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**Pueblo of Acoma
Committee on Natural Resources
Subcommittee for Indigenous Peoples of the United States
Legislative Hearing on H.R. 2930
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Responses to Questions for the Record

Questions from Rep. Grijalva

1. Illegally acquiring and trafficking tribal cultural patrimony is more than just a property rights issue.

a. Can you speak more about protecting tribal cultural traditions and how it's linked to spiritual and community wellbeing?

Our tribal cultural heritage items are an essential part of our cultural practices and daily well-being as Acoma people. These items are passed down from one generation of caretakers to another and are acknowledged as a member of a household or society. The items are interwoven into and necessary to properly carry out ceremony and other cultural observances. They also serve as an important tool for reminding us of our core values and teaching them to our younger generations. Without these sacred items, our ability to carry on our cultural practices and life ways and to pass them on to our children is in dire jeopardy. Having a strong foundation in cultural identity is important for the continuity of Acoma people, and it is also important to the livelihood of each tribal member today, and those yet to come. Given the importance of these items to the Pueblo, if a caretaker fails to properly care for an item, or if a caretaker dies without properly providing for the care of an item, the item is returned to the ultimate caretaker, the Pueblo.

Questions from Rep. Westerman

1. Would a tourist who purchased a commercial item, need to go through the exportation process before leaving the country?

No. The STOP Act in setting the boundaries for which objects require export certifications incorporates existing federal definitions, and such commercial items made for tourists do not generally fall under those definitions. Therefore, the export of such items would not trigger the export certification process.

The STOP Act *only* requires export certifications for objects that satisfy the Native American Graves Protection and Repatriation Act (NAGPRA) "cultural item" or Archaeological Resources Protection Act (ARPA) Native American "archeological resource" definitions. Sec. 5(b)(1)(A);

see also Sec. 3(6). This excludes the vast majority of items associated with tribes. These definitions require a requisite level of cultural significance to qualify under them. Sec. 3(1) (citing 16 U.S.C. § 470bb for ARPA definition of "archaeological resource"); Sec. 3(3) (citing 25 U.S.C. § 3001 for NAGPRA definition of "cultural item"). Therefore, the vast majority of objects associated with tribes—including items made solely for commercial purposes—do not fall under those definitions now and therefore would not require an export certification when the STOP Act is enacted.

The NAGPRA "cultural item" and ARPA Native American "archeological resource" definitions are sufficiently clear, and the STOP Act provides them even more clarity—including highlighting that items made for commercial purposes generally do not fall under them, as described below. The definitions are set forth clearly in statutory provisions, have been in existence for decades, were carefully crafted, and have been upheld as clear through litigation. *See, e.g., United States v. Tidwell*, 191 F.3d 976 (9th Cir. 1999) (upholding NAGPRA); *United States v. Corrow*, 119 F.3d 796 (10th Cir. 1997) (upholding NAGPRA); *see also United States v. Austin*, 902 F.2d 743 (9th Cir. 1990) (upholding ARPA).

The STOP Act provides even more clarity by directing the Department of the Interior, in consultation with tribes, to publish additional information about the types of items that fall under the NAGPRA "cultural item" and ARPA Native American "archeological resource" definitions. Sec. 5(b)(1)(B).

Further, only NAGPRA "cultural items" and ARPA Native American "archaeological resources" prohibited from being trafficked under their respective statutes—which is a much smaller subset of items due to those statutes' restrictive provenance requirements—are actually prohibited by the STOP Act from being exported. Sec. 5(a)(1); *see also* Sec. 3(5)(A) (citing 18 U.S.C. § 1170(b) for NAGPRA anti-trafficking prohibition); Sec. 3(5)(B) (citing 16 U.S.C. § 470ee for ARPA anti-trafficking prohibition).

Even if a piece of art made for commercial purposes somehow was covered under these definitions, a tourist purchasing the art would almost certainly not be criminally liable for any export. The STOP Act has a *mens rea* requirement tied to criminal penalties for an export violation. Sec. 5(a)(2). It requires that an exporter know, or in the exercise of due care should have known, that the item was taken, possessed, transported, or sold in violation of, or in a manner unlawful under, an underlying federal law or treaty.

Thus, the odds of a tourist purchasing and trying to export an item so culturally significant that it qualifies as a NAGPRA "cultural item" or ARPA Native American "archaeological resource" are extremely low—and thus an export certification is not required. The odds that the item meets the provenance requirements of those statutes to make its trafficking illegal, and thus its export under the STOP Act prohibited, are even lower. Even if both of these conditions happened, that tourist would not be subject to criminal penalties unless he knew or should have known of the item's illegality. The STOP Act addresses the export and international trafficking of items of great cultural significance to tribal communities—not art made by Native artists solely for commercial purposes.

Instead, by making trafficking in federally-protected tribal cultural heritage items more difficult, the STOP Act seeks to encourage buyers to purchase legal contemporary art made by Native artists for commercial purposes—a goal explicitly stated in the STOP Act. *See* Sec. 2(8).

2. How does H.R. 2930 ensure that commercial items are not pulled into the export requirements?

As described above, the STOP Act incorporates existing federal definitions, and commercial items do not generally fall under these definitions. Further, the STOP Act takes steps to clarify and create presumptions that commercial items do not fall under these definitions.

The STOP Act makes clear that an object made solely for commercial purposes is presumed to not qualify as a NAGPRA "cultural item" or ARPA Native American "archaeological resource." Sec. 5(b)(1)(B)(ii)(I); *see also* Sec. 3(6). The STOP Act also encourages tribes to issue their artists receipts to show that particular objects sold by those artists do not possess the requisite cultural significance to qualify under the definitions. Sec. 5(b)(1)(B)(ii)(II); *see also* Sec. 3(6).

By clarifying that commercial items made by Native artists are not illegal to buy and sell, the STOP Act again seeks to encourage buyers to purchase legal contemporary art made by Native artists for commercial purposes—a goal explicitly stated in the STOP Act. Sec. 2(8).