



SOCIETY FOR AMERICAN ARCHAEOLOGY

**Testimony of the Society for American Archaeology
Before the Senate Committee on Indian Affairs
Regarding S. 2165, the Safeguard Tribal Objects of Patrimony Act of 2019**

June 23, 2020

Chairman Hoeven and Vice Chairman Udall: the Society for American Archaeology (SAA) appreciates this opportunity to once again testify in strong support of S. 2165, the Safeguard Tribal Objects of Patrimony Act of 2019. This vitally-needed bill would greatly improve the ability of the United States to prevent the export of tribal objects of cultural patrimony acquired in violation of the Archaeological Resources Protection Act (ARPA) or the Native American Graves Protection and Repatriation Act (NAGPRA), to help prevent the sale of such items that have already been removed from US territory, and to encourage the voluntary return of such items to their rightful owners.

SAA is an international organization that, since its founding in 1934, has been dedicated to the research about and interpretation and protection of the archaeological heritage of the Americas. With more than 6,000 members, SAA represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. SAA has members in all 50 states as well as many other nations around the world.

The looting of Native American archaeological materials and objects of cultural patrimony from federal and tribal lands is a longstanding problem, and led in part to the enactment of statutes such as the Antiquities Act, ARPA, and NAGPRA. For decades, SAA has worked to end looting and trafficking of archaeological items, both at home and abroad. In addition, we have long stood against the buying and selling of objects out of archaeological context. Our Principles of Archaeological Ethics states in part that such activity "...is contributing to the destruction of the archaeological record on the American continents and around the world. The commercialization of archaeological objects--their use as commodities to be exploited for personal enjoyment or profit--results in the destruction of archaeological sites and of contextual information that is essential to understanding the archaeological record."

But the problem does not end there. Over the past ten years, SAA and other groups have noticed that numerous objects of great spiritual and cultural importance to Native American tribes have been put up for sale in European auction houses, many of them having dubious provenance, or no provenance at all. Tribes, the U.S. government, and numerous other private organizations (including SAA) have repeatedly asked foreign auction houses and governments to prevent these sales from going forward. In most cases, however, the sales went ahead, in spite of the objections. Foreign government officials asserted

that the auctions could not be stopped because the U.S. did not have a law specifically prohibiting the export of illegally-procured Native American objects.

Thus, current law is inadequate when it comes to preventing the export of illicitly-procured tribal cultural patrimony from the U.S. and the sale of those items overseas. Without explicit export restrictions, many sacred and cultural tribal items end up abroad, where it is very difficult to repatriate them, and their loss becomes permanent. To rectify this situation, Section 5 of S. 2165 creates an explicit prohibition on the export of objects of cultural patrimony obtained in violation of the NAGPRA or ARPA. It also establishes an export certification system to allow for transactions of legally-acquired materials. These measures will make it possible for plaintiff tribes to access other countries' law enforcement mechanisms to regain their stolen property.

Sacred tribal objects of uncertain provenance are also held in private collections in the U.S. These items are not covered by NAGPRA. Section 6 of S. 2165 attempts to address this matter by defining and establishing a mechanism of voluntary return of items of "tangible cultural heritage." Under this language, it would become the official policy of the federal government for "collectors, dealers, and other individuals and non-Federal organizations" that hold such articles to return them—without threat of prosecution—to Indian tribes and Native Hawaiian organizations. Further, Sections 7 and 8 would create federal advisory panels to help facilitate both the repatriation of overseas objects, and of those returned under the voluntary system.

The STOP Act makes other needed changes. It would, for example, increase the penalties for violating NAGPRA and ARPA. It would not, however, criminalize any currently legal activity, or extend federal protections to articles that are not already protected under NAGPRA or ARPA, such as those items held in museums or research facilities that are subject to those statutes.

S. 2165, as currently drafted, is the product of lengthy consultation and input between tribal leaders, federal agencies, archaeologists, art dealers, and others who care about America's heritage and the preservation of her cultural resources. We believe the STOP Act will be of critical assistance to ending illegal trafficking in tribes' cultural heritage and bringing home objects that have been separated from their communities for far too long. SAA supports the STOP Act and its goals of preventing the export of illicitly-procured tribal sacred items and returning them to their lawful owners, and urges the committee to pass the measure as quickly as possible.