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Article: Altered Meanings: The Department of the Interior's Rewriting of the Native American Graves Protection and Repatriation Act to Regulate Culturally Unidentifiable Human Remains

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VI. Conclusion

The very clear picture that emerges from the above analysis is that DOI lacks the authority to promulgate regulations for culturally unidentifiable human remains. More troubling than this conclusion is the fact that DOI did attempt, with the 2007 Draft Regulations, to do just that despite all the doubts and objections it received over the years.

With the 2007 Draft Regulations, DOI not only exceeded its statutory charge under NAGPRA, but it also rewrote the organic law that it purports to use as authority to promulgate the proposed regulations. NAGPRA is silent regarding what should be done with culturally unidentifiable human remains. Nonetheless, not only has DOI supplied its own authority to regulate on this issue, but it has also supplied the authority to order the reburial of culturally unidentifiable human remains. This is quite a feat for a law that says nothing about such remains aside from the charge to the Review Committee to make recommendations regarding their disposition.

It is clear from the above review that, in addition to being inconsistent with the letter of NAGPRA, the 2007 Draft Regulations are also inconsistent with the legislative history of NAGPRA. Congress did not intend for NAGPRA to interfere with science. In addition, several members of Congress noted that culturally unidentifiable human remains were to be "kept with care." This is definitely not a mandate to DOI to order the repatriation of such remains. NAGPRA is about righting past wrongs and doing the right thing. It can hardly be said that DOI is doing the right thing by promulgating rules that would have remains

returned to virtually anyone who claims Native American heritage, with no consideration of the cultural affiliation of the remains being requested. Indeed, it does not appear that such a method for repatriation even comports with the wishes of many in the Native community.

Although there have not been many reported cases under NAGPRA, it is clear from the *Bonnichsen* case that jurisprudential interpretations of NAGPRA also find that law not to provide for repatriation of human remains to tenuously linked groups on the basis of some shared Native affinity. Thus, in addition to rejecting the clear language of NAGPRA and its legislative history in drafting the 2007 Draft Regulations, DOI has also rejected the jurisprudence on this matter.