

WRITTEN TESTIMONY OF JON BRADY “ARIKARA” MHA NATION
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THE HOUSE NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

STRENGTHENING INDIGENOUS COMMUNITIES THROUGH CULTURAL AND
ENVIROMENTAL PRESERVATION

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Chair Fernandez, Ranking Member Young, Committee Chair Grijalva and other distinguished Members of this Subcommittee: It is an honor to provide written testimony for the Subcommittee's hearing titled “Strengthening Indigenous Communities through Cultural and Environmental Preservation.”

I am testifying on behalf of the 300,000 plus American Indian practitioners of the Peyote religion known as the Native American Church. In its 73rd year of existence the Native American Church of North America (NACNA) is one of this country’s oldest national Indian organizations. We are the largest and most representative advocacy organization protecting American Indian religious freedom and religious rights. Our primary focus through the decades has been to ensure the legal, ceremonial use, possession, transport, and harvest of Peyote (*Lophophora Williamsii*).

The battle for the legal use of Peyote required Congress to assert its “plenary power” over Indian Affairs after the United States Supreme Court in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), refused to acknowledge American Indians’ First Amendment right to practice the Peyote religion and sanctioned religious discrimination against us on that basis. NACNA has been at the forefront of these complex issues since our founding. Today NACNA offers written testimony to raise awareness of a quiet crisis in Indian country that once again will require congressional action. There exists an urgent need for Congress and the Administration to engage in Peyote habitat conservation to stem the tide of habitat loss.

The American Indian Religious Freedom Act (AIRFA) of 1978, as amended in 1994, offers a rare window into the soul of Indian country and the Peyote religion, which is the only national intertribal ceremony/religion in existence. While the AIRFA amendments of 1994 protect the use, purchase, transport, and possession of Peyote, they do not provide a statutory mechanism to protect Peyote habitat. For example, AIRFA does not provide for the protection of the Peyote plant or its natural habitat. Moreover, it does not address Peyote harvesting practices. Yet our Peyote ceremonies are contingent on the continued availability of Peyote for sacramental use. The AIRFA, therefore, does not protect the actual Peyote ceremony or members of the Native American Church.

Peyote habitat is threatened by development, road construction, wind farms, oil pads, and agricultural practices. Solving this crisis requires creative solutions that strike a balance between private landowners and their economic pursuits, and American Indian religious concerns. NACNA believes Congress and the Administration can honor Native American Church members' rights and respect private landowners' rights with equal zeal.

NACNA is making strides to address the lack of accessibility of the sacrament. NACNA hired the Walker Research Group to facilitate NACNA's Peyote Research Project, which analyzed data from the Walker Research Group and cacti researchers' publications Dr. Martin Terry's *Limitations to Natural Production of Lophophora Williamsii*, and Anne Erbanova's Master's thesis, *Comparative Survey of Peyote Populations*. Our Peyote Research Project revealed that there is a severe loss in the habitat of Peyote. I am including these research papers with this testimony and request that they be included in the Congressional Record. Without intervention there is an imminent threat to the existence of the entire Native American Church. Peyote habitat preservation is critical to harvesting Peyote and inextricably linked to the perpetuation of the Native American Church and the full expression of American Indian religious freedom.

Complicating habitat protection is the fact that 100% of Peyote habitat is contained within the nexus of private land located along the border on both sides of the Rio Grande River in Southwest Texas. American Indian practitioners of the Native American Church refer to this land as the "Peyote Gardens." It is a sacred place. This geographic anomaly is the only place in America that provides the climate, soil, and altitude that allows *Lophophora williamsii* Peyote to grow wild in its natural state.

We are currently in the midst of the first generation of Native American Church members who have been denied access to the Peyote Gardens for their entire lives. The right to practice religion, including pilgrimage rights, and Peyote ceremonial offering and harvest protocols, is a human right, and yet there is currently no protection for American Indian pilgrimage rights to the Peyote Gardens. Just as the habitat and the Peyote cacti have no protection, Native American Church practitioners have no protections in enjoying the full, complete, uninhibited participation in their religious ceremonies. Without the physical pilgrimage of Peyotists, the ceremonial protocols inexorably linked to sacred places where Peyote grows will only be known as fairy tales and lore.

