

WRITTEN TESTIMONY
OF
DR. ROSITA WORL
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ON THE
IMPLEMENTATION
OF THE
NATIVE AMERICAN GRAVES PROTECTION
AND
REPATRIATION ACT

My name is Dr. Rosita Kaahani Worl. I serve as the Vice Chair of the Sealaska Corporation, a Native corporation created under the Alaska Native Claims Settlement Act of 1971 (ANCSA), and the President of the Sealaska Heritage Institute, located in Juneau, Alaska.

I am also a member of the NAGPRA Review Committee, having served on the Committee for 11 years. It is in that capacity as well as administering a NAGPRA program that I have had the opportunity to develop an in-depth understanding of how the Act has been implemented over the past 21 years, and to experience some of the challenges associated with the repatriation process that the Act authorizes.

As the members of this committee know, ANCSA was enacted to settle the aboriginal land claims of Alaska Natives. Through that Act, the Congress authorized the establishment of Alaska Native regional and village corporations as the instruments through which the Act's objectives would be implemented. Since that time, Congress has enacted over 100 laws that define the ANCSA corporations as "Indian tribes" or define ANCSA lands as "Indian lands".¹

¹Sealaska Report ANCSA Corporations and the Definition of "Tribe" 1999. An updated report is in the process of being finalized.

NAGPRA Grants

ANCSA corporations have made significant contributions to the implementation of the NAGPRA, providing benefits to Alaska Native communities and contributing to the survival of Native cultures. Alaska Native corporations and Alaska Native tribes have participated nearly equally in the implementation of the Act. For instance, from 1998 through 2008, twelve Alaska Native corporations administered \$2,294,194 in NAGPRA grants while seventeen Alaska Native tribes received \$2,409,684 in NAGPRA grants during the same period.

NAGPRA Repatriation Claims

Fifteen Alaska Native corporations have made successful repatriation claims for 1,730 cultural objects² and thirty-nine Alaska Native tribes have made successful repatriation claims for 526 cultural objects.

NAGPRA Review Committee

Three Alaska Natives have served on the NAGPRA Review Committee, and at least one such NAGPRA Review Committee member was nominated by an ANCSA corporation and the others were nominated by Alaska Native tribes.

Alaska Native Corporations Contributions to NAGPRA

The inclusion of Alaska Native corporations in NAGPRA has provided benefits to Native people throughout Alaska and the lower 48 States. Regional ANCSA corporations, like Sealaska Native Corporation, have used their NAGPRA grant funds to provide training for village corporations and tribes within their region to enhance their understanding of the Act's provisions and to build capacities to participate in the repatriation processes that the Act authorizes. ANCSA corporations have also dedicated their corporate funds to support NAGPRA activities. For

² Of this total, 1,600 objects were individual glass beads.

instance, because NAGPRA grant funds are not available to support costs associated with dispute requests to the NAGPRA Review Committee, ANCSA corporations that have initiated such requests are bearing the costs of those activities.

Some Alaska Native tribes have recently made decisions not to participate in NAGPRA because they do not have the resources to support ongoing NAGPRA programs without the benefit of NAGPRA grants and supplemental organizational funds. In these instances, tribal members have called upon ANCSA corporations to file their repatriation claims. Likewise, Alaska Natives, who do not live within communities represented by a tribal government have called on ANCSA Corporation to initiate their repatriation claims.

During the time that I have served on the NAGPRA Review Committee, I and my fellow committee members have observed an ever-increasing escalation in costs associated with either making repatriation requests or seeking the committee's review of disputes. The dispute resolution process is often lengthy and sometimes results in costly litigation if the review committee's determination is not accepted by the parties to a dispute. In Alaska, the organized Native groups that are best able to make these now sizable investments in the return of Native remains and cultural items are the Alaska Native corporations.

