

Statement of
The American Association of Museums, the Association of American Universities,
The Society for Historical Archaeology, the Society for American Archaeology
And the Native American Rights Fund
On Funding for the Grant Program established in
The Native American Graves Protection and Repatriation Act (P.L. 101-601)
Presented to the Subcommittee on the Interior
Of the Committee on Appropriations
U.S. House of Representatives
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Mr. Chairman and members of the Subcommittee: I am Jason Hall, Director of Government and Public Affairs for the American Association of Museums, presenting written testimony on behalf of a consortium consisting of the American Association of Museums, the Association of American Universities, the Native American Rights Fund, the Society for American Archaeology, and the Society for Historical Archaeology.

As you know, Section 10 of the Native American Graves Protection and Repatriation Act (P.L. 101-601 – “NAGPRA”) authorizes the Secretary of the Interior to “make grants to Indian tribes and native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of native American cultural items” and to “make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6.” While we appreciate the Congress and the President agreed in the Interior bill to provide funding of \$2.472 million for Fiscal Year 2001 to allow the statutorily-mandated repatriation process to proceed, we respectfully urge Congress to increase the appropriation to \$5 million for FY 2003. We present the following reasons in support of this request.

As you are aware, NAGPRA is remedial legislation. Congress enacted the law in 1990 in large part to assure that Native American remains and funerary and other objects retained by the federal government and museum community are returned under the law to appropriate tribes and organizations for reburial or other appropriate treatment. As remedial legislation, NAGPRA will not remedy the problem Congress sought to resolve unless adequate dollars are appropriated so that tribes and museums can complete the repatriation process – which is now under way but which necessarily proceeds slowly in many cases because of essential museum-tribe consultation and other factors. Repatriation is a high priority of the museum and tribal communities, which do not have adequate funds to do the necessary work required by NAGPRA.

Since repatriation is the subject of federal legislation as well as regulations and administrative guidelines, the U.S. government has a trust responsibility to Indian tribes and their members in the area of repatriation. This trust responsibility imposes strict, binding fiduciary standards on the conduct of executive agencies, here the National Park Service and the Department of the Interior, in its treatment of tribes in repatriation matters. Adequate funding for tribes, museums and universities is necessary to carry out the statutory mandates of Congress.

At the same time, it is clear that the communities and sovereign Indian tribes represented by the consortium have been called upon to take a much increased role in implementing P.L. 101-601 in the past several years, as the mandated summaries and inventories of museum holdings were largely completed by museums and sent to the tribes in mid-November, 1993, and mid-November, 1995, respectively. Activity

has intensified immensely in recent years and will continue to do so as the number of actual repatriations continues to increase. The consortium's testimony provides information on how the requirements of the law are creating significant costs for our communities and seeks your support for funding for the grant program authorized in the law, so that we can continue to comply with it in a timely and responsible way. Let me start by addressing in generic terms the needs of the museum community. In order to comply with P.L. 101-601, museums have to engage in activities falling into four categories: (1) preparation of inventories, in the case of human remains and associated funerary object, and written summaries, in the case of unassociated funerary objects, sacred objects and cultural patrimony; (2) notification and consultation with Native American groups and visitation by those groups to museum collections; (3) research to identify cultural affiliation of human remains and objects; and (4) repatriation.

To prepare the inventories of human remains and funerary objects which were due by November 16, 1995, museums have needed to: physically locate every item within the museum's storerooms; locate and review existing records to compile information necessary to determine whether a funerary object is "associated" or not, and to determine the cultural affiliation of the objects; catalog any remains and objects that are not catalogued; document (e.g., measure and photograph) and analyze the human remains and funerary objects; and compile an inventory of human remains and funerary objects containing the information required under P.L. 101-601, including cultural affiliation. The delay in promulgation of the final regulations, and the late start and low level of grant funding for repatriation grants to the tribes and museums, have slowed the process such that a significant number of museums were not able to prepare inventories by the November 16, 1995 deadline, despite timely and continuing good faith efforts, and had to appeal for extensions.

With respect to unassociated funerary objects, sacred objects and cultural patrimony, museums were required to and did, prepare a written summary by November 16, 1993 rather than an itemized inventory of their collections. Nevertheless, many museums needed to undertake many tasks similar to those noted above in order to collect the required information. Throughout all of this, museums have needed to consult with native American tribes which might have an interest in the objects. The time and funds spent on consultation with Native American peoples varies according to the physical proximity of the museum to the particular group.

Once the inventory and written summary are complete, the museum must identify the tribal representatives authorized to accept repatriable objects and formally notify those representatives. Tribal representatives must travel to the museums to examine the objects and consult with the museum. Remains and artifacts must be packed and shipped to the appropriate Native American group. During this process, disagreements may arise as to the disposition of items covered by P.L. 101-601, and these issues must be resolved.

Let me turn to some specific cases. On December 6, 1995, the Senate Committee on Indian Affairs held an oversight hearing on the implementation of NAGPRA. Final NAGPRA regulations, with some sections still incomplete, were published two days prior to the hearing. Two years later, the Interior Department published an interim rule on one of those incomplete sections, the civil penalties section. But as of April 2001, there have been no final regulations issued on the three remaining sections (future applicability, culturally unidentifiable remains, and unclaimed items from Federal or tribal lands.)

