the discretion afforded to the appellees in selecting artwork to display, see U.S.C. 75e, Appellant failed to State a 5th Amendment Due process or Equal protection claim…"

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[10] "An exception to the general rule, recognized by this court, exists in situations where an individual seeking enforcement of the trust has a "special interest" in continued performance of the trust distinguishable from that of the public at large." ***Hooker v. Edes Home*, 579 A.2d 608, 612 (D.C. 1990)**

This is like saying that the trustees discretion in Girard College gave them the right to violate the constitution and to deny "...petitioners Foust and Felder ...for admission to the college. They met all qualifications except that they were Negroes. For this reason the Board refused to admit them. " ***Pennsylvania v. Board of Trusts*, 353 U.S. 230, 231 (1957)**

Petitioner was similarly rejected because of his political viewpoint as a patriotic, conservative Trump supporter. Politically liberal Respondent Sajet, Director of the portrait gallery, made that very clear in her off the record, personal, biased and hostile phone call to Petitioner in which she objected to the 'too political and too pro-Trump' viewpoint contained in the painting, but defended the acceptance of the donation[11] and exhibition of the liberal political viewpoint expressed by the artist Shepherd Fairey in the pro-Obama 'Hope' campaign political poster for the 2009 and 2013 presidential inauguration exhibition/celebration. And accepted on loan by billionaire art collectors the two giant Obama photos by Chuck Close for the 2013 Obama inauguration.

> "There is no doubt that the poster at issue here conveys a political message; nor is there a question that WMATA has converted its subway stations into public fora by accepting other political advertising... political speech may not constitutionally be restricted in a public forum... we reverse the district court and hold that WMATA violated the plaintiff's first amendment right of free speech." *Lebron v. Washington Metro. Area Transit Auth*, 749 F.2d 893, 896 (D.C. Cir. 1984)

In Penn. v. Board of Trusts, the U.S. Supreme Court righted the Pennsylvania Supreme Court's discriminatory decision by stating:

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[11] Donation of the Obama 'Hope' poster to the Smithsonian by D.C. lobbyist Tony Podesta who said "It seemed like a historic moment for the country, and a chance to do something for art and Democrats,... Gallery spokeswoman **Bethany Bentley** said it will be up by Inauguration Day. " Tony Podesta, brother of transition co-chairman **John Podesta,** told the Washington Post, January 7, 2009

> "The Board which operates Girard College is **an agency** of the State of Pennsylvania. Therefore, even though the Board was acting as a trustee, its refusal to admit Foust and Felder to the college because they were Negroes was discrimination by the State. Such discrimination is forbidden by the Fourteenth Amendment. ***Brown* v. *Board of Education*, 347 U.S. 483**.(Bold added.) ***Pennsylvania v. Board of Trusts*, 353 U.S. 230, 231 (1957)**

This is identical to Petitioner's experience under the 5th Amendment equal protection discrimination clause because the Smithsonian Board of Regents is **'an agency'** of the Federal Government. The discrimination in the instant case though was not for his skin color but because of Petitioner's political beliefs and political viewpoint expressed in a painting of the President Elect of the United States of America, submitted as a tribute to be displayed at the Smithsonian National Portrait Gallery, simply on loan for the historic inauguration of President Elect Trump on January 20th, 2017.

COMPLETE AND UNFETTERED DISCRETION

> "But even if "the increase and diffusion of knowledge" was originally a private goal, Congress ratified it, and the United States now has **complete discretion** in how to fulfill it.(Bold added.)" ***Raven v. Sajet*, 334 F. Supp. 3d 22, 29 (D.D.C. 2018)** This statement of 'complete discretion' lines up with the Court's remarkable statement that; "...the Smithsonian's management has complete, **unfettered discretion**...(Bold added.)" ***Raven v. Sajet*, 334 F. Supp. 3d 22, 35 (D.D.C. 2018)**

'Complete' and 'unfettered' discretion sounds like judicially certified tyranny, immune even from Supreme Court scrutiny. The District Court, remarkably erected another layer of impenetrable legal unaccountability in defense of the Smithsonian Institution, a public trust, which flies in the face of written codified standards of ethical conduct of its officers and written standards and procedures for portraiture acceptance as in the instant case. This judicial tyranny is precisely the very reason at the heart of Respondent's egregious actions, since Smithsonian officials for now, act like they are above the law and are untouchable!

"Invariably, the Court has felt obliged to condemn systems in which the exercise of such authority was not bounded by precise and clear standards. The reasoning has been, simply, that the danger of censorship and of abridgment of our precious First Amendment freedoms is too great where officials have unbridled discretion over a forum's use. Our distaste for censorship — reflecting the natural distaste of a free people — is deep-written in our law." ***Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975)**

"WMATA's refusal to accept this poster for display because of its content is a **clear-cut prior restraint**. Here, WMATA has by official action prevented Mr. Lebron from using a public forum to say what he wants to say. *Southeastern Promotions,* 420 U.S. at 553, 95 S.Ct. at 1243. As such, WMATA "carries a **heavy burden** of **showing justification** for the imposition of such **a restraint**." *Organization for a Better Austin v. Keefe,* 402 U.S. 415, 419, 91 S.Ct. 1575, 1577, 29 L.Ed.2d 1 (1971). *See New York Times Co. v. United States,* 403 U.S. 713, 714, 91 S.Ct. 2140, 2141, 29 L.Ed.2d 822 (1971) (per curiam). We impose this burden on public officials because of "[o]ur distaste for censorship...(Bold added.)" ***Lebron v. Washington Metro. Area Transit Auth*, 749 F.2d 893, 896 (D.C. Cir. 1984)**

And remarkably the U.S. Court of Appeals for the District of Columbia Circuit agrees with the decision to grant complete and unfettered discretion to the government when acting as trustee.

'GOVERNMENT SPEECH', REALLY?

