

RESOLUTION OF THE
NAABIK'ÍYÁTI' COMMITTEE OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL - Second Year, 2016

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT AND NAABIK'ÍYÁTI'
COMMITTEES; RESPECTFULLY REQUESTING SUPPORT OF H.CON. RES. 122,
PROTECT PATRIMONY RESOLUTION

WHEREAS:

Section One. Standing Committee Authority and Power

- A. The Navajo Nation established the Resources and Development Committee as a Navajo Nation Council standing committee. 2 N.N.C. § 500 (A) (2012) *see also* CJA-03-13.
- B. The Navajo Nation empowered the Resources and Development Committee to oversee the Division of Natural Resources. 2 N.N.C. § 501 (C) (1) (2012) *see also* CJA-03-13.
- C. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee. 2 N.N.C. § 700 (A) (2012) *see also* CJA-03-13.
- D. The Naabik'íyáti' Committee established the Sacred Sites Sub-Committee whose purpose is "to identify the nature and detail of any all controversies pertaining to any sacred site within the Navajo Nation." NABIMY-31-15, 23rd Navajo Nation Council, sect. 2, para. A(2) (May 28, 2015).

Section Two. Findings

- A. The Navajo Nation has a government-to-government relationship with the United States of America. Treaty of 1850, Sept. 24, 1850, 9 Stat. 974 and Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.
- B. On March 2, 2016, New Mexico Representative Stevan Pearce introduced H. Con. Res 122, PROTECT Patrimony Resolution, hereinafter "the bill"; EXHIBIT A.

C. The House referred the bill to the House Natural Resources on March 2, 2016. www.congress.gov.

D. The PROTECT Patrimony Resolution, H. Con. Res. 122, 114th Cong. (2016).

1. Condemns the theft, illegal possession or sale, transfer, and export of tribal cultural items;
2. Call upon several United States Departments and the Attorney General to consult with tribes in addressing this important issue, to take affirmative action to stop these illegal practices, and to secure repatriation of tribal cultural items;
3. Calls upon the Comptroller General to conduct a study to determine the scope of illegal trafficking in tribal cultural items domestically and internationally;
4. Support the development of explicit restrictions on the export of tribal cultural items; and
5. Encourages State and local governments and interested groups and organizations to work cooperatively in deterring the theft, illegal possession or sale, transfer, and export of tribal cultural items and in securing the tribal cultural items repatriation.

E. This bill supports efforts to stop the theft, illegal possession or sale, transfer, and export of American Indians, Alaska Natives, and Native Hawaiians cultural items in the United States and internationally. *Id.*

F. This bill aligns with the Navajo Nation's position to stop the theft and sale of Diné cultural items internationally.

G. In December 2014, the Naabik'íyáti' Committee Sacred Sites Sub-Committee decided to send a delegation to Paris, France to retrieve seven Yei'bi'chei masks from a Paris auction house. Alastair L. Bitsoi, *Navajo delegation brings back Yei Bi Chei masks from Paris*, NAVAJO TIMES, Dec. 15, 2014, at navajotimes.com see also Navajo Nation Human Rights Commission Resolution NNHRCMAR-04-16 (Mar. 4, 2016).

H. The Navajo Nation Human Rights Commission supports this bill and directs the Office of Navajo Nation Human Rights

Commission to do all things necessary to continue advocating for the protection of sacred cultural items for monetary gain. Navajo Nation Human Rights Commission Resolution NNHRCMAR-04-16 (Mar. 4, 2016). EXHIBIT B.

NOW THEREFORE, BE IT RESOLVED:

- A. The Navajo Nation respectfully urges the United States Congress to pass H. Con. Res. 122.
- B. The Navajo Nation authorizes the Navajo Nation President, the Navajo Nation Speaker, and their designees, to advocate for the bill's passage.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 14 in favor, 0 oppose, this 12th day of May, 2016.



LoRenzo Bates, Chairperson
Naabik'íyáti' Committee

Motion: Honorable Alton Joe Shepherd
Second: Honorable Tuchoney Slim, Jr.

