

July 19, 2005

Senate Committee on Indian Affairs
United States Senate
836 Hart Office Building
Washington, DC 20510
FAX: (202) 224-5429

Re: McCain Amendment

Dear Committee Members:

I am writing to urge that Senator McCain's proposed amendment to the Native American Graves Protection and Repatriation Act (NAGPRA) not be approved by the Senate Committee on Indian Affairs. That amendment would change NAGPRA's definition of the term Native American by inserting the words "or was" after the word "is" in Section 2(9) of the statute.

I am a professor of anthropology at the University of Tennessee. I have 30 years experience studying the skeletal remains of both ancient and recent Americans, including Native Americans and those of European, African, or other origins. As a scientist interested in the history of American human populations, I am concerned about the profound negative consequences that the McCain Amendment would have on our ability to study the remains of early skeletons and to understand the history of human occupation of North America.

There are not more than about a dozen reasonably well preserved early skeletons (older than about 8000 years ago) or substantial parts of skeletons that are available for study in the United States. The proposed amendment, should it become law, would give Native Americans control over these ancient remains, and any others that might be discovered in the future on federal land. If that were to occur, it can be anticipated that

most, if not all, of them will be reburied and thereby lost to scientific investigation. The same would happen to dozens of other skeletal remains that date to 5000 years ago or more. Possible connections between these early remains and modern Native Americans are entirely speculative. Despite all of the advances that have been made in the last 80 years or so, our knowledge of the many different groups of people that lived in North America more than 2000 or 3000 years ago is still quite limited. We know something about the tools and other artifacts that they made, the animals and plants that they ate, and where they made some of their camps. However, we know very little about the people themselves.

Research on these early remains has demonstrated that they differ in significant ways from modern Native American tribes. There are two scenarios that might explain this apparent discontinuity between the ancient remains and modern people: (1) there is an ancestor-descendent relationship between the early people and recent ones, and the differences are due to in-situ change; (2) the early inhabitants of North America differ from modern Native Americans because they are unrelated, and the ancestors of Native Americans represent a later migration of people into the continent.

At present, there is insufficient evidence to reach any reliable conclusions about which one of these scenarios is correct. We will never be able to know what actually happened without continued study of existing skeletal remains and of those that might be

discovered in the future. Even those remains that have already been studied have not lost their importance as sources of potential information. The need to restudy them from time to time will continue to grow as scientific advances occur. For example, it is now possible to extract DNA from ancient remains, or to infer diet or place of origin from elemental isotopes. Such studies were impossible only a few decades ago. Future generations of scientists are certain to develop methods of analysis that we cannot even imagine and that are many times more powerful than anything that we can do today. If the McCain Amendment were to become law, it may never be possible to answer questions about who the earliest inhabitants of the continent were, where they came from, whether they had descendants, and how or whether they relate to modern Native Americans. If early inhabitants did in fact evolve into modern Native Americans, we will not be able to understand how or why that process occurred. If the ancestors of modern Native Americans replaced these early people, we will never understand the nature of the transition.

Our ability to understand human origins and dispersal is critically dependent on our ability to study remains. It is done routinely in most countries of the world. America is one of the last parts of the world to be inhabited by humans. Turning over to modern Indian tribes remains that are thousands of years old would, in effect, prevent the telling of this last chapter of the human story. There might be some conceivable justification for adopting such a policy if there were a demonstrable relationship between these ancient remains and modern Native Americans. Since such a relationship has yet to be established, and may never be, it would be premature and short-sighted to empty museums and institution collections of these precious relics from the remote past.

I support NAGPRA as it now stands. I believe that on the whole it is good legislation that enables Native American tribes to claim remains identifiable as their ancestors. In fact on several occasions I have conducted analyses on skeletal remains that provided evidence connecting the remains to a specific tribe, hence facilitating their repatriation. However, the fact that NAGPRA has fair and appropriate applications in some situations does not mean that it should be applied to every skeleton that might be found on federal land. NAGPRA should be limited to what its title implies (i.e., those remains and objects that can fairly be said to be Native American). If the definition of Native American is modified as proposed in the McCain Amendment, the term Native American will essentially become a meaningless term.

I am available to answer question from the Committee members and staff about the issues addressed in this letter, and can be reached at:

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Sincerely,

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Brief Background of Richard L. Jantz, Ph.D.

My current position is that of Professor of Anthropology and Director of the Forensic Anthropology Center, The University of Tennessee, Knoxville. In those capacities I teach graduate and undergraduate courses in biological anthropology, direct the research of M.A. and Ph.D. students, conduct research, and administrate the Forensic Anthropology Center. I have been on the faculty of the University of Tennessee since 1971.

My research is concerned with history of human populations as inferred from their skeletal remains. Over the course of my career I have studied the remains of several thousand individuals of people from most regions of the world, ranging in time from 30,000 years ago to modern people. I have either established, or participated in the establishment of several skeletal data bases. These include (1) a data base of skeletal measurements of the populations of America containing information on some 2500 individuals, ranging in time from 10,000 years ago to the present; (2) a data base of modern American Blacks, Hispanics and Whites which is used to estimate sex, race and height of unknown skeletons that appear as forensic cases. I am co-author of a popular software package, FORDISC, now in its third edition. This software package is used by forensic anthropologists in America and the world to assist them in developing the biological profile of unknown skeletal remains. Over the course of my career, I have published over 200 articles and book chapters.

My membership in professional organization includes American Association of Physical Anthropology, Society for the Study of Human Biology and American Academy of

Forensic Sciences. I have served as Chair and Program Chair of the Physical Anthropology Section of the AAFS. I have served on the editorial boards of several scientific journals, and am currently on the editorial board of the Journal of Forensic Sciences.