In LeBron even after it was determined by the Supreme Court that Amtrak was sufficiently 'government' so as to be constitutionally liable, Amtrak's selection of advertising content for the Spectacular Screen in Penn Station was never considered to be 'government speech' and that would have seemed to be the case even more so than in the instant case since Amtrak was created for a government purpose: "We hold that where, as here, the Government creates a corporation by special law, for the furtherance of governmental objectives" ***Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374, 400 (1995)** in contrast, the United States received and accepted the responsibility to carry out the will or objective of a private citizen James Smithson:

"...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;**"(Bold added) **Preamble to the Smithsonian Act of Congress of 1846.**

In Pennsylvania v. Board of Trusts, defendants did not try to argue that the selection of boys for participation in the Girard trust constituted protected government speech as per the ruling and as such was immune from the constraints of the U.S. Constitution as in the instant case. The Courts did not rule accordingly either, the trustees exercise of discretion was condemned by the Supreme Court as racial discrimination in violation of the 14th Amendment to the U.S. Constitution:

> "Therefore, even though the Board was acting as a trustee, its refusal to admit Foust and Felder to the college because they were Negroes was discrimination by the State. Such discrimination is forbidden by the Fourteenth Amendment. *Brown* v. *Board of Education*, 347 U.S. 483." ***Pennsylvania v. Board of Trusts*, 353 U.S. 230, 231 (1957)**

The District Court's decision, in order to grant 'government speech' powers to the private Smithsonian Institution has devastating legal and constitutional ramifications. The decision deprived Petitioner of his trust beneficiary participatory rights since the Smithson trust is an active and passive public trust[12] and Petitioner's 1st Amendment political 'free speech' rights and 5th Amendment 'property' and equal protection rights. The decision subtly dissolved the private property rights and private speech rights expressed in the will of James Smithson, even though a foreigner. Mr. Smithson would have been granted full constitutional protections including property and speech rights, since his will and property was fully and unconditionally accepted by the United States. With a stroke of the pen the District Court violates the Congressional Act and sacred trust law by deeming the private will of Smithson now apparently a government objective because Congress now has discretion as trustee to how fulfill the will?

This is akin to saying every time a trustee accepts the will of a testator, the testator's will is no

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[12] 20 USC 75e: Powers of Board

longer is controlling and trust beneficiaries are powerless and have no say in the administration of the trust since the trustee has complete 'unfettered discretion' as how to fulfill the will of the testator. This is outrageous! Especially since ""It is the peculiar province of equity, to compel the execution of trusts." **Hunter v. United States, 30 U.S. 173, 188 (1831)** The District Court arbitrarily dissolved the private will of James Smithson without adherence to the lawful process of trust dissolution in contradiction to:

> "...this Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings ...Under a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, it has charged itself with moral obligations of the highest responsibility and trust. Its conduct,... should therefore be judged by the most exacting fiduciary standards. **Seminole Nation v. U.S., 316 U.S. 286, 296-97 (1942)**

The District Court's 'ratification' theory[13] is invented[14], as it cites no law granting Congress this magical power of trust dissolution and government absorption and assimilation, because Congress simply accepted the sacred responsibility of trustee to carry out the will of a deceased private citizen. Wills and trusts are never ratified they are obeyed and fulfilled!

The District Court confuses and equates the entity status of the Smithsonian National Portrait Gallery, with that of the **National Endowment for the Arts** that is a government created entity for a government purpose and interestingly created around the same time and yet they are totally different animals.

> "Because the Smithsonian is a government entity and the Gallery's art selection decisions constitute government speech, the First Amendment does not limit the Gallery's ability to say what it wants to say" *Raven v. Sajet*, 334 F. Supp. 3d 22, 28 (D.D.C. 2018)
>
> "With substantial federal funding..." *Raven v. Sajet*, 334 F. Supp. 3d 22, 30 (D.D.C. 2018)

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[13] "But even if "the increase and diffusion of knowledge" was originally a private goal, Congress ratified it, and the United States now has complete discretion in how to fulfill it." ***Raven v. Sajet*, 334 F. Supp. 3d 22, 29 (D.D.C. 2018)**

[14] The very fact that the name of the institution still is the 'Smithsonian Institution' is evidence the private will of Smithson is still controlling since the name was a condition of the will and further evidence of the institution's private entity status.

Even considering the federal funding question and its use by the Court to validate and justify the Court's 'Government Speech' theory that translates in the instant case into a license for unfettered, arbitrary and legally untouchable actions by federal officials, while at the same time in a schizophrenic manner claiming submission to the 1st Amendment to the US Constitution, not even the government in NEA v. Finley claimed it speaks through the expressions subsidized by the government. And in Rosenberger v. Rector one can see the underlying principle controlling when and where government speech contours end.

> "the Smithsonian is part of the United States government for purposes of the First Amendment. *See Crowley* , 636 F.2d at 744." ***Raven v. Sajet*, 334 F. Supp. 3d 22, 30 (D.D.C. 2018)**

> "We have stated that, even in the provision of subsidies, the Government may not "ai[m] at the suppression of dangerous ideas," *Regan* v. *Taxation with Representation of Wash.*, 461 U.S. 540, 550 (1983) (internal quotation marks omitted), and if a subsidy were "manipulated" to have a "coercive effect," then relief could be appropriate." ***National Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998)**

> " the NEA itself concedes, a more pressing constitutional question would arise if government funding resulted in the imposition of a disproportionate burden calculated to drive "certain ideas or viewpoints from the marketplace." *Simon Schuster, Inc.* v. *Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991);" ***National Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998)**

> "The Government freely admits, however, that it neither speaks through the expression subsidized by the NEA," ***National Endowment for the Arts v. Finley*, 524 U.S. 569, 611 (1998)**

> "The quoted language in *Widmar* was but a proper recognition of the principle that when the State is the speaker, it may make content-based choices. When the University determines the content of the education it provides, it is the University speaking," ***Rosenberger v. Rector & Visitors of University of Virginia*, 515 U.S. 819, 833 (1995)**

DEFENESTRATION EXTRAVEGANCE

The District Court continued to squeeze the Smithsonian into its newly created 'constitution and trust free' mode, twisting and forcing the Smithsonian into the Supreme Court's decision in Pleasant Grove v. Summum in order to grant the Smithsonian Institution 'government speech' powers, depriving Petitioner of his 1st Amendment free speech rights:

> "Traditional government actors are subject to political restraints, Mr. Raven points out, echoing the Supreme Court's observation that "a government entity is ultimately 'accountable to the electorate and the political process for its advocacy.' " *Summum* , 555 U.S. at 468, 129 S.Ct. 1125 (citation omitted). In contrast, Mr. Raven argues, the Smithsonian's "trustees and

> their assistants do not qualify for 'Gov. Speech' powers ... since they cannot be voted out!" Opp. 7. ***Raven v. Sajet*, 334 F. Supp. 3d 22, 30 (D.D.C. 2018)**