NAVAJO NATION

RCS# 388

Naa'bik'iyati Committee

5/12/2016

03:19:40 PM

Amd# to Amd#

Legislation No. 0074-16

PASSED

MOT Shepherd

Respectfully Requesting Support

SEC Slim

of H. CON RES 122

Yea : 14

Nay : 0

Not Voting : 10

Yea : 14

Begay, NM

Crotty

Jack

Slim

BeGaye, N

Damon

Perry

Witherspoon

Bennett

Daniels

Shepherd

Yazzie

Chee

Hale

Nay : 0

Not Voting : 10

Bates

Filfred

Smith

Tsosie

Begay, K

Pete

Tso

Vacant

Brown

Phelps



114TH CONGRESS
2D SESSION

H. CON. RES. 122

Supporting efforts to stop the theft, illegal possession or sale, transfer, and export of tribal cultural items of American Indians, Alaska Natives, and Native Hawaiians in the United States and internationally.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2016

Mr. PEARCE (for himself, Mr. COLE, and Ms. MCCOLLUM) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary, and in addition to the Committees on Foreign Affairs and Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

CONCURRENT RESOLUTION

Supporting efforts to stop the theft, illegal possession or sale, transfer, and export of tribal cultural items of American Indians, Alaska Natives, and Native Hawaiians in the United States and internationally.

Whereas this resolution may be cited as the "Protection of the Right of Tribes to stop the Export of Cultural and Traditional Patrimony Resolution" or the "PROTECT Patrimony Resolution";

Whereas the tribal cultural items of American Indians, Alaska Natives, and Native Hawaiians (collectively "tribes" or "Native Americans") in the United States of America include ancestral remains; funerary objects; sacred ob-

jects; and objects of cultural patrimony (hereinafter "tribal cultural items"), which are objects that have ongoing historical, traditional, or cultural importance central to a Native American group or culture itself, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual;

Whereas tribal cultural items are vital to tribal cultural survival and the maintenance of tribal ways of life;

Whereas the nature and the description of tribal cultural items are sensitive and to be treated with respect and confidentiality, as appropriate;

Whereas violators often export tribal cultural items overseas with the intent of evading Federal and tribal laws;

Whereas tribal cultural items continue to be removed from tribal possession and sold in black or public markets in violation of Federal and tribal laws, including laws designed to protect tribal cultural property rights;

Whereas the illegal trade of tribal cultural items involves a sophisticated and lucrative black market, as items make their way through domestic markets, and then are often exported overseas;

Whereas auction houses in foreign countries have held sales of tribal cultural items from the Pueblo of Acoma, the Pueblo of Laguna, the Pueblo of San Felipe, the Hopi Tribe, and other tribes;

Whereas after tribal cultural items are exported abroad, tribes have difficulty stopping the sale of these items and securing their repatriation to their home communities, where the items belong;

Whereas Federal agencies have a responsibility to consult with tribes to stop the theft, illegal possession or sale, transfer, and export of tribal cultural items;

Whereas an increase in the investigation and successful prosecution of violations of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) and the Archaeological Resources Protection Act (16 U.S.C. 470aa-470mm) is necessary to deter illegal traders; and

Whereas many tribes and tribal organizations have passed resolutions condemning the theft and sale of tribal cultural items, including—

(1) the National Congress of American Indians passed Resolutions SAC-12-008 and SD-15-075 to call upon the United States, in consultation with tribes, to address international repatriation and take affirmative actions to stop the theft and illegal sale of tribal cultural items both domestically and abroad;

(2) the All Pueblo Council of Governors, representative of 20 Pueblo Indian tribes, noting that the Pueblo Indian tribes of the southwestern United States have been disproportionately affected by the illegal sale of tribal cultural items both domestically and internationally and in violation of Federal and tribal laws, passed Resolutions Nos. 2015-12 and 2015-13 to call upon the United States, in consultation with tribes, to address international repatriation and take affirmative actions to stop the theft and illegal sale of tribal cultural items both domestically and abroad;

(3) the United South and Eastern Tribes, an intertribal organization comprised of twenty-six federally recognized tribes, passed Resolution No. 2015:007, which

calls upon the United States to address all means to support repatriation of ancestral remains and cultural items from beyond United States borders; and

(4) the Inter-Tribal Council of the Five Civilized Tribes, uniting the Chickasaw, Choctaw, Cherokee, Muscogee (Creek), and Seminole Nations, passed Resolution No. 12-07, which requests that the United States assist in international repatriations and take immediate action, after consultation with tribes, to address repatriation: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring), That Congress—*

3 (1) condemns the theft, illegal possession or
4 sale, transfer, and export of tribal cultural items;

5 (2) calls upon the Secretaries of the Depart-
6 ment of the Interior, the Department of State, the
7 Department of Commerce, and the Department of
8 Homeland Security and the Attorney General to con-
9 sult with tribes and traditional Native American reli-
10 gious leaders in addressing this important issue, to
11 take affirmative action to stop these illegal practices,
12 and to secure repatriation of tribal cultural items to
13 tribes;

14 (3) calls upon the Comptroller General to con-
15 duct a study to determine the scope of illegal traf-
16 ficking in tribal cultural items domestically and
17 internationally and to identify, in consultation with
18 tribes and traditional Native American religious

1 leaders, steps required to end illegal trafficking and
2 export of tribal cultural items and secure repatri-
3 ation to the respective tribe;

4 (4) supports the development of explicit restric-
5 tions on the export of tribal cultural items; and

6 (5) encourages State and local governments and
7 interested groups and organizations to work coopera-
8 tively in deterring the theft, illegal possession or
9 sale, transfer, and export of tribal cultural items and
10 in securing the repatriation of tribal cultural items.

