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Mr. David J. Skorton
Secretary of the Smithsonian
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Mr. Richard Kurin
Acting Provost / Under Secretary for Museums and Research
Smithsonian Institution
Post Office Box 37012
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Mr. Lonnie G. Bunch III
Founding Director
National Museum of African American History and Culture
Post Office Box 37012
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Dear Dr. Skorton, Mr. Kurin, and Mr. Bunch,

Many congratulations are in order for the immensely successful opening of the National Museum of African American History and Culture. The new museum has been rightly praised for its detailed, complex, and powerful portrayal of the African-American experience in the United States. As the *Wall Street Journal* and *New York Times* have observed, the museum is simultaneously uplifting and upsetting—and it should be, given that the tapestry of our nation's history includes both the disgraceful epoch of slavery and the inspiring endeavors of legendary African-American leaders like Harriet Tubman, Frederick Douglass, and Martin Luther King, Jr.

It is about one of these leaders that I write you today: Clarence Thomas, the second African-American justice to sit on the Supreme Court of the United States, as well as the longest serving African-American justice. As much as I am grateful for the museum and its efforts to preserve and promote the indispensable, yet oft-neglected, contributions of African Americans to the collective history of our nation, I believe the museum has made a mistake by omitting the enormous legacy and impact of Justice Thomas, as well as his compelling background.

Even in the context of the countless African-American heroes from U.S. history, few “against all odds” tales are more inspirational than that of Justice Thomas. To quote one Thomas expert, Mark Paoletta:

[Thomas] grew up in the segregated deep south of coastal Georgia. Because of his Geechee heritage, he experienced discrimination from other African Americans as well as from whites. Thomas was fortunate that he was sent at age seven to live with his grandparents, who were both strong role models. His grandfather, Myers Anderson, was uneducated but built a small business delivering fuel oil, coal, firewood and ice in the Savannah community. He instilled the values of hard work, perseverance, and accountability. He used to tell Thomas and his younger brother, “Old Man Can’t is dead. I helped bury him.”

Ever his grandfather’s son, Justice Thomas also helped bury ‘Old Man Can’t’—in spectacular fashion. Justice Thomas’s dramatic journey from enduring entrenched racial discrimination to serving on the highest court in a country of 320 million people is one that should be shouted from the rooftops to all Americans, regardless of race or ethnicity.

And Justice Thomas’s historic rise is only half of the story. This year, we commemorate the 25th anniversary of his appointment to the Supreme Court. In a quarter century, Justice Thomas has carved out one of the more profound and unique legacies in the Court’s history. Never afraid to oppose the prevailing trends of the day, Justice Thomas has become the Court’s foremost adherent to the idea that the Constitution should only be interpreted in accord with the document’s historic and original meaning, as opposed to the “living Constitution” doctrine that has pervaded both the Court and the legal academy for decades.

As is typical when challenging an entrenched orthodoxy, Justice Thomas’s impassioned commitment to originalism has earned him sharp criticism over the years—some of it measured, but much of it vitriolic and disingenuous. It has also earned him effusive praise, however, and not just from like minds. *CNN* legal analyst Jeffrey Toobin, often a harsh Thomas critic, admitted in *The New Yorker* in 2011 that Thomas had “emerged as an intellectual leader of the Supreme Court” whose influence has “been recognized by those who generally disagree with his views.” No other Justice, Toobin observed, “studies the historical record with as much care, and enthusiasm, as Thomas.” Moreover, according to Toobin:

The implications of Thomas’s leadership for the Court, and for the country, are profound. Thomas is probably the most conservative Justice to serve on the Court since the [1930s]. More than virtually any of his colleagues, he has a fully wrought judicial philosophy that, if realized, would transform much of American government and society.

Similarly, Tom Goldstein, a Supreme Court expert and the founder of the increasingly influential SCOTUSblog, wrote:

No other member of the Court is so independent in his thinking. ... I disagree profoundly with Justice Thomas’s views on many questions, but if you believe that

Supreme Court decision-making should be a contest of ideas rather than power, so that the measure of a Justice's greatness is his contribution of new and thoughtful perspectives that enlarge the debate, then Justice Thomas is now our greatest Justice.

In summary, Justice Thomas climbed from Pin Point, Georgia, prejudice, and poverty to the pinnacle of the legal profession, to where he is now an intellectual leader on a Supreme Court that is more influential than ever in the most powerful nation on earth. And on top of that, as I can attest from my personal experience as a law clerk at the Supreme Court, he is well known behind the scenes as one of the most jovial, down-to-earth, and gracious personalities to ever don the robe. Stories of his kindness, generosity, and humility abound.

As such, I became deeply disturbed upon learning that Justice Thomas's moving story and incredible contributions to the country are not even mentioned, much less discussed in detail, in the new museum. Making matters worse, the only reference to Justice Thomas is in regard to a single individual's controversial accusation against him at his Senate confirmation hearing twenty-five years ago—an accusation that was contradicted by numerous witnesses and rejected by the *Washington Post*, the Democratic-controlled Senate, and the American public at the time. I am concerned that millions of Americans, of all ages, races, religions, and walks of life, when passing through this museum, will be subjected to a singular and distorted view of Justice Thomas, an African-American who survived segregation, defeated discrimination, and ascended all the way to the Supreme Court.

I fully understand that a museum cannot include every bit of relevant information, nor can it tell every tale. Many great people and their stories had to be omitted from the museum, I am certain. But, with all due respect, Justice Thomas's story is not just any other story. Rather, it is a story uniquely compelling in the annals of United States history, African-American or otherwise. In my view—and in the view of Senator Tim Scott, who sent a similar letter recently—a Thomas exhibit would fit perfectly in the section of the museum entitled “Making a Way Out of No Way.” Indeed, if you were to travel back in time to Pin Point, Georgia, in 1948, and ask that community whether a newborn in Justice Thomas's circumstances could someday sit on the Supreme Court of the United States, I am confident the answer of most (if not all) would have been: No Way. And yet, by the grace of God, 68 years later here he is.

To be clear, I am not petitioning for a partisan hagiography of Justice Thomas, nor am I asking that everything critical of him be excluded. I am simply requesting that a fair and accurate portrayal of his powerful story be included, for the great benefit of millions of future museum-goers. This could perhaps best be done with a balanced display discussing Justice Thomas and the esteemed Thurgood Marshall, the Supreme Court's first African-American justice. Justice Marshall is briefly praised in the museum, but only in reference to his participation as a lawyer in the famous *Brown v. Board of Education* decision. An exhibit showing the inspirational beginnings, journeys, and vastly different judicial approaches of Justice Marshall and Justice Thomas makes much sense. After all, in 240 years, only three African Americans have served at the highest level of the executive or judicial branches of our great country—Justice Marshall,

Justice Thomas, and President Barack Obama. President Obama has a large presence in the museum, so it would be appropriate to also examine Justices Marshall and Thomas.

In his closing, the museum reviewer for the *New York Times* writes: “I also suspect—hope, actually—that the museum will never be finished, or consider itself so; that its take on African-American history, which is American history, stays fluid, critical and richly confused: real, in other words.” I hope for the same thing, and appreciate your consideration of this request.

Very truly yours,



Ted Cruz
Chairman
Subcommittee on Oversight, Agency Action,
Federal Rights and Federal Courts

Cc: The Honorable Charles E. Grassley
Chairman
Senate Committee on the Judiciary

The Honorable Patrick J. Leahy
Ranking Member
Senate Committee on the Judiciary

The Honorable Christopher A. Coons
Ranking Member
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