Representatives from the National Park Service, the NAGPRA Review Committee, three affected tribes, and a witness representing both the American Association of Museums and an affected museum, testified

about compliance with the law. NPS witness Katherine Stevenson noted that the NPS had made 83 NAGPRA grant awards totaling \$4.37 million since the beginning of the program, but that over that time, they had received 337 grant proposal requests totaling nearly \$30 million, and she conceded that the Interior Department's \$2.3 million request for FY 96 did not meet the valid needs demonstrated in the grant applications from museums and the tribes. Since that 1995 testimony, the situation has remained much the same in terms of funding needs. As of April 2001, the NPS has been able to make 311 NAGPRA grant awards totaling \$19.05 million since the beginning of the program, but during that time, it has received well over 700 grant proposals totaling more than \$47.69 million, and funding has essentially been flat at \$2.3 million, and more recently \$2.5 million annually. The \$2.5 million appropriation continues to fall short of valid needs.

The witness representing museums in 1995, William Moynihan, President of the Milwaukee Public Museum, testified about the effort of his museum to comply with the law. He noted that the "Milwaukee Public Museum will have committed well in excess of half a million dollars by 1997 to deal with the legislation. Existing staff in our Anthropology/History Section have been reallocated from their normal duties to NAGPRA-related activities, a large team of volunteers assembled, and trained student interns and work-study students hired." He noted that the Museum has been collecting anthropological and archaeological materials for over 100 years, that included in the holdings are the remains of 1,500 individuals, and that the collections are not computerized. Despite these difficulties, the museum had completed a physical inventory of over 22,000 Native American ethnographic objects, and a preliminary inventory of 50,000 archaeological objects; sent summaries to 572 tribes and native Alaskan and Hawaiian groups; followed up with hundreds of calls to tribes; and taken a variety of other actions to comply with the law.

On a broader scale, we have results from the American Association of Museums' 1994 repatriation survey of 500 of its member institutions, including all of its natural history museums and a selected sample of its art and history museums. The survey response rate was 43.6%. Of those responding, 76% of the natural history museums, 43% of the history museums and 23% of the art museums had Native American objects. Those respondents – a little more than 200 – alone had almost 3.5 million objects which fell into NAGPRA categories, and that does not include 15 responding natural history museums, including 3 large institutions, which could not give an estimate of their NAGPRA-related holdings. An overwhelming number of these institutions noted how lack of final regulations and of NAGPRA grant funding had hindered or prevented their repatriation efforts.

Estimating aggregate costs is not possible from the survey data, given the great disparities in how institutions calculated their own costs. It is clear, however, that thousands of institutions across the country are affected to some degree by NAGPRA costs.

The Native American community is also incurring major expenses in attempting to comply with the requirements and deadlines of NAGPRA. As you know, the repatriation process involves sacred items and, most importantly, human remains, not just artifacts. In this light we must approach the funding issues related to the Act. A 1994 repatriation survey done by the National Congress of American Indians indicated that some tribes had received hundreds of NAGPRA summaries from museums, and that the need for outside funding to hire experts to help them analyze these materials and subsequent NAGPRA inventory materials is virtually universal. From the dozens of responses to the survey, it is apparent that most tribes do not have the capacity to comply with the Act. For example, the Shingle Springs Rancheria/Miwok/Maidu tribe reported, "Our tribe has been well versed in the purpose and intent of NAGPRA. The response from

museums {the sending out of surveys to the tribes at the November 1993 deadline} has been astounding. We have received over 100 notices. However, we cannot respond or take advantage because of lack of funds." This tribe estimated its financial needs at approximately \$35,830. And at the December 1995 Senate oversight hearing, Cecil Antone of the Gila River Indian Community noted that the Community had received over 150 letters from various museums and federal agencies about the disposition of NAGPRA-related collections. The needs of the tribes vary depending on the number of responses they have received, their present and future ability to comply with the Act, and what, if any, experience their tribe has had with projects of this sort. In fact, tribal responses estimating funding needs ranged from "unknown" to "very much" to "\$2 million."

In October 1990, the Congressional Budget Office estimated NAGPRA implementation costs to museums of \$40 million and to tribes and native Hawaiian organizations of \$5-10 million over 5 years, assuming that museums and federal agencies hold between 100,000 and 200,000 Native American remains and that the cost to inventory and review each remain would be \$50-150. Those estimates now appear to be very low in light of our experience since that time. As a result, viable tribal and museum request for grants continue to exceed available funds by a large margin. In addition, museums cannot repatriate to the tribes until appropriate notices go into the *Federal Register*, and there is currently a backlog of about 150 such notices at the NPS, about a year's worth, due to lack of staff to process them.

In closing, let me add that while the museums and tribes must have this grant program funded simply to comply with the requirements of NAGPRA, it is also true that the grant program will accomplish far more than compliance. Museums and tribes have discovered that the exchange of data required under NAGPRA is yielding new information that helps us all. In the process of identifying sensitive cultural items, museums are learning much more about their entire collections. Delegations of elders and religious leaders have supplied valuable new insights about many objects in the repositories they have visited, and in turn they are discovering items of immense interest to their own tribes, the existence of which had been unknown in recent generations. Few items in these categories are being sought for repatriation; it is simply that access to the collections has led to much better mutual understanding and exchange of knowledge. While the repatriation process will eventually end as the transfer of materials is completed, the long-term relationship created between museums and tribes will continue.

Thus, this funding will not just support expenses mandated by law. It is also an excellent investment that serves the public interest now – and will continue to pay dividends in the future – through more accurate and respectful exhibits and education programs that are the fruits of long-term collaborations.

Finally, we respectfully urge you to keep in mind that we are talking in large part about the reburial of the remains of human beings, and that under a reasonable and dignified standard, such repatriation and reburial should occur with all due haste. Certainly the United States government has acted urgently with due regard to repatriation of remains of American soldiers killed in foreign wars or missing in action. Native American repatriation and reburial should be treated with the same priority and dignity.

The consortium appreciates this opportunity to testify on this issue.