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NNHRCMAR-04-16

**RESOLUTION OF THE
NAVAJO NATION HUMAN RIGHTS COMMISSION**

Supporting the 114th Congress 2nd Session H. Con. Res. 122 on Stopping the Theft, Illegal Possession, Sale, Transfer, and Export of Sacred Cultural Items of Indigenous Peoples within the United States of America Nationally and Internationally

WHEREAS:

1. Pursuant to 2 N.N.C. §920 and §921, the Navajo Nation Human Rights Commission ("Commission") is established within the Legislative Branch as an entity of the Navajo Nation government to operate as a clearinghouse to address discriminatory actions against citizens of the Navajo Nation, and to interface with local, state, federal governments and with national and international human rights organizations in accordance with the Commission's plan of operation and applicable laws and regulations of the Navajo Nation; and
2. In Spring 2014, the Navajo Nation Historic Preservation Department ("Preservation Department"), the Sacred Sites Task Force – Subcommittee of the Navajo Nation Naabik'iyat'i' Committee, the Office of Navajo Nation Human Rights Commission ("Office"), and the Navajo Nation Office of the Vice-President became aware of thirty (30) confirmed Navajo Yeibichei masks that would be auctioned on June 27, 2014 at the Eve Auction House in Paris, France; and
3. The Navajo Nation, with the assistance of the Office, made every effort to prevent the auction of these thirty (30) confirmed Navajo Yeibichei masks, which are sacred items to the Navajo people, and have the sacred items returned to the Navajo Nation. The Navajo Nation met and spoke with the U.S. Department of State, U.S. Department of the Interior, U.S. Ambassador Keith Harper to the United Nations Human Rights Council, U.S. Mission to the United Nations in New York, U.S. Mission of the United Nations and Other International Organizations in Geneva, and the Embassy of the United States in Paris on the importance of these sacred masks and their assistance to repatriate these sacred items without cost; and
4. While international indigenous human rights is relatively a new issue in contrast to other human rights issues, there is one international human rights treaty that governments of both the United States and France are parties to that regulate artifacts and sacred items worldwide, the *Convention on the Means to Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970*. However, the convention limited the Navajo Nation's effort to repatriate these sacred masks for the simple reason that the Navajo Nation would have to prove these sacred masks were either looted or stolen; and
5. All efforts made by the Navajo Nation to prevent the auction and return of these sacred masks by Eve Auction House were unsuccessful. On June 27, 2014, all but seven (7) confirmed Navajo Yeibichei masks were auctioned off. The remaining sacred masks would later be scheduled to be auctioned on December 15, 2014 in Paris at the Hotel Sales of Drouot by Eve Auction House. The Sacred Sites Task Force then directed the

Office to prepare for and seek final approval to travel to Paris to repatriate these remaining sacred masks from the Eve Auction House. This included purchasing them directly before they go to auction and bidding on them directly during the auction, if the first was not possible. On December 15, 2014, the remaining seven (7) sacred masks were successfully bid on and returned to the Navajo Nation; and