The Court omitted the Supreme Court citation, confirming its absurd defenestration theory. The Supreme Court in Summun stated clearly that government speech powers are derived from the electorate:

> "And of course, a government entity is ultimately "accountable to the electorate and the political process for its advocacy." *Southworth,* 529 U.S., at 235, 120 S.Ct. 1346. "If the citizenry objects, newly elected officials later could espouse some different or contrary position." *Ibid.*" ***Pleasant Grove City v. Summum*, 555 U.S. 460, 468-69 (2009)**

But remarkably the District Court now declares the Smithsonian Officials are 'accountable to the electorate and political process' ibid which is absurd. The Board of Regents is made up of eight government officials and nine members of the public all appointed and all unpaid. By statute (U.S. Code § 44) eight members are required to form a quorum so as to do business. So nine appointed citizens plus the unelected Chief Justice out of reach of the electorate, make a majority of the board membership not subject to the political process in any way at all and since statute requires only eight for a quorum, the institution can function quite well without the seven elected officials. So even stretching the District Court's defenestration theory into its absurd ultimate theoretical end, where citizens rally to remove from office any or all of the officials who happen also to be board members, the Board of Regents is unaffected!

And the instant case is dealing with the actions of a federal official, an employee of the federal government who decisions and actions for now are untouchable.

> "It is true that the Smithsonian, Cerberus-like, sports heads from the Executive, Legislative, and Judicial Branches. 20 U.S.C. § 42. But political accountability persists. Of the eight Regents who serve because of their federal office, voters could defenestrate seven:" ***Raven v. Sajet*, 334 F. Supp. 3d 22, 30 (D.D.C. 2018)**

And as will all distortions, aberrations and mutations, they can only produce more of the same, so goes with the District Court opinion. For in granting constituted 'government speech' powers illegitimately to the board of Smithsonian regents made up of all three branches of government, the District Court ruling violates the Constitutions separation of powers doctrine.

VIOLATION OF THE SEPARATION OF POWERS

The Court of Appeal's decision violates the separation of powers by certifying the District Court's decision that attributes duly conferred constituted powers derived from the electorate in the form of 'governmental speech' powers to a private, non-governmental trust instrumentality managed by appointed, non-paid elected officials from all three branches of the government and of the public.

The District Court declared: "It is true that the Smithsonian, Cerberus-like, sports heads from the Executive, Legislative, and Judicial Branches. 20 U.S.C. § 42." **Raven v. Sajet, 334 F. Supp. 3d 22, 30 (D.D.C. 2018)**(Bold added.)

This fiduciary trustee arrangement encroaches not upon the boundaries of demarcation separating the Legislative, Executive and Judicial branches of government as established in the United States Constitution so long as it operates within its own boundaries of establishment within the Smithsonian Act of Congress of 1846. For as Justice William Taft declared in his capacity as Chancellor: "The Smithsonian Institution is not and has never been considered a government bureau. It is a private institution under the guardianship of government."

The Appellate Court's decision is in conflict with:

"...where the whole power of one department is exercised by the same hands which possess

> the whole power of another department, the fundamental principles of a free constitution, are subverted." The Federalist No. 47, pp. 325-326 (J. Cooke ed. 1961) (emphasis in original). " **Mistretta v. United States, 488 U.S. 361, 381 (1989)**
>
> "While the Constitution diffuses power the better to secure liberty…It enjoins upon its branches separateness but interdependence, autonomy but reciprocity." Youngstown Sheet Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952) (concurring opinion)." **Mistretta v. United States, 488 U.S. 361, 381 (1989)**

You cannot have "separateness but interdependence" ibid. or "autonomy but reciprocity" ibid. when sitting at the same table and making decisions in quorum or as one unified body. "the greatest security against tyranny — the accumulation of excessive authority in a single Branch …" The Federalist No. 51, p. 349 (J. Cooke ed. 1961).**Mistretta v. United States, 488 U.S. 361, 381 (1989)**

Petitioner is not speaking about the accumulation of power in a single branch, but that the Panel's Decision creates a whole new branch of unified unaccountable, un-defenestratable federal power where this tri-part accumulation occurs.

The domino effect of the entity status distortion continues its effect all the way down the Appeals Court ruling:

> **APPELLATE COURT ORDER:** "Even if Appellant had sufficiently stated these 1st and 5th Amendment claims the District court properly concluded dismissal of appellant's damages claims under Bivens…was warranted on qualified immunity grounds…"

The District Court decided that: "Qualified immunity protects government officials from civil liability for constitutional violations…**Since the Free Speech Clause does not apply** to government art decisions like this one, and no Fifth Amendment rights are at issue, the Defendants did not violate "clearly established" constitutional law, for all the reasons given above.(Bold added.)" ***Raven v. Sajet*, 334 F. Supp. 3d 22, 34 (D.D.C. 2018)**

Distort the Smithsonian entity status to deprive Citizens of their constitutional rights strips them of the ground to stand on when pursuing money damages from rogue officials who have clearly violated "clearly established" constitutional law concerning the 1st and 5th Amendments to the U.S. Constitution and the common law of trusts.

> "The principle that has emerged from our cases "is that the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." ***City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984)**. "The "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Ashcroft v. American Civil Liberties Union,* 535 U.S. 564, 573, 122 S.Ct. 1700, 152 L.Ed.2d 771 (2002) " ***Act Now to Stop War & End Racism Coal. v. District of Columbia*, 905 F. Supp. 2d 317, 329 (D.D.C. 2012)**

For the Supreme Court not to grant the Bivens remedy for the violations of the preeminent free speech clause of the 1st Amendment would seem contrary to everything the U.S. Constitution stands for. The 1st Amendment is there for a reason and its preeminence is there because of its protections against rogue officials who violate preeminent, vital and critical civil rights that must be protected. And until Congress creates the appropriate law, how else will individual federal officers be put on notice as to their constitutional obligations without applying Bivens to the free speech clause of the 1st Amendment?