In addition, under the Alaska Native Claims Settlement Act, Alaska Native corporations are the statutorily-designated owners and managers of Native lands - they are thus the first entities to which federal agencies would typically turn in determining the cultural origins and affiliations of objects of cultural patrimony. And in a provision of Federal law enacted in 2004 and made applicable to all Federal agencies, Public Law 108-447 directs Federal agencies to consult with Alaska Native corporations.³

In recent times, as a function of the Government Accountability Office's findings, there has been some debate associated with the inclusion

³ Pub. L. No. 108-447, 118 Stat. 2809, Dec. 8, 2004.

of Alaska Native corporations in the NAGPRA regulations, and the Interior Solicitor's Office has opined that because the Congress employed similar terminology in the 1994 Federally-Recognized Tribes List Act and in the 1990 Native American Graves Protection and Repatriation Act, the definitions in one Act should constrain the interpretation and application of the earlier-enacted law.

However, it is not only critically important but imperative that each Act be examined within the context of Federal policy and the objectives that the Congress sought to achieve in each Act. The 1990 enactment of the NAGPRA was built on the foundation of assuring that cultural properties would be the subject of the congressionally-authorized repatriation process - and that such properties would be returned to the rightful owners or keepers of objects of cultural patrimony. The Act had less to do with Native governance and more to do with Native cultures. That the cultural context was what informed congressional intent behind the Act is found in the unusual inclusion of traditional Native American religious leaders as it relates to sacred objects.

In contrast, the 1994 Federally-Recognized Tribes List Act has its foundation in the government-to-government relationship between the United States government and tribal governments. The Act is intended to reflect the United States' recognition of the sovereignty of Native governments, and to assure that all Native governments are treated equally under Federal law and policy.

Thus to predicate the interpretation of a law enacted in 1990 on a retroactive application of a law enacted in 1994 that is based on a distinctly different policy foundation, leads to misinterpretation of Congress' intent in wanting to assure that the repatriation policy was and is to apply to all Native people across the United States.

Accordingly, I would urge the members of Senate Indian Affairs Committee to consider an amendment to the NAGPRA that provides the means for Alaska's Native people to fully participate in the Act's repatriation processes and to more effectively realize the goals of the Act.

Another critical component of the Act requires museums to file summaries and inventories, and yet, we know of one museum in the Northwest area that sold its collection of cultural items that were subject to the NAGPRA without compiling a summary or inventory. We believe that the burden of proof should be on a museum to document that deaccessioned items are not subject to NAGPRA, as opposed to the position that has been taken by the National NAGPRA Program Office – which is that the burden of proof should be placed on tribes and Native organizations.

Clearly, the policy of the Native American Graves Protection and Repatriation Act is to protect Native American human remains and objects of cultural patrimony and to assure that they are repatriated to their rightful owners. The Act does not authorize Indian tribes and Native organizations to act as unfunded law enforcement agents charged with detecting violations of the Act or noncompliance with the Act, nor does it assign the burden of proof to Native entities to police the actions of museums and document the origins of deaccessioned objects.

Finally, the members of the Committee are aware that the National Museum of the American Indian Act (NMAI Act) was enacted into law in 1989 – and thus while preceding the enactment of the NAGPRA, the NMAI Act includes provisions similar to, but not identical to the provisions of the NAGPRA which authorize the repatriation of human remains and cultural objects. Nonetheless, the Government Accountability Office has recently completed an examination of the Smithsonian Institution’s implementation of the repatriation provisions of the NMAI Act and found them lacking.⁴

Native groups have also expressed concern that the NMAI Act has been interpreted by the Smithsonian Institution as applying only to Smithsonian’s Natural History Museum, the GAO concluded that “the statutory language and its legislative history do not support that view.”⁵

⁴ U.S. Government Accountability Office Report to Congressional Requesters, May 2011, entitled “Smithsonian Institution: Much Work Still Needed to Identify and Repatriate Indian Human Remains and Objects”, GAO-11-515.

⁵I.d., page one, GAO-11-515, Smithsonian Repatriation.

As has been discussed in various forums on the NAGPRA, tribal commentators, as well as representatives of museums and scientific institutions, have expressed the view that the Congress should act to extend the provisions of the NAGPRA to all museums within the Smithsonian Institution.

I thank the U.S. Senate Committee on Indian Affairs for affording concerned Native people the opportunity to share their views on the implementation of the Native American Graves Protection and Repatriation Act with the Committee and the Congress.