6. In Fall 2015, the Eve Auction House owner, Alain LeRoy, reached out to the Office and communicated that he will be in possession of eighteen (18) Navajo Yeibichei masks, which will be scheduled for auction on December 7, 2015. The possession and auction of these Navajo Yeibichei masks was communicated to Preservation Department, the Subcommittee on Sacred Sites, and the Navajo Nation Office of the President & Vice-President. The Navajo Nation, with the assistance of the Office, worked out an arrangement with Eve Auction House to not photograph, catalog, and publish the possession and auction of these sacred items as the Navajo Nation would be purchasing and repatriating them directly; and
7. As a result, the Navajo Nation stakes on protecting sacred cultural items for monetary gain nationally and internationally increased. The Commission finds it is in the best interest of the Navajo Nation to support Hobbs Straus Dean & Walker, LLP, the Pueblo of Acoma and U.S. Congressman Steve Pearce (R-NM) in their effort to protect and stop the theft, illegal possession, sale, transfer, and export of sacred cultural items of indigenous peoples within the United States nationally and internationally (attachment Exhibit A); and
8. The Commission finds it is in the best interest of the Navajo Nation to advocate that inappropriate wording be stricken out such as "tribal cultural items" and "a Native American group" (Para. 3) and replaced with "'sacred cultural items'" and "Native American peoples." In addition, the wording "have a responsibility to consult with..." be stricken and replaced with "have a trust responsibility to" (Para. 11). Furthermore, the wording "condemning the theft and sale of tribal cultural items" be stricken out and replaced with "condemning the theft and sale of sacred cultural items, as a violation of collective rights," (Para. 13); and
9. In addition, the Commission finds it is in the best interest of the Navajo Nation to incorporate "to work directly with American Indians, Alaska Natives, and Native Hawaiians" within the *Resolved by the House of Representatives (the Senate concurring)*, No. 5 (Line 6). It will read, "encourages State and local governments to work directly with American Indians, Alaska Natives, and Native Hawaiians and interested groups and organizations..." (Lines 6-7) as their commitment to paragraph twenty-seven (27) of the World Conference on Indigenous Peoples Outcome Document ("Outcome Document"), which was adopted by the United Nations General Assembly on September 22, 2014; and
10. Furthermore, the Commission finds it is in the best interest of the Navajo Nation to incorporate an enforcement/investigation mechanism within the *Resolved* section. The Commission offers the following language, "supports the development of a unit within the Department of the Interior Bureau of Indian Affairs Division of Law Enforcement to focus and work directly with impacted American Indians, Alaska Natives, and Native Hawaiians on the investigation of violations of the Native American Graves Protection

and Repatriation Act (25 U.S.C 3001 et seq.) and related laws" such as the Migratory Bird Treaty Act (16 U.S.C. 703-712), the Bald & Golden Eagle Protection Act (16 U.S.C. 668-668c) or the Archaeological Resources Protection Act (16 U.S.C. 470); and

11. Lastly, the Commission finds it is in the best interest of the Navajo Nation – after expending a large amount of resources and time advocating before the United Nations and Organization of American States regarding Navajo human rights – that the Navajo Nation advocate the minimum standard established within the United Nations Declaration on the Rights of Indigenous Peoples be utilized along with the Outcome Document, Paragraph 27, which states the following commitment, "We commit ourselves to developing, in conjunction with the indigenous peoples concerned, fair, transparent and effective mechanisms for access to and repatriation of ceremonial objects and human remains at the national and international levels," when the U.S. Congressional hearing and amendment process begins.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Human Rights Commission hereby directs the Office of Navajo Nation Human Rights Commission to support Hobbs Straus Dean & Walker, LLP, the Pueblo of Acoma and U.S. Congressman Steve Pearce (R-NM) in their effort to protect and stop the theft, illegal possession, sale, transfer, and export of sacred cultural items of indigenous peoples within the United States nationally and internationally.
2. The Navajo Nation Human Rights Commission hereby further directs the Office of Navajo Nation Human Rights Commission to do all things necessary to continue advocating for the protection of sacred cultural items for monetary gain and transmit this resolution to the Navajo Nation Council, Navajo Nation Naabik'iyat'i' Committee, Navajo Nation Subcommittee on Sacred Sites, Navajo Nation Historic Preservation Department, and the Navajo Nation Washington, D.C. Office.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Human Rights Commission at a duly called meeting at St. Michaels, Navajo Nation (Arizona) at which a quorum was present at that same was passed by a vote of 3 in favor and 0 opposed, this 4th day of March, 2016.



Steven A. Darden, *Chairperson*
Navajo Nation Human Rights Commission

114TH CONGRESS
2D SESSION

H. CON. RES. 122

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Whereas tribal cultural items are vital to tribal cultural survival and the maintenance of tribal ways of life;

Whereas the nature and the description of tribal cultural items are sensitive and to be treated with respect and confidentiality, as appropriate;

Whereas violators often export tribal cultural items overseas with the intent of evading Federal and tribal laws;

Whereas tribal cultural items continue to be removed from tribal possession and sold in black or public markets in violation of Federal and tribal laws, including laws designed to protect tribal cultural property rights;

Whereas the illegal trade of tribal cultural items involves a sophisticated and lucrative black market, as items make their way through domestic markets, and then are often exported overseas;

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Whereas Federal agencies have a responsibility to consult with tribes to stop the theft, illegal possession or sale, transfer, and export of tribal cultural items;

Whereas an increase in the investigation and successful prosecution of violations of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) and the Archaeological Resources Protection Act (16 U.S.C. 470aa-470mm) is necessary to deter illegal traders; and

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9 sult with tribes and traditional Native American reli-
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