> "...the Constitution's special concern with threats to the right of citizens to participate in political affairs is no mystery. The First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth* v. *United States*, 354 U.S. 476, 484 (1957); *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 269 (1964). "[S]peech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison* v. *Louisiana*, 379 U.S. 64, 74-75 (1964). Accordingly, the Court has frequently reaffirmed that speech on public issues occupies the "`highest rung of the hierarchy of First Amendment values,'" and is entitled to special protection. *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982); *Carey* v. *Brown*, 447 U.S. 455, 467 (1980).
> ***Connick v. Myers*, 461 U.S. 138, 145 (1983)**

Denying Bivens for violations of the preeminent free speech clause of the 1st Amendment where

rogue federal officials can willfully act in such an egregious, hostile and deliberate manner, knowing full well they are silencing the political free speech and a viewpoint that they despise is outrageous and an affront to the 1st Amendment. Biven's may be a disfavored remedy but it exists precisely for the instant case. And because Bivens was extended in Davis v. Passman for gender 'discrimination' under the 5th Amendment equal protection under the law clause, Petitioner's case has two lawful reasons, the 1st Amendment free speech and 5th Amendment viewpoint discrimination to extend Bivens to his case.

Qualified immunity did not protect government officials from their racially discriminatory actions in Penn. v. Board of Trusts when they violated the 14th Amendment, and by all accounts their actions were not driven by racial animus, but rather the terms of the will of Girard. Unlike the instant case where Respondent Sajet proudly tweeted to the official Smithsonian Twitter page from the un-hinged and vicious anti-Trump 'Women's March' protest. At the protest pop star Madonna publically fantasized about blowing up the White House, and Respondent tweeted how much she loved the anti-Trump protest, held the day after President Trump's inauguration. These outrageous actions are evidence of the anti-Trump animus Respondent Sajet had toward Petitioner and his pro-Trump painting, proving Respondent Sajet knew exactly what she was doing in calling Petitioner off the record and silencing Petitioner's 1st Amendment political free speech! Respondent Sajet's final sentiments to Petitioner says it all: 'I am the Director of the Smithsonian National Portrait Gallery, your application will not even be considered, you can appeal it all you want!' and then hangs up the call. The District Court and Appeals Court immunizing Respondent's actions by saying the 1st Amendment "Does not apply" shocks the conscience!

PARALLEL RECOVERY

Deny the trust status of the Smithsonian and deny Petitioner his right to amend his complaint with breach of trust claims removes the grounds for prosecuting Respondents according to the law and puts Respondents out of reach of both common and federal law.

The egregious breaches of trust committed by Respondents are to be judged against the common law of trusts and breaches of trust are to be equally judged and remedied by the comprehensive Uniform Trust Code for the District of Columbia[15]. Within the Uniform Trust Code there are wide and far reaching options for the Courts to grant relief to Petitioner.

Deny Petitioner his right to amend his complaint with breach of trust claims strips Petitioner of the injury remedies contained within the common law of trusts for breaches of trusts. So much so that a Court may order "...**any** other appropriate relief. (Bold added.)" and that included monetary damages, compliance with the Smithson trust and the written procedure for portraiture consideration or simply order the Smithsonian to show the painting. **§ 19–1310.01. of the Uniform Trust Code of the District of Columbia: Remedies for breach of trust.**

Deny the public trust status of the Smithsonian and it strips trust beneficiaries, We The People of their property interests in the will of Smithson. That although title of the property held by trustees in public trusts cannot be extended to the entire public as this would create litigious chaos, those members of a small class of persons identified in the trust i.e. *Artists* in this case do have special interest in the execution of the trust and can enforce the trust through litigation.

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[15] **§ 19–1310.01.** of the **Uniform Trust Code of the District of Columbia: Remedies for breach of trust.**

> The better reasoned view — consistent with the Restatement's recognition of representative standing for a member of a "small class of persons" — is that a particular class of potential beneficiaries has a special interest in enforcing a trust if the class is sharply defined and its members are limited in number. *Alco Gravure, supra*, 64 N.Y.2d at 465, 490 N.Y.S.2d at 119, 479 N.E.2d at 755. *See also St. John's-St. Luke Evangelical Church v. National Bank*, 92 Mich. App. 1, 13-19, 283 N.W.2d 852, 858-60 (1979) (where class of beneficiaries not "uncertain and indefinite," standing should not be denied)
> ***Hooker v. Edes Home*, 579 A.2d 608, 614 (D.C. 1990)**

Once a person has been granted standing as a member of a limited class of persons, this gives them standing to bring suit and by extension extends equitable sharing in the property title as how else could standing be granted without property rights afforded through property title. Thus the denial of participation in the passive and active public Smithson trust by rogue trustees who are government officials constitutes a violation of the 5th Amendment's deprivation of property without the due process of law clause.

When participation in the active public trust, specifically artists in the instant case, are deprived of participation in their property without the due process of law, their 5th Amendment property rights are violated. How can egregious violations of 1st Amendment and 5th Amendment equal protection under the law and Smithsonian written and codified due processes for the consideration and acceptance of portraiture, i.e. participation in the Smithson trust by trust beneficiaries not be a deprivation of "property without the due process of law" under the 5th Amendment? James Smithson's property is held in trust by the United States as trustee for The People of the United States benefit and participation.

FINALLY

> **APPELLATE COURT ORDER:** "Finally, the District Court correctly denied as futile Appellant's motion to amend his complaint with breach of fiduciary and infliction of emotional distress claims under the Federal Tort Claims Act, 28 U.S.C. Section 1346(b)."

This is the case of Petitioner's motion to amend his complaint with breach of trust claims under the FTCA. Although contained within that same motion was the citation of the Uniform Trust Code for the District of Columbia delineating the laws regarding fiduciary duties incumbent on trustees. Petitioner did not comprehend how that law could apply to the Federal Government, did not understand how the Restatement of Trusts applied, so at the time it seemed that the FTCA was his only non constitutional remedy. Since the Administrative Procedure Act does not apply to the Smithsonian, there seemed to be no laws or remedies that could apply.

This all changed with the discovery of multiple Supreme Court decisions regarding the administration of Indian land Trusts, and that how the actions of the Federal Government were measured against the common law of trusts/Restatement of Trusts Petitioner had already cited in the motion to amend.

Before the District Court even rendered its memorandum opinion, Petitioner filed his petition with the District Court to exchange the motion to amend his complain with the FTCA law with the Uniform Trust Code for the District of Columbia for breaches of trust. This petition was completely ignored by the District Court in its final decision and the motion was denied.

The docketed petition to the Court, prior to the Court's ruling may have been better titled as a **'motion'** or **'cross motion'**, or may have required a withdrawal of the original motion to then be re-filed accordingly, but Appellant is a 'pro se' litigant, trying his very best to follow the law and the local rules, but who is obviously at a massive disadvantage when navigating the federal court system and who's adversary at law is the Smithsonian Institution represented by the full legal power of the U.S. Department of Justice!

