

Senator John McCain, Chairman
Senate Committee on Indian Affairs
United States Senate
836 Hart Office Building
Washington, DC 20510
FAX: (202) 224-5429

July 15, 2005

Re: Proposed Amendment to NAGPRA
(108 of S.536 of the Native American
Omnibus Act of 2005)

Dear Senator McCain:

Please share this letter and accompanying official Written Statement to the members of the Senate Committee on Indian Affairs.

The Ethnic Minority Council of America (EMCA) is opposed to the proposed amendment to the Native American Graves Protection and Repatriation Act (**NAGPRA**) that would add the words "or was" to the statute's definition of Native American. We believe that the amendment would be harmful to the best interests of the country generally, and more particularly to the rights of those individuals of American Indian descent who want to know more about their heritage.

1. WHO WE ARE

EMCA is an organization of more than 3000 families who are committed to promoting and protecting our varied ethnic heritages. We were founded in 1985. Many of our members are of American Indian descent and these members live both on US Indian reservations and independently outside reservations.

Our organization consists of a broad base of members who, politically, are Democrats, Republicans and Independents. We are located in every state and represent a wide variety of occupations (e.g. day laborers, housewives, lawyers, physicians) and social economic levels. We ascribe to varied religions including Native American, Christian, Jewish, Moslem, Hindu, Buddhist and agnostic faiths.

We are representative of modern ethnic America: an America that unites different people into one strong nation.

2. WE SUPPORT A BALANCED APPROACH TO THE PAST

The EMCA supports the preservation and study of ancient remains and artifacts because these items comprise part of the history of this country. We believe this history must be explored and recorded for posterity. The EMCA recommends the cultural, educational, medical and scientific exploration of ancient artifacts and remains as a way of helping future generations.

> We support repatriation of remains in cases where the direct next-of-kin are identified and wish reburial, cremation or other disposition. Repatriation in such situations should be allowed not only for the remains of American Indians, but should be granted in all situations regardless of the ethnic or religious affiliations of the people involved.

> We are concerned that the McCain Amendment, if it becomes law, will give unidentified remains to unrelated or very tangentially related people who are not direct relatives and will thus destroy an important part of our history.

> We are troubled that the McCain Amendment will permit repatriations of unidentified remains to individuals or groups who practice religious burial ceremonies that are foreign to, and likely repugnant to, the beliefs of the people being reburied.

> We support DNA, scientific identification and study techniques which may lead to the identification of the direct, next of kin of a deceased individual. These techniques will increase in accuracy and specificity over time.

> We support the careful, patient study and identification of remains; not the hurried burials that are professed by some political groups and that will only increase if this amendment is adopted.

> We believe that repatriation decisions should be based upon sound scientific and historic information, not religious beliefs that cannot be objectively verified. Government policy should not be used to promote religion, or to elevate one set of religious beliefs to a favored position above all other beliefs.

We support the holding, curation and study of all unidentified remains and cultural artifacts pending positive identification; especially in the case of individuals of possibly mixed heritage (e.g. White-Indian).

> We believe that preservation and study of ancient remains and artifacts will help to UNITE all citizens in a mutual exploration and celebration of our diverse ethnic heritages. Too often, NAGPRA and its implementation have become the source of racial or ethnic divisions and political discord.

3. WE ARE DEEPLY CONCERNED WITH WHAT THE MCCAIN AMENDMENT WOULD DO.

The McCain Amendment would open the door for giving away ancient remains and artifacts that have no known connection to modern Indian tribes. Examples of the types of ancient remains that would be affected by the amendment include Kennewick Man in Washington State and Spirit Cave Man in Nevada. Such remains should not be given away to tribal groups that may have no relationship to the remains and that are likely to practice religious burial services that are foreign to the person being reburied. Unrelated remains of this kind should be preserved and studied so that all of us, Indians and non-Indians alike, can learn more about the people who preceded us on this continent.

If the Committee on Indian Affairs wishes to do something productive with its time, it would be better advised to investigate the NAGPRA activities of the Department of the Interior and other federal agencies. Too often, these agencies make hurried, ill-conceived decisions that are not based upon sound evidence. Too often, they use NAGPRA as a pretext to block scientific study of ancient remains and artifacts. The Kennewick Man case is a good example of how NAGPRA can be misused. It seems to us that such over-applications of the law are motivated, in many cases, by a desire to mollify a few tribal activists who do not represent the true descendents of the remains and who are seeking to pursue their own political agenda. We do not believe that NAGPRA was intended to have such a one sided interpretation and agenda. The “any ol’ Indian will do” attitude of some agencies is deplorable.

Agencies also refuse to use modern technology (e.g. DNA analysis) for identification of remains because of religious objections to scientific testing raised by a few fundamentalist believers who may not be representative of the wide range of religious beliefs within an Indian community. This is problematic because such tests are in standard use for existing populations (e.g. identifying Jane Does and other unidentified remains brought to a Coroner or Medical Examiner’s office). Likewise, agencies often, unfairly favor Indian claimants at the expense of other races in cases where the remains are identified as mixed-race.

The Ethnic Minority Council of America respectfully recommends that the McCain Amendment be withdrawn and not included in the NAGPRA law. We request that the Committee on Indian Affairs conduct appropriate investigations to ensure that federal agencies will act fairly and scientifically in their repatriation decisions. Please feel free to contact us if we can be of help.

Respectfully,

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