

Committee on Resources

Testimony

Testimony of James C. Chatters, Ph.D. on HR 2893
To be Delivered before the House Committee on Resources,
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Mr. Chairman, members of the committee, I want to thank you for the opportunity to speak to you on behalf of an amendment to the Native American Graves Protection and Repatriation Act.

I am a professional archaeologist and forensic anthropologist with more than 30 years experience in western US, where I have often worked closely with the region's Indian tribes on archaeological studies and the analysis and repatriation of human remains. Most recently, I have been involved with the case of Kennewick Man, an approximately 9000 year-old skeleton found in Washington State that has drawn worldwide attention to issues addressed by this bill. As a husband and father of women of Native American descent who can benefit from scientific studies of ancient remains, I also have a very personal stake in what happens to this legislation.

Every law must balance the interests of all parties and cultures. The Native American Graves Protection and Repatriation Act does not create a fair balance. As a practicing anthropologist whose work is directly affected by NAGPRA, I have concerns about five issues stemming from its content and implementation.

- The overzealous prevention of scientific study by federal agencies
- The importance of scientific study to humanity at large
- NAGPRA's impact on non-Indians and Native Americans without tribal affiliation
- The impact of NAGPRA's geographic clause
- The need for a time limit to the statute

Federal Agencies Overinterpret NAGPRA to Prohibit Scientific Study

When NAGPRA was passed, with the promise of balance between the concerns of the scientific and Native American communities, most scientists (myself included) strongly supported it. We still do. There is no question that many injustices were done. We never imagined that in implementing this well intentioned statute, federal agencies (most notably the Department of Interior), would use it to deny Americans access to the vast store of knowledge that human skeletal remains offer to all of us. Fearing lawsuit and following misplaced advice from the National Park Service, museums and agencies increasingly deny even the most respected anthropologists access to skeletal collections, even when the remains are unaffiliated. The Corps of Engineers' handling of the Kennewick Man case is an example of how extreme this practice has become. They have spent more than a half million taxpayer dollars and defied the expressed will of both houses of Congress in fighting an effort by scientists to study one of America's oldest fossil human skeletons and the site of its discovery.

NAGPRA is seen by some agencies as superseding other statutes--even the constitution. At one point in the discussions over Kennewick Man, a tribal representative demanded that there be no further publicity on the find and a Corps of Engineers spokesman agreed to exclude the press. When I reminded him of the first

amendment right to free speech, I was informed that "the first amendment does not apply to NAGPRA cases."

Federal agencies are so paralyzed by NAGPRA regulations that many do not even investigate whether a newly discovered skeleton is Native American before turning it over to the tribes. This practice interferes with law enforcement, and alienates African, Asian and European Americans from any ancestor unfortunate enough to have fallen on federal land.

Enactment of HR2893, with its clear but respectful approval of limited scientific study will help to eliminate at least some of this overenforcement.

Scientific Study is of Value to Humanity at Large

The study of prehistory, particularly the remains of ancient people, benefits humanity regardless of culture or nation. It allows us all to know as much of our past--good or bad--as science is able to uncover and allows us to decide what parts of the past are important to our sense of ourselves. Through it we discover the full richness of our common heritage, learning how closely we are related and exploring many of the historical dead ends reached by peoples who are now extinct. It enriches, inspires, and humbles us, but it also has a practical side. For example, the knowledge gained from human skeletal remains has great potential to contribute to our understanding of health and disease in our species, as I describe further in a moment.

NAGPRA Ignores the Interests of Nontribal Native Americans

Millions of our fellow citizens count Native Americans among their ancestors, yet relatively few belong to federally recognized tribes and most participate in mainstream American society. As currently drafted and implemented by federal agencies, NAGPRA alienates these people from the remains and cultural objects of their ancestors unless they can trace a direct lineal relationship. Living outside tribal society, these Americans can know their Native heritage only through anthropological writings and scientific research. Yet they have no standing to be heard in NAGPRA cases, even though the study of prehistoric remains may be important to their sense of identity and has potential health benefits for them and their children.

For example, recent research on ancient remains shows promise for understanding two diseases that are particularly prevalent among Native Americans: rheumatoid arthritis and type 2 diabetes. These diseases strike Native Americans of tribal and nontribal affiliation alike. My mother-in-law, of Haida descent and thus particularly susceptible to rheumatoid arthritis, died of that disease. Hence my strong personal interest in the continuation of this research, which HR2893 would help make possible.

NAGPRA's Geographic Clause Limits Our Knowledge of History

NAGPRA's most flawed component is the clause that allows tribes that are culturally unaffiliated with ancient remains and cultural objects to lay claim strictly on the basis of their recent land holdings. Archaeological and anthropological evidence and even oral histories from before NAGPRA was enacted show us that nearly every part of the United States has been occupied through time by different peoples with different cultures, languages, and religions. Studies of population histories throughout the world tell us that many if not most of these peoples left no descendants. In some cases, these earlier people were displaced or even annihilated by the ancestors of the people now making claims under NAGPRA's geography clause. Compliance with the geography clause can thus lead to the kind of injustice that NAGPRA is intended to

remedy.

The problem is particularly acute when truly ancient remains are at issue. Recent research in linguistics, dental anthropology, skeletal analysis, and even genetics is just beginning to indicate that the early peopling of the Americas was a complex process. After hundreds of generations at least some of our continent's original inhabitants have disappeared, apparently leaving no descendants. Such early peoples are of interest to, and should be considered the heritage of humanity at large, which explains the worldwide interest the Kennewick Man case has attracted.

NAGPRA Needs a Time Limit.

As I have spoken to thousands of people over the past two years, one question invariably is raised. " Why is there no time limit to this law?" People are incredulous that Congress would intend to place the entire human history of their homeland in the hands of only a few of its citizens. Other nations have laws pertaining to studying human remains and cutoff dates are commonplace.

The absence of a cutoff date, like the geography clause, fails to acknowledge that many of the peoples and cultures of the past left no descendants. If the remains and cultural objects of these people are placed off limits to scientific study at the insistence of modern political and religious leaders, entire peoples may be denied their place in human history.

HR 2893 Does not Go as Far as Scientists Might Prefer

HR2893 fails to address the issue of a time limit but most anthropologists are willing to live with this exclusion if congress sends a strong message that scientific study is to be allowed. We are concerned, though, with the provision that allows study to be denied "...based on existing museum policies and cultural concerns." Vague terms such as these make us uneasy, as they can be construed to totally frustrate the purposes of this bill. If these phrases are left in, we recommend that there be a very strong committee report describing how this phrase is to be interpreted (similar to the one that the original Senate report did for the term "sacred object").

HR2893 Restores the Balance

Despite its limitations, HR2893 alleviates the unequal treatment of tribal and nontribal Native Americans, allows for the historical recognition of extinct peoples, clarifies the position of science, and considers the interests of society at large. In the process it retains the primary intent of NAGPRA to return human remains and sacred objects to culturally affiliated tribes. It brings NAGPRA closer to creating the promised balance between the interests of the secular and the sacred, and in so doing is more in keeping with the principles on which our country was founded.

I urge you to pass this amendment. Thank you.

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