Appellant was not requesting any "unfair advantage" i.d., but simply what Appellant in owed by the Court's codified **duty** towards Appellant, that places the burden upon the Court and Judges to exercise the Court's discretion on behalf of justice when a 'pro se' litigant may have failed in a procedural matter as it is written:

> "[1A] The judge has an ***affirmative*** role in facilitating the ability of ***every person*** who has a legal interest in a proceeding **to be fairly heard**. Pursuant to Rule 2.2, the judge should not give self-represented litigants an unfair advantage or create an appearance of partiality to the reasonable person; ***however***, in the interest of ensuring fairness and access to justice, judges should make **reasonable accommodations** that help litigants who are **not** represented by counsel to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law." **Code of Judicial Conduct For The District of Columbia**

WHERE ARE PETIONER'S 'REASONABLE ACCOMODATIONS'?

The Supreme Court is clear that "***mere technicalities***" ibid do not trump "decisions on the merits" even if defective procedurally or even pleaded poorly especially by a '**pro-se**' litigant and the rules governing Judicial conduct require any claim be heard "**according to law**" (Bold added.) Rule 2.2/2.6:

"It is too late in the day, and entirely contrary to the spirit of the Federal Rules of Civil Procedure, for decisions on the merits to be avoided on the basis of such mere technicalities. "The Federal Rules reject the approach that pleading ***is a game of skill*** in which one misstep by [182] counsel**(pro se litigant, added.)** may be decisive to the outcome, and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson*, 355 U. S. 41, 48. The Rules themselves provide that they are to be construed "to secure the **just**, speedy, and inexpensive determination of **every action**." Rule 1. **Foman v. Davis, 371 U.S. 178(1962)** (Bold, itallics added.)

How could a decision on the merits have been reached by the District Court when the Court denied Appellant his right to amend his complaint so that Appellant's claims could be lawfully heard "**according to law**" i.d. in this case the Uniform Trust Code for the District of Columbia? This is an abuse of discretion by the Court, that has the appearance of either a deliberate prejudicial ruling because Appellant is a 'pro se' litigant and is not being taken seriously and so Appellant's claims should be discarded and not given the chance to be 'heard according to law' or the abuse of discretion is a deliberate scheme exercised by the Courts to protect the Smithsonian Institution from a claim that will finally bring the institution to its correct status and operation and once and for all break the 'Status Quo Bias' controlling the perpetuated pre-suppositional error that treats the Smithsonian as a federal entity when it is not. The Federal Government is merely the trustee/guardian of the private charitable trust.

MOTION TO AMEND COMPLAINT COMPORTED WITH PRINCIPLES IN FOMAN v. DAVIS

Petitioner's ignored 'petition' for the FTCA law code to be exchanged with the Uniform Trust Code required nothing more, since Appellant's entire breach of trust claims were all based on the egregious fiduciary violations of Smithsonian officials, they just needed to be tested against the appropriate law.

"The Court of Appeals also erred in affirming the District Court's denial of petitioner's motion to vacate the judgment in order to allow amendment of the complaint." ***Foman v. Davis*, 371 U.S. 178, 182 (1962)**

This statement is in principal identical to Petitioner's situation and yet at this is a more extreme stage of litigation since judgement had already occurred and the Supreme Court still reversed in

the interest of justice because:

Appellant clearly cited the law codes for the Uniform Trust Code for the District of Columbia **in** Appellant's motion to amend Appellant's complaint with FTCA claims not knowing at the time that Appellant's claims could have simply been filed sounding in the common law of trust. The reason being as stated now multiple times, Appellant is a 'pro se' litigant who did not know that at the time, but upon finding multiple Supreme Court decisions concerning measuring the actions of the Federal Government when acting as trustee against the common law of trust, Appellant added a response to Appellee's motion in opposition to the motion to amend the complaint with a petition to the District Court to exchange the law.

No added claims, no added evidence, but the identical claims must be tested against the correct law. And the District Court ignored the cited Uniform Trust Code for the District of Columbia in the original motion.

The District Court abused its discretion by failing to state that the FTCA was not the appropriate legal remedy, because the appropriate law was right in front of the Court within the same motion to amend the complaint with FTCA claims! The District Court should have ordered Petitioner to cure this deficiency and to file the motion under the Uniform Trust Code for the District of Columbia. Or the District Could have simply ordered the claims be adjudicated against the correct law i.e. the Uniform Trust Code for the District of Columbia as written in the motion.

And that was before Appellant specifically petitioned the court to exchange the legal remedy and before the Court had rendered its judgement! "As appears from the record, the amendment

would have done no more than state an alternative theory for recovery." ***Foman v. Davis*, 371 U.S. 178, 182 (1962)**

> Rule 15(a) declares that leave to amend "shall be freely given when justice so requires"; **this mandate is to be heeded.** See generally, 3 Moore, Federal Practice (2d ed. 1948), ¶¶ 15.08, 15.10. If the underlying facts or circumstances relied upon by a plaintiff may be a **proper subject of relief**, he **ought to be afforded an opportunity to test his claim on the merits**.(Bold added.) ***Foman v. Davis*, 371 U.S. 178, 182 (1962)**

PETITIONER OWED NO DUTY, OWED NOTHING

APPELLATE COURT ORDER: "In the light of Appellees discretion to select portraits for display, Appellant has failed to demonstrate that he was owed any duty. See 20 U.S.C. Section 75e"

The appellate court forgot to add 'unfettered' to its order since that is what they are agreeing with:

> "But as explained above, the Smithsonian's management has **complete, unfettered** discretion to determine how best to pursue "the increase and diffusion of knowledge among men," 20 U.S.C. § 41, at least when it comes to the selection of art for the Gallery. 20 U.S.C. § 75(e).(Bold added.)" ***Raven v. Sajet*, 334 F. Supp. 3d 22, 35 (D.D.C. 2018)**

No compliance with the 1st and 5th Amendment to the U.S. Constitution, no compliance with the common law of trusts, no compliance with Federal law, No compliance with the federal code of conduct for federal employees, no compliance with Smithsonian written standards for portraiture acceptance, no compliance with written ethical and procedural Smithsonian standards, no compliance with the FOIA, the APA etc. and you owe no one "any duty" ibid.

