



The Honorable Charles E. Grassley
Chairman
Senate Judiciary Committee
United States Senate
Washington, D.C., 20510

The Honorable Richard J. Durbin
Ranking Member
Senate Judiciary Committee
United States Senate
Washington, D.C., 20510

Aug. 1, 2025

Dear Chairman Grassley and Ranking Member Durbin:

This is Gabe Roth with Fix the Court. I write to propose that the Judiciary Committee draft legislation that would remove the Chief Justice of the United States from the Smithsonian Institution's Board of Regents.¹ There is no need for a public official who, by virtue of his primary office, is required to be above the political fray to serve on the Board.

Despite its long and heralded history, the Smithsonian has frequently been involved in the partisan debates of the day² — even more so in recent times. When the National Museum of African American History and Culture opened in 2016, Justice Clarence Thomas was barely mentioned, and not in a positive light, despite the accomplishment of becoming the nation's second black justice. The following year, the National Portrait Gallery refused to display an acrylic painting of President Trump during his inauguration — a decision that a federal judge said “may [have] be[en]” due to “political bias.”³ And two months ago, the Board released a statement⁴ that some saw as a slight against the President and his administration's priorities.

There's another problem with the Chief Justice's inclusion on the Smithsonian Board. Part of the reason we have a *Supreme* Court is to ensure, to the extent possible, that its justices are free from entanglements that will compel recusals and leave the bench unable to render a precedential opinion. The Chief Justice's Smithsonian position is a conflict that requires him to step aside from Smithsonian-involved petitions. That leaves the possibility of a 4-4 tie, and I would like to curtail that possibility.

My request is that you consider drafting a law swapping out the Chief Justice for someone else. Who might take his place? Consider adding either a 10th citizen member or a rotating member of the Judicial Conference, such as the chair of its Executive Committee,⁵ though other options should be entertained.

I would be happy to assist your staffs in this endeavor and look forward to your thoughts.

Sincerely,

Gabe Roth
Executive Director
Fix the Court

¹ 20 U.S.C. §42(a): “The business of the Institution shall be conducted at the city of Washington by a Board of Regents, named the Regents of the Smithsonian Institution, to be composed of the Vice President, the Chief Justice of the United States, three Members of the Senate, three Members of the House of Representatives, and nine other persons [...]”

² The Smithsonian Institution's first secretary, Joseph Henry, tried to keep it “uninvolved in politics,” but, for instance, he “could not escape the abolition debate.” When it was proposed that Frederick Douglass speak in the Smithsonian castle in 1862, Henry shamefully forbade it. See Alyssa DesRochers, “Controversy in the ‘Castle,’” Smithsonian Institution Archives, Nov. 10, 2011, <https://siarchives.si.edu/blog/controversy-%E2%80%9C9Ccastle%E2%80%9D9D>.

³ See Abbie Van Sickle, Robin Pogrebin and Graham Bowley, “In Smithsonian Role, John Roberts Encounters History, Pandas and Trump,” *N.Y. Times*, July 24, 2025, <https://www.nytimes.com/2025/07/27/arts/smithsonian-john-roberts-trump-supreme-court.html>.

⁴ See “Smithsonian Statement,” June 9, 2025, <https://www.si.edu/newsdesk/releases/smithsonian-statement>.

⁵ Currently, the chair of the Exec. Committee is Sixth Circuit Chief Judge Jeff Sutton. A judge typically serves as chair for a single two-year term.