For American Indians, religious persecution has a human face. We have seen our fathers, mothers, uncles, aunts, and grandparents face discrimination for practicing their religious ceremonies and holding their religious beliefs. The United States carried out a campaign to forcibly remove Indian children from their families and communities and to extinguish our languages, cultures, and ceremonies. It should be a national goal—a domestic policy priority—to fully reverse the United States' repeated attempts to decimate American Indian religions, customs, languages, ceremonies, and connectedness to sacred places.

Religious liberty needs certain elements to be fully realized. While federal policy *now* leans toward universal concern for preventing and combating religious persecution, the freedom to practice one's religion can only be realized when the government identifies barriers impeding the expression of full religious rights and adopts policies that remove those barriers.

NACNA has collaborated and consulted with several administrations to identify barriers to American Indian religious freedom, offer recommendations on how best to remove such barriers, provide suggestions for modernizing the AIRFA and protect Peyote. NACNA, consistent with our internal consultation procedures, has partnered with the National Congress of American Indians (NCAI) to form a Peyote Task Force, of which I am one of the co-chairs. Included in this written testimony is our resolution #SAC-21-038, *Calling on Federal, State, and Local Governments to Protect and Respect Peyote (Lophophora williamsii) and its Byproducts*. The resolution establishes as tribal priorities Peyote habitat protection, Peyote conservation, and strengthening the AIRFA to fully protect our ceremonial use of Peyote. The resolution calls on the Administration and numerous federal departments to convene and conduct a review of federal programs to determine a culturally-sensitive approach to facilitating the protection of Peyote habitats and the restoration of Peyote populations in the wild; (2) identify funding to address the threats to the long-term viability of the Peyote plant; and (3) to address other impediments to the legitimate use of Peyote, such as cross-border restrictions.

We recognize that our silence has created a self-imposed barrier to addressing this crisis, but NACNA now chooses to speak. Like all American Indian ceremonies, spiritual beliefs, and religions, the Native American Church is clandestine—our ceremonies are closed and isolated, and we do not proselytize. Not only is this done for reasons directly linked to persecution, it is also done because Native American Church ceremonies require privacy. This has translated into a lack of dialogue with policy makers and even a fear that the non-Indian world would intrude into one of the last enclaves of tribal ceremonial rights. Through this testimony NACNA wishes to reach out to the Subcommittee to foster dialogue on the protection and conservation of Peyote and our ceremonial practices. We also want to work with the Subcommittee and its staff to craft durable, creative solutions that will protect the Peyote habitat and allow uninterrupted ceremonial use of Peyote by members of the Native American Church.

We believe this will require new legislation and executive action. Any federal policy regarding Peyote must center Peyote habitat protection and ensure the necessary harvest of Peyote to meet the need for bona fide Native American Church ceremonies.

NACNA and the NCAI Peyote Task Force recommend the following actions which are supported by practitioners and tribal leaders:

- Developing measurable trust standards that ensure responsiveness and accountability in Peyote protection and conservation. The federal government's trust responsibility includes American Indian Religious freedom protections and the responsibility to guarantee access to Peyote. It also requires congressional oversight and the Administration's engagement on this issue.
- Drafting budgets or statutory authorizations to hold every branch of government accountable in its responsibility to AIRFA and the fullest expression of American Indian religious freedom.
- Directing federal agencies to manage conservation programs in a manner that targets private landowners with Peyote habitat as a priority conservation community, thereby codifying Peyote habitat protection as a federal priority.