But:

> "Once we have determined that **a fiduciary obligation** exists by virtue of the governing statute or regulations, it is well established that we then look to the **common law of trusts**,

particularly as reflected in the Restatement (Second) of Trusts, for assistance in defining the nature of that obligation.(Bold added.)" **WMATribe v. U.S., 249 F.3d 1364, 1377 (Fed. Cir. 2001)**

And the common law of trusts states the trustees in all of their dealings involving the trust and trust beneficiaries have the supreme duty of care, codified as:

The 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." **§ 19–1308.01 Uniform Trust Code, District of Columbia**
The Duty of Loyalty: "(a) A trustee shall administer the trust solely in the interests of the beneficiaries."(Bold added.) **§ 19–1308.02. Uniform Trust Code, District of Columbia**
The Duty of Impartiality: "If a trust has 2 or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests." § 19–1308.03. Uniform Trust Code, District of Columbia
The Duty of Prudent Administration: "A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust.
In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution." **§ 19–1308.04. Uniform Trust Code, District of Columbia**
The Duty of Recordkeeping: "(a) A trustee shall keep adequate records of the administration of the trust." **§ 19–1308.10.5**
The Duty to Inform and Report: "(a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a
beneficiary's request for information related to the administration of the trust.""

FINALLY, FINALLY

The Supreme Court has the final word thankfully:

"Invariably, the Court has felt obliged to condemn systems in which the exercise of such authority was not bounded by precise and clear standards. The reasoning has been, simply, that the danger of censorship and of abridgment of our precious First Amendment freedoms is too great where officials have **unbridled discretion** over a forum's use. Our distaste for censorship — reflecting the natural distaste of a free people — is deep-written in our law.(Bold added.)"
***Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975)**

On July 9th, 2015 Julian Raven embarked upon a creative artistic, spiritual, patriotic and political journey that involved painting the now historic, patriotic, predictive and symbolic portrait of then presidential candidate Donald J. Trump. The nearly 8x16 foot painting in acrylics on stretched canvas and beautifully framed in a decorative red, white and blue frame became the most recognized pro-Trump political portrait/painting during the 2015-2016 presidential campaign.

From New York to Los Angeles, reactions to the painting often ended with the comments that this painting should end up in the Smithsonian National Portrait Gallery in Washington D.C. After an historic grassroots political campaign, candidate Trump became the President of The United States on November 8th, 2016.

What followed was the disturbing and disheartening experience with the Smithsonian National Portrait Gallery and The Smithsonian Institution.

THE FACTS

Upon receiving confirmation of Petitioner's publicly supported[1] application via Smithsonian Affiliates Director Harold Closter, Petitioner called the Director of the Smithsonian NPG Kim Sajet on the morning of December 1st. 2016 at around 11:20 a.m. to inquire as to the 'application' process. Petitioner wanted to ensure that there was nothing lacking in the 20 plus page application document, which included letters of recommendation from elected representatives from upwards of 200,000 citizens. These included Congressman Tom Reed, New York Senator Tom O'Mara, Elmira Mayor Dan Mandell, New York GOP chairpersons, Cox, Cady, King, Strange, radio personality Frank Acomb and art collectors Gates & Davis.

1 - Appendix

After leaving his phone number with the assistant to the Director of the NPG, since the assistant informed Petitioner that the Director was not in or available that day. Petitioner expected a call the next day or thereafter to inform him of any further steps necessary for the application process.

Within 15 minutes of the initial phone call to the assistant, Petitioner's cell phone rang. It was a call from the same Washington D.C. number Petitioner had just dialed. It was to his surprise Director Kim Sajet.

This surprise call would lead to an eleven minute long tense debate and at times argument with the NPG Director Sajet[16]. The Director would lay out her arbitrary objections by inventing her own standards for acceptance into the portrait gallery, partially citing a portion of a written standard, lying about the creation of the Obama 'Hope' poster, as she argued, raising her voice, insisting that it had been created from life, having just refused Petitioners for not being created from life. Having already derided the painting's content, expressed in a condescending tone referring to the American eagle and American flag, Respondent Sajet would go on to enforce her political animus expressed in a biased and anti-Trump opinion in any and every way that she could. The Painting was refused even before given a fair and objective consideration according to Smithsonian Institution standards.(Note: Prior Restraint) .

[16] Kim Sajet is not an American citizen and yet she is the curator of American pictorial history.

DIRECTOR KIM SAJET OBJECTIONS:

These objections ranged from its size being 'too big' to partially and incorrectly citing an NPG standard for acceptance that the portrait was not from life, to claiming the image was too 'Pro-Trump', 'Too Political', 'not neutral enough' and finally 'no good'.

"TOO BIG"

Without any cordial, official, or written[1] acknowledgement of Petitioner's officially and publicly supported application, Director Sajet by phone, began to object to the Trump Portrait. It is clear from the first objection about the size that the director was rushing to judgment and expressing a personal, partial, arbitrary and biased opinion. Nowhere in the Smithsonian Institution's standards of acceptance for portraiture is there any mention of supposed appropriate sizes of paintings! In fact the NPG has huge paintings that dwarf Petitioner's.

The hasty phone call less than 24 hours after the application had been received, calls into question whether Director Sajet even consulted with Chief Curator Brandon Brame Fortune or any other official at that time, as is required by Smithsonian procedures when considering a painting, this fact is yet to be discovered.

Surprisingly, after about five minutes into the heated discussion, Director Sajet when repeatedly challenged about her objection to the size of the painting, began to backtrack and eventually apologized for her ridiculous objection! This erratic behavior is evidence of a deliberate, intentional, hasty and partial personal opinion, one not based or grounded in Smithsonian Institution Standards!

