



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution of the Subcommittee on Human, Religious & Cultural Concerns #PDX-20-070

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TITLE: NCAI Initiative on Sacred Places and Cultural Rights Laws and Developing Legislation

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and,

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and,

WHEREAS, the NCAI “authorized a joint initiative with NARF (Native American Rights Fund), The Morning Star Institute, and tribal governments and organizations (the “Initiative”) to assist, represent and share responsibilities to monitor policy and legislative issues that impact sacred places, to advocate for changes in law and policy that improve protection for sacred places, to work cooperatively with federal agencies to develop and implement policies and practices to provide and improve protection for sacred places, and to convene presentations, workshops, and roundtables designed to improve and advance protection of sacred places, in cooperation with relevant tribal, federal and private interests;” and, further resolving “that this joint initiative shall be guided by NCAI Resolution PHX-08-069C, *NCAI Policy Statement on Sacred Places*, and NCAI Resolution 10-065, *Calling for Legislation to Provide a Right of Action to Protect Native Peoples’ Sacred Places*” (See, NCAI Resolution TUL-13-007); and,

WHEREAS, the Initiative worked with representatives of Native Nations, NCAI, and cultural rights specialists during the Obama Administration on a variety of efforts to protect Native Peoples’ sacred places and other cultural rights, including securing protections for Ancestors and areas of sensitivity, most notably through a series of Antiquities Act Proclamations, which the Trump Administration altered or threatened to withdraw from its earliest days in office; and,

WHEREAS, the Initiative worked on numerous efforts to protect and defend specific Ancestors, sacred places and cultural rights, including the longstanding effort to counter damage done to the definition of “Native American” in the Native American Graves Protection and Repatriation Act (NAGPRA) by the *Kennewick Man* litigation—designed to prevent the Colville, Nez Perce, and Umatilla Tribes, the Wanapum Band, and the Yakama Nation from repatriating and reburying their Ancestor, Techaminsh Oytpamanatityt (*Ancient One*), which they could not do until 2017—and to add a two-word amendment (“or was”) to NAGPRA, but House Natural Resources Committee Chairman “Doc” Hastings (R-WA) vowed to defeat it and to repeal NAGPRA throughout his 2011-2015 tenure, despite the technical “or was” amendment being approved three times in the Senate; and the need for this and other amendments to NAGPRA still exist; and,

WHEREAS, the Initiative previously provided a bare-bones cause of action draft for protection of sacred places, which NCAI sent to Indian members, with a request for comments, and the draft was provided to all the members of six meetings of the NCAI Subcommittee on Human, Religious, and Cultural Concerns; and, while the comments were encouraging about the need and direction, they were not content specific, and the Initiative engaged with numerous tribal leaders, attorneys and cultural rights specialists and scholars on legislative drafts, but there was no opening in Congress for substantive cultural rights legislation and the group ceased drafting after all doors to the Trump Administration and the Senate were closed; and,

WHEREAS, just as no other religions are required to define the sacred or to provide details of their ceremonies, the sacred must not be defined or limited by any definition or detail, and any ceremonial detail or information must be provided on the basis of free, prior, and informed consent, with the understanding that any explanation, description, or examples of sacred places are not definitional or all inclusive; and,

WHEREAS, United States law has failed to protect American Indian, Alaska Native, and Native Hawaiian Peoples’ religious freedom, and many laws affecting Native religious freedom, sacred places, and cultural rights were coerced or enacted without free, prior, and informed consent; and,

WHEREAS, many federal laws, regulations, and orders contain terms reflecting what should be antiquated notions of racial superiority to and judgments regarding Native Peoples’ religions, sacred places, and cultural rights, and must be brought into line with United States’ policy “to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions,” including but not limited to such superlatives as *significant, central, centrality, most sacred, most important, and importance*, and characterizations suggesting that Native religions are outside *world religions, major religions, or high culture*; and,

NOW THEREFORE BE IT RESOLVED that the National Congress of American Indians calls on the 117th Congress to:

1. Conduct at least two oversight hearings, one in Indian Country and one in Washington, DC, during the first 50 legislative days of the 1st Session, and to survey Native Peoples’ experiences implementing the American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, and related laws, in order to improve practices and develop amendments to alleviate negative impacts on the free exercise of traditional Native religions and cultural rights and the protection of Native sacred places and areas of sensitivity; and,

2. Work with Native Peoples' tribal and traditional religious leaders and cultural rights specialists and scholars, during the second 50 legislative days of the 1st Session, to draft legislation, gain sponsors, and introduce needed amendments to AIRFA, NAGPRA, and related laws, so as to address negative impacts on the free exercise of traditional Native religions and cultural rights and the protection of Native sacred places and areas of sensitivity; and,