- Authorizing a tribal set aside and a Peyote habitat priority in the Land and Water Conservation Fund at the U.S. Department of the Interior.
- Facilitating a meaningful program with NACNA and Federal Partners of the Land Trust Alliance to secure impactful Conservation Easements for Peyote habitat.
- Authorizing a significant tax incentive targeting private landowners with Peyote habitat wishing to engage in Peyote habitat conservation.
- Increasing access to Peyote, and creating targeted approaches to Peyote habitat conservation across agencies to comprehensively address the loss of Peyote habitat.
- Increasing understanding across agencies of causes surrounding Peyote habitat loss and its correlation with the diminishment of religious freedom in the Native American Church.
- Increasing Peyote reintroduction within suitable habitat, and increasing the percentage of existing Peyote habitat that is producing/supporting Peyote in its wild natural state.
- Breaking down and removing barriers that impede private landowners' (with Peyote habitat) participation in interagency programs advancing conservation.
- Supporting and improving data collection, mapping, and evidence-based strategies to protect, reintroduce, harvest, propagate, and conserve Peyote.
- Exploring policies that would establish a national park/monument to Peyote and a permanent home for Peyote.
- Ensuring access for Native American Church members, fulfilling pilgrimage and ceremonial offering protocols.
- Advancing coordinated efforts that regulate Peyote harvest, including harvesting guidelines that address the permitted size of harvestable Peyote and distribution documentation.
- Establishing an office in the Department of Interior with responsibilities for Federal coordination, partnerships with private landowners, conservation mobilization, enforcement of AIRFA, data collection, and Tribal / Native American Church engagement. Monitor and evaluate interagency progress.

AIRFA must be modernized, and the Subcommittee can begin by providing oversight of this crucial statute and invite testimony regarding its application, enforcement, and effectiveness since it was last amended in 1994. In the broader community of American Indian religious concerns there are significant deficiencies within AIRFA that render it toothless and an aspirational policy rather than the law of the land. This statutory incongruity has deprived American Indians of their integrity as a distinct people, unique cultural values, and continued ceremonial life. American Indian cultural, ceremonial, and human rights as they pertain to Peyote have conditional rights dependent on external forces rendering Native American Church practitioners with no protections.

Another emerging challenge to Peyote and the Native American Church is the “decriminalization” movement and its far-reaching efforts to legalize drugs including (mescaline) in municipalities and states. These ill-advised initiatives/referendums, legislative efforts in state assemblies and legislatures are proposed and introduced without any tribal consultation. Furthermore, they create statutory conflicts with Federal Indian law (AIRFA) raising the need for both the Administration and Congress to assert Federal Preemption to protect Peyote, Peyote habitat, and the Native American Church.

NCAI resolution #SAC-21-038 calls on the federal government to exercise its per prerogatives under the doctrine of federal preemption to block state and local governments' efforts to legalize and decriminalize Peyote use, in violation of AIRFA. The National Caucus of Native American State Legislators (NCNASL) recently passed a resolution endorsing NCAI resolution #SAC-21-038's call for preemption. The NCNASL consists of 81 members across 21 states who work to provide better understanding of state tribal issues among policy makers. NACNA cannot and should not have to fight endless efforts to decriminalize Peyote and mescaline. It is the federal government's responsibility and part of the federal trust corpus to protect American Indians from such efforts. The federal trust responsibility extends beyond express statutory and regulatory mandates. Here, it requires that the federal government anticipate and act to cease states' usurpation of American Indian religious rights.

The decriminalization movement, pharmaceutical interest, and rogue entities with no ties to federally recognized tribes or NACNA have formed an alliance that is endorsing drug legalization efforts across the country, and if successful they will fundamentally undermine the foundations of federal Indian law and AIRFA. NACNA opposes these efforts. We oppose any legal expansion of Peyote access that would undermine AIRFA. We also unequivocally oppose the commercialization of Peyote, particularly through land and lease acquisitions that funded by allies, funders, and supporters of the decriminalization movement.

These are dangerous times for the Native American Church, and they call for creative long-lasting solutions that will come from members of Native American Church, Congress, and the Administration. We must concurrently protect Peyote habitat, engage in meaningful restoration of religious access to the Peyote gardens, ensure continued sustainable harvest for ceremonial continuity, enforce AIRFA and federal preemption, provide harvesting and distribution regulations, and collaborate with private landowners in a manner in which all stakeholders understand and honor our symbiotic relationship to Peyote.

In conclusion, I offer that the current legal system which permits the harvesting and distribution of Peyote is unsustainable given the rate of habitat loss. Government incentives can positively influence private land use to protect the Peyote Gardens and private landowners' rights. The Peyote Gardens are an invaluable natural resource that is essential to maximum expression of American Indian religious freedom for hundreds of thousands of Native American Church members. Indian religion is not a program, it's a way of life that has been developed exquisitely since human presence in what is now America. Our existence as a people is predicated on our ceremonies and their link to sacred places.

NACNA is committed to working with Congress, this Committee in particular, and the Administration to change the trajectory of our current path.