1 - See appendix

The sudden change of opinion about her first objection about the scale of the painting indicated that Director Sajet clearly knew, that her words and actions were inconsistent with Smithsonian standards and procedures, since in the midst of her objecting, she dramatically made an 'about face' turn, demonstrating her opinion to be arbitrary, since the reality in the Smithsonian spoke to the contrary. This self-incriminating and guilty behavior at the outset of the conversation established the arbitrary context for the rest of the conversation, that later compelled Petitioner to investigate, and subsequently discover the reason for Director Sajet's change of mind. The evidence discovered, proves the initial objection was absolutely partial and biased against Petitioner and his Trump Portrait. Director Sajet was eager to rush to judgment and was eager to personally give Petitioner her biased objections. It is still to be discovered if Chief Curator Fortune agreed with the objection

"NOT FROM LIFE"

Director Sajet continued, saying the Trump portrait was disqualified from consideration since it was not created from life, partially citing a Smithsonian Standard for portraiture acceptance. At this point Mr. Raven was in disbelief. Petitioner immediately cited the Smithsonian reception and showing of the Shepherd Fairey Obama 'Poster' on January 13th, 2009. Petitioner being intimately acquainted with the story of its creation, appealed to the poster as evidence that the NPG surely did show work not taken from life. At this point, since the Director's second objection was now questioned, the Director repeatedly insisted that the Shepherd Fairey political campaign poster, had in fact been created from a live sitting by the artist with then Candidate Barrack Obama! This is absolutely false! The Director did not back down on this statement, thus clearly violating federal law regarding the making of false statements by federal employees and the General Principles of Ethical Conduct for Federal Employees.

98. This was where the NPG Director twisted the truth to support her bias in favor of the Obama poster and obviously Barack Obama. One only has to examine the criminal conviction of the artist in question regarding the 'Hope' poster, Shepherd Fairey to discover that the 'Hope' poster was a digitized photograph taken from the internet from AP photographer Mannie Friedman. It turns out that the 'requirement from life' rule Director Sajet cited was partially true, the Smithsonian standard did require portraits to be from life. But as with this entire story, the guideline was quoted partially since it says; "that works must be the best likeness possible; original portraits from life, *if possible*;" http://siarchives.si.edu/history/national-portrait-gallery

In actuality, out of the four Donald Trump 'portraits' the NPG owns, only one of the four was actually created from life. In reality out that one of the four 'portraits' is actually a cartoon sketch of Donald Trump! Either Director Sajet was unaware of the existing stock of the Donald Trump portraits in her possession and of their back story regarding originality from life or she deliberately obscured the truth and fabricated the argument in her repeated efforts to deny Petitioner entry into the application process? Federal Employees And Smithsonian Employees are ordered by law to be 'Loyal To the Constitution', 'Honest', 'impartial' etc. in their decisions and conduct.

"TOO PRO-TRUMP"

Director Sajet now moved to her next partial and biased objection. The Trump Portrait was too 'PRO-TRUMP'! 'It is not neutral enough' Director Sajet continued. Not only are Smithsonian Employees to be impartial, they are to follow the clearly established 'standards' for judging or testing a work of art. The 'Hope' Poster, created for Barrack Obama's political campaign in 2008 is

nothing but 'PRO-OBAMA'. The whole essence of the Obama poster was to portray Presidential candidate Barrack Obama in the most favorable political light, as a visionary leader gazing upwards! What would be the point if it was not 'PRO-OBAMA'? Again clear and blatant bias and partiality is demonstrated in this arbitrary objection.

In the 2013 'Celebration' Inauguration of President Obama, the NPG hung TWO huge 6x8 foot photo portraits of President Obama side by side along with the 'Hope' poster from 2008 a total of 3 'PRO' Obama portraits no less! And I am told that one portrait of Donald Trump is 'TOO PRO TRUMP'? This is obviously another false, biased and partial statement!

"TOO POLITICAL"[17]

The Director of the *National* Portrait Gallery from the outset of the phone call mentioned, in a condescending tone the imagery of the eagle and the American flag. Director Sajet's tone implied the painting was too patriotic. Whilst complaining that the trump Painting was not 'neutral enough' the Director repeatedly mentioned the George Washington Lansdowne portrait in the NPG since it too had a fully developed background. Furthermore, the Lansdowne portrait is layered in symbolism like the Trump Portrait, the Lansdowne portrait is not just a portrait of the face of the subject.

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[17] Petitioner's story regarding the instant case was recently the sprawling thirteen page feature in the **Washingtonian Magazine's** August 2019's issue. Although the portrayal by the politically left leaning and generally anti-Trump magazine of Petitioner is skewed, the facts of the case are pretty sound as printed. The fact that the highly respected left leaning Washingtonian magazine, known for its fact checking would cover Petitioner's story is because they spent three months investigating it. After 2 photo-shoots, nearly thirty hours of interviews and rigorous legal and editorial oversight they printed the story. They know something is very wrong with the picture, and by that Petitioner does not mean his Trump portrait. LINK: https://www.washingtonian.com/2019/08/04/julian-raven-trump-artist-national-portrait-gallery-smithsonian/

Director Sajet excused the Washington portrait whilst objecting to the Trump portrait since the Washington portrait contradicted her objection to the Trump portrait's content. An analysis of the Washington portrait reveals a much large ratio of background and body to the shoulders, head and face than is contained in the Trump Portrait that is about 40% head and face. An analysis of the Trump cartoon sketch, part of the 4 portraits owned by the NPG also reveals another contradiction to the Directors objections as to the ratio of background verses head, face and shoulders.

Again, to be noted, Director Sajet's opinion was devoid of Smithsonian Institution standards. The Director said the Trump Portrait was in fact 'TOO POLITICAL'! Again to Petitioner's astonishment, the NPG Director had now objected to the historical context, the political and presidential campaign of 2015-16, the unprecedented campaign of Donald J. Trump and to the content of the Trump Portrait. The American Flag, the Bald Eagle, the representation of the geographical United States and The Statue of Liberty are some of the American symbols used in the contextual narrative of the Trump Portrait and these are too political to be shown in the *National* Portrait Gallery? They are patriotic rather than political. The title 'Unafraid And Unashamed' is relating to Trump's character politician or not!

"NO GOOD"

After Director Sajet's objections were all refuted, her final and seemingly desperate, personal and arbitrary opinion was that she did 'not like' the portrait and the Director said that it was 'no good', again showing her personal bias against Petitioner and his painting. Again ignoring the Smithsonian Standard; "Thus, the standards for accepting portraits varied considerably from other galleries. Even today, in every instance, the historical significance of the subject is judged before the artistic merit of

the portrait, or the prominence of the artist." But regardless of what the Smithsonian has to say, Director Sajet was to have the last word and that was final!

Based upon Director Sajet's final taunting words to the Petitioner this legal complaint has been made. The final words were something like this. 'I am the Director of the National Portrait Gallery, this application will not go forward or even be considered, you can appeal my decision all you want...'

