

July 19, 2005

To the Honorable Senator McCain and the members of the Senate Committee on Indian Affairs, United States Senate

I am retired from a career in high technology, and I am personally familiar with the issues related to the proposed legislation offered by Senator McCain to amend NAGPRA's definition of Native American. I have a graduate degree in physical anthropology from the University of Tennessee, Knoxville. I was trained in human osteology and skeletal biology and participated in research in those areas. Since 1998, I have assisted the attorneys for the scientists in the Kennewick Man lawsuit. These are my personal views.

I strongly oppose the McCain Bill or any legislation that would expand NAGPRA's definition of Native American to include all people residing here before European contact. One cannot simply assume that a single unbroken line connects all the earliest people who have ever lived on this continent to modern American Indian tribes today.

Through careful scientific study we have come to understand much about human life on earth. Even so, a basic question about the prehistory of our continent awaits an answer. Who were the earliest people to come here and by what means did they arrive in the empty land of the Americas thousands of years ago? The ancestors to modern day American Indians came into the Americas from elsewhere. Who, if anyone, did they find when they arrived? We simply do not yet know.

It now appears that the Americas were a melting pot long before Europeans arrived. The assumption of a single migration by a small band of people over a Bering land bridge is inadequate to explain all the facts as we now know them. Tantalizing evidence of early

migrations along the Pacific coast suggests that a variety of unrelated peoples from the Pacific rim made contact over many millennia. Surprisingly, the oldest US archeological sites have been found in the south and east. Even older evidence of human habitation is found in South America. We rely on scientific techniques to piece together the facts of prehistory. Assumptions must be carefully reasoned, then verified.

The argument is often made that the study of unidentified and unaffiliated human remains is not important. Nothing could be further from the truth. Every bit of evidence adds to a factual, verifiable understanding of the complexities of prehistory.

Precious ancient remains have been lost on false assumptions and without establishing cultural links. The Buhl woman, who lived 10,800 years ago, was found in Idaho in 1989. Her remains were buried in 1991. Someone assumed that this one skeleton couldn't tell us much. The limited information gathered about her reveals that she bore no resemblance to modern American Indians. Ideas about her life, her culture, her beliefs and her population relationships were assumed and imposed, not established by factual inquiry.

Most of the known ancient remains from the Midwest are gone forever because of misapplications of NAGPRA, and there is now little hope of finding out if any common thread backwards or forwards connect these remains to the tribal cultures that we recognize today. Browns Valley, Pelican Rapids, Wet Gravel, Gilder Mound, Hour Glass Cave: these ancient remains and others in the West are named now for the places where they were discovered. Each was a single ancient skeleton. Each was given an identity that was assumed and imposed, not established. Not one of these ancient skeletons received protection from NAGPRA's requirement to establish a cultural link.

In Oregon, Prospect Man lived sometime before Mt. Mazama erupted nearly 7,000 years ago. Preliminary examination of his remains revealed a mixture of human traits.

Recommendations to establish a firm carbon date for when he lived were denied. This single skeleton could have provided important clues to help connect the early people with those who may have arrived later. The remains were buried in 1999.

The first court test of NAGPRA's definition of Native American came in the Kennewick Man lawsuit (Bonnichsen, et al.). Without bothering to check the evidence, the Army Corps of Engineers assumed that the tribal claim was legitimate. It turned out that no cognizable cultural link could be established.

During the appeal to the Ninth Circuit, a judge on the panel posed a question to the Department of Justice attorney: If the bones of the earliest humans on earth, a virtual Adam and Eve, were found on Federal land, would they be Native American under the defendants' interpretation of NAGPRA's definition? The response was yes. The court found that such an interpretation yielded an absurd result. Defending this interpretation cost the American taxpayers an estimated \$6,000,000.

Some claim that the Ninth Circuit got it all wrong. I challenge every member of this committee to actually read the Ninth Circuit decision before accepting that position.

The government and the tribes sought to impose on Kennewick Man a history that does not exist. We do not know where he was born, how far he traveled in his lifetime, who his group was, what his beliefs were, who thrust the spear point into his hip, or how he died. We do not even know yet if he was accidentally or intentionally buried. But with scientific study, many of these questions can be addressed. Had the lawsuit not been brought in 1996, the 9,000 year-old Kennewick Man remains would have been buried with no study whatsoever.

With scientific study of individual skeletons, insights into the lives of newly discovered early individuals can be built on a foundation of fact, not simplistic assumptions that exclude a world of other equally plausible possibilities.

The history of the earliest peoples in this country still waits to be understood. These people deserve their histories to be told accurately and as completely as we can manage. A factual understanding of the past through scientific study is of interest not only to the citizens of the United States but also to people worldwide. All of the earliest people came from elsewhere, bringing their ingenuity to the Americas. Some left descendants, others may not have. Descendants from the earliest people could be anywhere. One cannot simply assume that a single unbroken line connects all the earliest people to modern tribes today.

Congress should not pass legislation that would restrict access to factual information or limit explanations of the past to a single view. NAGPRA's cultural affiliation requirement has offered no protection to culturally unaffiliated and unidentified ancient remains in the past. It is not clear what this legislation is actually intended to accomplish.

I urge you to withdraw the proposed McCain bill to define Native American as including all humans on this continent before European contact. This legislation is flawed by unfounded and narrow assumptions about the earliest people who inhabited the continent.

Respectfully submitted,

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