



FRIENDS OF AMERICA'S PAST

October 29, 2015

Honorable Patty Murray
154 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Murray,

Re Opposition to S.1979 Bring the Ancient One Home Act of 2015

I strongly oppose S. 1979, urge you to withdraw it, and agree with this position submitted by the Board of Friends of America's Past. This bill would give the Kennewick Man remains to tribal claimants with no proper basis in fact, law, or equity and is contrary to established laws and policies of the United States. S.1979 imposes an assumed modern identity upon the Kennewick Man and precludes all the possible facts remaining to be discovered of Kennewick Man's origins and life.

Summary

- Federal Courts already have the authority to grant relief without an act of Congress.
- The validity of the research from the Danish laboratory has not been verified.
- S.1979 ignores and violates long established federal law and policy concerning archaeological resources.
- S. 1979 would turn NAGPRA on its head by awarding Kennewick Man to the only groups in the world who tried and failed to show a claim to the skeleton.
- S.1979 assumes a possible modern relationship based on where Kennewick Man died, while precluding discovery of the actual facts of his life. Politics should not be used to bar future attempts to gain knowledge about Kennewick Man.

We urge you to more thoroughly consider the implications and consequences of S.1979 and to withdraw this bill.

Discussion

S.1979 is not needed. The Federal Courts already have the authority to grant the relief sought by the Corps of Engineers, without an act of Congress, if a proper basis for such relief can be shown.

After eight years of expensive litigation, the Army Corps of Engineers (COE) could not show any special or significant connection between the claimants, the coalition of tribes, and Kennewick Man. The courthouse door is always open to the COE under Civil Rule 60(b)(5), 60(b)(6) and 60(d), if there is new evidence providing an equitable reason for changing the court's judgment against them.

Instead, you have been enlisted with all the considerable credibility of your office in an effort to bypass the court and avoid the standards of NAGPRA, and other laws established by Congress to deal with cases such as this one. For the reasons set forth below, we hope you will withdraw your proposed bill S.1979.

S.1979's reliance on the Danish laboratory report is premature.

The validity of the results of the Danish laboratory, authorized by the COE, is thus far untested by independent experts. We do not know if the COE has sought other qualified experts to validate the assumptions and verify these preliminary scientific results, a required step in the scientific method. The COE has legal responsibility for the skeleton, so they should ensure that this step is completed as part of any decision making process.

The results from the laboratory in Demark are inadequate at this time to establish that Kennewick Man is a direct ancestor to the claiming tribes. The laboratory found a gene commonly found in modern Native Americans but also in groups worldwide, indicating great time depth for this gene. The common ancestors with this gene may have lived thousands of years before Kennewick Man, who then lived 9,000 years before today's Native Americans.

Dr. Willerslev, of the Danish laboratory, has been quoted widely in the press and his own scientific reports that his laboratory's results could not establish that Kennewick Man is a direct ancestor to those tribal members who offered their DNA for comparison. Any attempt to claim an ancestral relationship between the skeleton and a present day tribe is not yet based on any credible evidence.

Further, environmental evidence obtained to date that identifies where Kennewick Man lived prior to his death indicates that he was a visitor to the area where he died. The stable isotope studies done after the completion of litigation point strongly to a coastal diet when he was a child rather than a diet from resources available of the Upper Columbia River at that time. The Nature article describing Dr. Willerslev's results failed to mention this and other evidence that argues against affiliation with the plateau tribes.

Contrary to Dr. Willerslev's stated promise that he would allow public access to the data from his laboratory studies, this has not been the case. In particular, the comparative data from the living subjects has not been made available to Dr. David Reich, a Harvard University scientist willing and clearly qualified to evaluate the results. The COE should make all information available to qualified scientific researchers before any transfer of the remains is considered. Without independent verification any reliance on the results of the Danish laboratory for repatriation decisions is without scientific merit.

S. 1979 ignores and violates long established federal law and policy concerning archaeological resources.

Legislation that would pre-empt the Native American Graves Protection and Repatriation Act (NAGPRA), the Archeological Resources Protection Act (ARPA) and the National Historic Preservation Act (NHPA) with the simple clause "notwithstanding conflict with NAGPRA or any other laws..." Fails to give appropriate recognition to the scope and importance of these laws. S. 1979 disregards the reasons behind the long established policies of NAGPRA, ARPA, and NHPA.

S. 1979 would turn NAGPRA on its head by awarding Kennewick Man to the only groups in the world who have tried and failed to show a valid claim to the skeleton.

To turn these remains over to tribes who, after prodigious investments of public resources on their behalf, utterly failed to establish a legitimate claim to those remains serves no proper objective. The COE can be trusted to continue protecting and preserving the Kennewick Man skeleton, and the courthouse door remains open to the parties to the Kennewick litigation. If a proper showing can be made, the COE, on behalf of its tribal principals, can return to court for relief from the prior judgment. It is possible that future research could show that a sufficient connection with claimant tribes can be established. Or, future study might link Kennewick Man to some other group that has not as yet been identified. This would permit the COE under Rule 60(b) and (d), to repatriate Kennewick Man to such a newly linked tribe. Such would also support an independent action by that tribe itself.

S. 1979 would cut off, for all time, all legitimate claims, and instead give the skeleton to the only parties in the world whose claim has been thoroughly tested and rejected in court. This unfortunate outcome will be avoided by withdrawing S.1979.

Politics should not be used to bar future attempts to gain knowledge about Kennewick Man.

Human habitation came to North and South America long after other regions of the world were populated. When and by what methods people arrived here is of worldwide interest. Whether the New World was populated by single migration of people from Asia is only one theory being tested by scientists. Tribal belief offers another explanation of how this happened. A single view must not take precedence over understanding all that we can about the facts of early peoples.

S.1979 imposes an identity on Kennewick Man's life and erases all possibility discovering further facts. It requires repatriation that includes even the tiniest of residues of the Kennewick

Man remains. As time passes, improved scientific methods may reveal answers to questions unaddressed even a decade ago. The Danish DNA report itself represents an advance in the science of replicating ancient DNA since 2001 when samples of bone were taken. We understand the residues used in the Danish laboratory were from samples taken in 2001, as the COE did not allowed new sampling in the 2005-6 studies. The 2001 samples yielded results with more sophisticated techniques a decade later.

Weekly, the news tells us of new DNA insights from Alaska to Africa. Advocates for S. 1979 contend that we have had "enough science." We strongly disagree. With each passing year, the benefits of additional research will only increase. Science promises to reveal more of Kennewick Man's life when he lived. S.1989 imposes a modern identity based on where he died.

I urge you to consider more thoroughly the implications and consequences of S.1979 and to withdraw this bill.

Respectfully submitted,