It is clear that this type of authoritarian statement evinces an abuse of authority, in that all procedural 'due process' was stripped away from Petitioner, from the Smithsonian Institution and from the Smithsonian Trust Beneficiaries, the American People. Petitioner was deprived of his constitutional right of free political speech while others of a different opinion were permitted.

Petitioner's rights were willfully & recklessly ignored, cancelled, trampled and violated! Everything the Smithsonian Institution stands for, the 'increase and diffusion of knowledge for all men', the Smithsonian Board of Regents approved standards for acceptance of portraiture, the rights of participation, the rights of procedural 'due process' that is Petitioner's right to participate in the process of consideration were thrown out of consideration.

DR. RICHARD KURIN CONCURS

Dr. Richard Kurin, having been appointed by the Board of Regents to adjudicate Petitioners appeal to the Board of Regents for their intervention at the direction of Director Kim Sajet who taunted Petitioner to appeal her unlawful decision all he wants, ignored Petitioners appeal and simply "concurred"[1] with all that Director Sajet said, making himself jointly liable for all of Petitioners claims against Director Kim Sajet.

1- See appendix.

REMAINING RESPONDENTS

The remaining respondents, Chief Curator Brandon Brame Fortune, Smithsonian Spokesperson Linda St. Thomas and The Smithsonian Board of Regents in 2016/2017 in their capacities as trustees, including Chief Justice John G. Roberts Jr., Vice President Michael R. Pence, Senator John Boozeman, Senator Patrick Leahy, Senator David Purdue, Rep. Xavier Becerra, Rep. Tom Cole, Rep. Sam Johnson, Mrs. Barbara M. Barret, Mr. Steve Case, Mr. John Fahey, Mrs. Shirley Ann Jackson, Mr. Robert P. Kogod, Mrs. Risa J. Lavizzo-Mourey, Mr. Michael M. Lynton, Mr. John W. McCarter, Jr., Mr. David M. Rubenstein are all part of Petitioner's breach of trust claims that were denied by the District and Appeals Court.

These Respondents were all served individually as trustees of the Smithson Institution, with the appeal to the Board of Regents via the Board of Regents office and Chancellor of the Board of Regents John G. Roberts. Like everyone else in this case, they have remained silent, eschewing their fiduciary duties and betraying their most sacred duty, the duty of care owed Petitioner.. They are all 'defendants' in the breach of trust claims.

CONCLUSION

Granting Petitioner's writ for certiorari and correctly defining the Smithsonian Institution's entity status will have far reaching effects both in law and civilized society for the common good and personal relief of Petitioner.

1. The Smithsonian Institution's mystery will finally be solved and what it is and what it is not will be known as to its entity status will be fully known. Legislation, appropriations, donations and the general use of the Smithsonian Institution will comply with the correct laws thus ensuring fulfillment of the will of Smithson and lawful participation in the will for the beneficiaries.

2. Trust beneficiaries, the American People will be less likely to be treated with contempt by rogue trustee officials and or any employee of the trust, as lawful compliance and the consequences of violating the constitution and the common law of trusts comes with tangible consequences thus restraining lawlessness.

3. The general public, We The People of the United States, trust beneficiaries will be encouraged to participate more fully and freely in the 'increase and diffusion of knowledge' as they learn the Smithsonian is their public institution as opposed to it being a club for the elite left wing political class, the rich, famous and powerful.

4. Conservative, Christian, Republican and pro-Trump viewpoints will be equally accepted, expressed and contribute to the will of Smithson.

5. Politically biased activist employees will need to go and work in the public sector where overt political bias and partiality can freely operate.

6. America's pictorial historical archive as composed at the national Portrait Gallery will reflect the participation and will of 60 million plus Americans who voted for Donald J. Trump for president of the United States.

7. Desperately needed reform at the Smithsonian can finally take place. Please see Smithsonian Modernization Act 2015 as an example of the continual reform efforts, but the bill sits dead on the floor of the house. And senator Grassley's letter to Chancellor John Roberts (See Appendix) regarding the "...actions of the Smithsonian Board of Regents raise as many red flags as some of the worst boards I have investigated. The American people expect and deserve better."

The Petition for a writ of certiorari should be granted!

SUPREME ORDER

Petitioner seeks the writ of certiorari by the Supreme Court to review the U.S. Court of Appeals for the District of Columbia Circuit's order granting Summary Affirmance to Respondents. The appellate order[22] to affirm the District Court's memorandum opinion[23] needs to be vacated.

The case needs to be remanded back to the District Court. The District Court's decision needs to be reversed and Petitioner's motion to amend his complaint with his breach of trust claims tested against the common law of trusts for multiple breaches of trust by Respondents be granted.

With the correct entity definition in place, Petitioner's claims for violations of the 1st and 5th Amendments to the United States constitution needs to be amended and re-filed with the updated order so as to have Respondent's answer according to law against Petitioner's claims so that discovery and trial can be reached to secure the correct and just verdict regarding Petitioner's claims.

This petition is submitted respectfully by 'pro se' Petitioner Julian Marcus Raven on Thursday the 7th of November 2019 to the Supreme Court of the United States and to the honorable justices Breyer, Thomas, Roberts, Ginsburg, Alito, Gorsuch, Sotomayor, Kagan and Kavanaugh.

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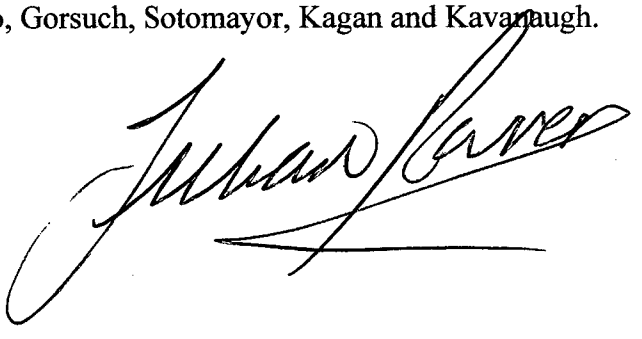

Copies of this Petition for a Writ of Certiorari

CC: 2019 Board of Regents Elected Officials: The Vice president of the United States, Mike Pence, CC: Senator John Boozman Senator Patrick Leahy, CC: Senator David Perdue, CC: Representative Doris Matsui, Representative Lucille Roybal-Allard, CC: Representative John Shimkus CC: Smithsonian Secretary Lonnie Bunch

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[22] See Appendix
[23] See Appendix