



*SCIP Legislative Hearing on H.R. 438, H.R. 2930, and the RESPECT Act Discussion Draft*

*5.20.21*

OPENING STATEMENT

Thank you, Madam Chair and thank you to the witnesses for being with us today.

With the many technical issues this committee has experienced during virtual hearings over the past year, I sincerely hope that Members of this Committee can return to work in person soon.

With most Americans now fully vaccinated and given the new CDC guidance it is my hope that the Speaker will open Congress back up.

Today's hearing is about three important pieces of legislation.

I want first begin by commending Ranking Member Young on H.R. 438, which would amend the Alyce [Alice] Spotted Bear and Walter Soboleff [So-bo-leff] Commission on Native



Children Act, to provide an additional two years for the Commission on Native Children to conduct its comprehensive study and publish a report on the programs and issues facing Native Children.

When the bill was signed into law in 2016, the Commission was required to submit a report to Congress three years after all commissioners were appointed and it received full funding.

Funding from Congress was unfortunately not seen until 2019 and is far less than what is needed.

Additionally, the COVID-19 pandemic made matters even worse.

In response to these challenges, Mr. Young has introduced this bill to ensure that the Commission has adequate time to produce a complete and comprehensive report.

I look forward to receiving the Commission's recommendations and working with the Ranking Member and our colleagues on next steps.

The second bill we are considering today is H.R. 2930, the Safeguard Tribal Objects of Patrimony Act, commonly known as the STOP Act.

This bill is intended to address the serious issue of illegal trafficking and sale of items of Tribal cultural patrimony.

Under current law, the Archaeological Resources Protection Act of 1979 and the Native American Grave Protection and Repatriation Act provide a legal framework for the repatriation of human remains and cultural items to Indian tribes.

While ARPA [ARE-PA] and NAGPRA [NAG-PRUH] have greatly reduced the sale of certain cultural items within the United States, many items have appeared in European auction sales where they have little protection from being sold.

One of the more familiar cases made headlines in 2016 when an auction house in France listed a ceremonial war shield from the Pueblo of Acoma.

Shortly thereafter, former New Mexico Representative Steve Pearce successfully lead efforts to pass a resolution condemning these sales and requested the GAO report on the issue.

In 2018, this report was released and was used to craft legislation, part of which is included in H.R. 2930.

The bill would amend ARPA [ARE-PA] and NAGPRA [NAG-PRUH] to increase criminal penalties for repeat traffickers of Native American human remains or cultural items and bans the export of illegally obtained Native American cultural objects.

It also would require the Secretary of Interior to develop an export certification system to allow for the export of appropriate items and sets up a process to encourage voluntary returns.

Lastly, under the bill the Department of the Interior would be required to form an interagency working group and a tribal working group to provide recommendations regarding ending illegal trafficking in tribal cultural heritage, and develop regulations within a year to implement the bill.

While I fully support the intent of this bill, I realize that there are some concerns over the details, which I look forward to diving into today.

The third bill under consideration today, the RESPECT Act, would establish, in statute, new processes and procedures for tribal consultation.

While I appreciate the Chairman's interest in improving tribal consultation, this draft bill misses the mark in several areas.

As everyone is aware, out of respect for the special status of Indian tribes, the United States government consults with Indian tribes on proposed actions that may affect their interests.

This was formalized in Executive Order 13175, and contains instructions for agencies to establish procedures to ensure "meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

While there are times when federal agencies may have different procedures and produce varying results, establishing a consultation process in statute, with the conditions contained in this draft bill, I believe there could be broad negative impacts.

Instead of attempting to improve the existing Tribal consultation process, the procedures established under this bill would be required prior to any federal agency action or regulation, and before any other consultation could occur with other stakeholders including states and counties.

The bill includes onerous reporting requirements that federal agencies would be required to follow with every affected tribe or tribal community and if they fail to meet any of them it could jeopardize the entire process.

The bill fails to define what constitutes a “good faith effort” by an agency to identify areas that may contain sacred sites.

This could result in endless litigation as agencies attempt to review projects.

If this bill would cover any federal action or regulatory action, we could be talking about months of delay in rebuilding roadways, installing stop signs, and even slowing down or stopping LWCF acquisitions or Antiquities Act designations—even when tribes may support actions or projects.

I am disappointed that this draft bill was released just one week ago, with no elected Tribal leaders or Administration officials being invited to testify today.

This bill could also impact Congress’s infrastructure efforts.

While I strongly believe that federal agencies should conduct proper Tribal consultation and projects should include tribal voices, this bill would be extremely harmful by significantly slowing down agency actions, which could hinder needed economic development and critical infrastructure development for tribes.

I would like to thank our witnesses again and look forward to hearing their testimony.

Thank you, Madam Chair.

I yield back.