

## Selected Federal Court Cases that Affect the Smithsonian Institution

Dong v. Smithsonian Institution, 125 F.3d 877, (D.C. Cir. 1997), *cert. denied*, 118 S. Ct. 2311, 141 L. Ed. 2d 169, 524 U.S. 922 (1998). The Smithsonian is not part of the Executive Branch and therefore is not subject to the Privacy Act or the Freedom of Information Act.

Bisson v. Office of Personnel Management, 908 F.2d 947 (Fed. Cir. 1990). A Smithsonian federal employee is not entitled to credit under the Civil Service Retirement System (CSRS) for time previously spent as a Smithsonian trust fund employee.

Crowley v. Smithsonian Institution, 636 F.2d 738 (D.C. Cir. 1980). A federally-funded Smithsonian exhibit explaining the concept of evolution was within the museum's charter to increase and diffuse knowledge and did not violate the first amendment rights of the plaintiff.

Expeditions Unlimited Aquatic Enterprises, Inc. v. Smithsonian Institution et al., 566 F.2d 289 (D.C. Cir. 1977). The Smithsonian is subject to the Federal Tort Claims Act, which permits certain tort actions but not libel.

Foster v. Ripley, 645 F.2d 1142 (D.C. Cir. 1981). The dismissal of a Smithsonian employee constituted state action for the purpose of the employee's First and Fifth Amendment claims.

Johnson v. Smithsonian Institution, 189 F.3d 180 (2d Cir. 1999). Claims against the Smithsonian to recover artwork in the Institution's possession must comply with the Federal Tort Claims Act.

Mac Avoy v. Smithsonian Institution, 757 F. Supp. 60 (D.D.C. 1991). Replevin and conversion claims against the Smithsonian must comply with the requirements of the Federal Tort Claims Act.

Madison Restoration Corp. v. Smithsonian Institution, 985 F. Supp. 434 (D.N.Y. 1997). The Smithsonian is not a state, municipal, district or public benefit corporation for the purpose of filing a "public improvement lien," and therefore a lien is not valid against it in New York.

Marley v. Ibelli, 203 F. Supp. 2d 302 (D.N.Y. 2001). Whether a Smithsonian employee is paid from trust or federal funds is irrelevant to the determination that the Smithsonian is subject to the Federal Tort Claims Act and the Westfall Act.

Misra v. Smithsonian Astrophysical Observatory, 248 F.3d 37 (1st Cir. 2001). Whether a Smithsonian employee is paid from federal or trust funds is irrelevant to claims brought against the Smithsonian under Title VII and the Age Discrimination in Employment Act.

O'Rourke v. Smithsonian Institution Press, 296 F. Supp.2d 434 (2003) *affirmed on appeal*, 399 F.3d 113, 122-123 (2d Cir. 2005), *cert denied* 126 S. Ct. 338, 163 L. Ed. 2d 50, 74 U.S.L.W. 3202 (U.S. 2005). Copyright infringement cases brought against the Smithsonian must be filed in the U.S. Court of Federal Claims.

Taylor v. Small, 350 F.3d 1286 (D.C. Cir. 2003) and Rivera v. Heyman, 157 F.3d 101 (2nd Cir. 1998). Federal employees, including Smithsonian Institution federal employees, are limited to relief for employment discrimination under Section 501 of the Rehabilitation Act, and therefore cannot bring a claim of employment discrimination under Section 504 of the Rehabilitation Act.

Wolcott v. United States, 43 Fed. Cl. 581 (Ct. Cl. 1999). The Severance Pay Act applies to federal employees of the Smithsonian but not to its trust employees. The Smithsonian Staff Handbook did not create an employment contract or a contract for severance pay.