3. Conduct legislative hearings in Washington, DC, and in Indian Country, during the third 50 legislative days of the 1st Session on proposed text and legislative history addressing the need for amendments that would accomplish and address at least the following:

- Increased penalties and sanctions, and any needed new ones, for violation of treaties and laws protecting Native ancestral remains and surrogates for human remains (e.g. cremation pots, burial baskets, and other vessels, blankets and other wrappings, and essences), no matter if they lived in ancient, distant, or contemporary times; objects of funerary processes, customs, and ceremonies, and other cultural items of the deceased and their mourners; and graves, burials, caves, mounds, shelters, cemeteries, burial grounds, markers, and pathways; and,
- Increased penalties and sanctions, and any needed new ones, for violation of treaties and laws protecting Native sacred places, approaches to sacred places, and areas of sensitivity, including but not limited to Native Peoples' natural or structured ceremonial areas, cultural locations, or any landscapes, landforms, underwater features, soundscapes, viewscapes—including unobstructed views of, and accessibility to, celestial bodies, points of water, earth, and sky—as well as usual and accustomed fishing, gathering, and hunting places; traditional cultural properties or traditional cultural places; waters used for religious, ceremonial, cultural, or traditional purposes for the spiritual health and well-being of the Native Peoples; commemorative and observational localities; and any petroglyphs, rock art, markers, or other messages from the Ancestors; massacre and memorial sites, killing fields, and other places of mayhem; and certain tribally-designated historical sites; and,
- Enhanced or new support, protection, and recognition for those with responsibility for carrying out traditional Native religious practices, and tribal and traditional religious leaders' declarations and protocols regarding sacred places and cultural rights, to include discouraging inappropriate practices of some federal employees and entities to assert or impose their opinions in inquiries, consultations, collaborations, or decisions regarding those obligations and practices; and,
- Cessation of federal practices and pressures for tribal and traditional religious leaders to define, quantify, qualify, or otherwise prove or limit what constitutes the sacred, or to designate or burden with any outside superlative or value judgment; and,
- Provision for (a) the removal of any barriers to Tribal Nations' exercise of inherent sovereign powers to investigate across jurisdictions and prosecute and try cases and carry out sentences for desecrators and violators of Ancestors, funerary or sacred objects, sacred places, or cultural rights; and (b) removal of any barriers to Tribal Nations' ability to refer investigations and cases of the matters addressed in section (a), above, directly to the United States for these same and related offenses, and meaningful prosecution when warranted; and,
- Observance of the standard of free, prior, and informed consent regarding any decisions impacting Native religious freedom, sacred places, or cultural rights; and,

- Elimination of existing laws terms of racial superiority to and value judgments regarding Native Peoples' religions, sacred places, and cultural rights, and aligning them with the United States' policy "to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions;" and,
- Recognition of and reliance on Native Peoples' oral history and oral history traditions, irrespective of the incorrect claims of the plaintiffs in the "Kennewick Man" case, and noting that the findings of the genetic scientists validated the descendant Native Nations' oral history facts that Ancient One was their Ancestor; and,

BE IT FURTHER RESOLVED that the NCAI calls on Congress to enact a technical amendment consistent with original intent to the definition of "Native American" of the NAGPRA, in order to avoid future confusion, misinterpretation, or any unnecessary and inappropriate limitations on which ancestral remains can be repatriated, that would add the words *or was*, as well as the words *any geographic area that is now located within the boundaries of*, so that the new definition would read: "Native American' means of, or relating to, a tribe, people, or culture that is **or was** indigenous to **any geographic area that is now located within the boundaries of** the United States." This technical amendment clarifying the intended definition would serve to avoid future misinterpretations, would address confusion created by judicial interpretations of NAGPRA, and would restore to the law the congressionally intended purpose; and,

BE IT FURTHER RESOLVED that the NCAI calls on Congress to update the National Historic Preservation Act to provide for the recognition and respect for Native Peoples' Declarations of Sacred Places and Cultural Rights, or Proclamations, or other mechanisms to designate Traditional Cultural Properties or Traditional Cultural Places (TCPs) and to make them eligible for the National Register of Historic Places; and,

BE IT FINALLY RESOLVED that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2020 Annual Session of the National Congress of American Indians, held Nov 8, 2020 - Nov 13, 2020, with a quorum present.



Fawn Sharp, President

ATTEST:



Juana Majel Dixon, Recording Secretary