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Pause Before STOP 2: Proposed Art Law Would Harm Museums, Collectors, and Tribes



June 28, 2017. **LAW SEEKS FEDERAL POLICY TO RETURN ALL ART TO TRIBES.**

A new and revised version of the Safeguard Tribal Objects of Patrimony or [STOP Act \(S. 1400\)](#) was introduced by Senator Martin Heinrich on June 21, 2017. ATADA, a professional organization representing many of America's top tribal and ethnographic art dealers and auctioneers, says that although the new STOP Act (STOP II) is an improvement on the 2016 bill in some ways, it remains seriously flawed.

ATADA president John Molloy says, "ATADA supports returning important objects needed for tribal spiritual activities. That's our policy, and we'll continue it whatever happens to this bill." But he continues, "This bill wasn't thought through. It won't achieve the tribes' goals of bringing back important sacred objects from overseas, it will discourage the legitimate market, and it sends totally the wrong message to museums and collectors."

ATADA representatives have been meeting directly with tribal leaders for months to discuss both legislation and voluntary returns. Molloy stressed ATADA's continuing desire to work closely with lawmakers to improve the bill. However, he noted that like the 2016 bill, STOP II would create dangerous legal uncertainties for private owners of a wide range of American Indian art and artifacts: by failing to provide adequate notice of what items would be illegal to export, STOP II would violate the due process guaranteed by the U.S. Constitution.

The new STOP Act includes a federalized returns program that ATADA Voluntary Returns Program manager Bob Gallegos finds alarming. Gallegos told CCP, "It's absurd to make a federal policy that says everything Native American should go back to tribes." Gallegos said that ATADA is very supportive of voluntary returns of sacred objects essential to tribal community well-being. "We have already returned dozens of important objects to tribes. We ask the help of tribal members on protocol for returns, and no matter how many years of expertise we bring to this, we can't know what's truly sacred. Creating a giant federal bureaucracy will make things worse, not better."

The federal proposal does not mirror the successful ATADA Voluntary Returns program. Instead, STOP II makes it U.S. government policy to encourage the return of all "*significant objects, resources, patrimony, or other items,*" and "*items affiliated with a Native American*

Culture.” This list would cover virtually everything made by Native Americans from the beginning of time to today. That includes commercial jewelry, textiles and rugs, to say nothing of items such as *kachina* dolls, ceramics, and other items that have been legally collected over the last 140 years. ATADA says that such a federal policy threatens not only private collectors but also the collections of America’s museums and cultural institutions.

Many Southwestern communities are heavily dependent on cultural tourism. Cultural tourism accounts for approximately ten percent of employment and provides wages and salaries equal to the mining industry* in New Mexico, the home state of STOP II sponsors Senators Martin Heinrich and Tom Udall.

Gallegos says that STOP II gives Customs wide, unspecified authority to create and enforce regulations, a practice that has led to due process abuses in the past. Gallegos pointed out, “There’s no way to visually differentiate between Native American objects lawfully collected over the last 140 years and objects obtained in violation of NAGPRA and ARPA. Under ARPA and NAGPRA, items could look the same but be unlawful if they were collected in certain geographic locations or time frames.” An item sold by a tribal member could be later claimed by a tribe as inalienable cultural patrimony that couldn’t be sold lawfully, even if the person who sold it was its custodian, and if no theft was reported.

No lists of items of inalienable cultural patrimony exist, because the restriction of privileged information is important to tribal traditions. Nonetheless, in Senator Heinrich’s June 21 [introduction of the 2017 STOP Act](#) at a meeting with Santa Fe Indian School students in Washington, DC, the senator said, “we can also recognize a clear difference between supporting tribal artists or collecting artifacts ethically and legally as opposed to dealing or exporting items that tribes have identified as essential and sacred pieces of their cultural heritage. We need to take all possible action to stop the latter and help repatriate stolen culturally significant items to their rightful owners.”

Unfortunately, tribes have not identified specific objects as essential and sacred pieces of their cultural heritage, leaving a knowledge gap that while respectful of tribal needs for secrecy, fails to provide proper notice to collectors and art dealers.

At the same meeting, [Senator Udall said](#), “Native Americans have been the victims of theft and looting for generations.” ATADA agrees with the Senator; in the past, thefts and exploitation were responsible for many items leaving tribal communities. Sale of stolen items is already unlawful, but ATADA has established rules prohibiting its members from selling known sacred objects essential for current religious practices, even if lawfully owned. It believes that this and other due diligence steps will eliminate the market.

However, Gallegos said the returns program was specifically designed to bring items from long-held collections back to tribes. He noted that U.S. federal government policy urged tribes to give up traditional religious practices for many decades, and Native American religion was not recognized as a religion until passage of the American Indian Religious Freedom Act (AIRFA) in 1978. Thus many sacred, communally owned objects entered both museum collections and the legal market with government approval. This was the case until passage of NAGPRA in 1990.

Senator Heinrich and others who support STOP II assert that the bill will halt the export of communally owned sacred objects. They don't point out, however, that STOP Act II's provisions eclipse the legislation's stated intent for an export ban on items covered by ARPA and NAGPRA as other portions of the law apply to much more than sacred items or cultural patrimony.

ATADA says that all the items so far returned by its Voluntary Returns program were legally owned and were returned to tribes for ethical reasons. The STOP Act does not simply create a liaison for voluntary returns – or invite assistance from the Internal Revenue Service to encourage donation of lawfully held items to tribes – STOP II invites in the Department of Justice, Homeland Security, the Department of State, the Cultural Property Advisory Committee (which has no advisory role for US cultural property), and other agencies as advisors.

Co-sponsors on STOP II are Sen. Jeff Flake (R-AZ), Sen. Tom Udall (D-NM), Sen. John McCain (R-AZ), Sen. Steve Daines (R-MT), Sen. Jon Tester, Jon (D-MT), Sen. Lisa Murkowski (R-AK), and Sen. Brian Schatz, Brian (D-HI).

*2014 UNM Bureau of Business and Economic Research report, *Building on the Past, Facing the Future: Renewing the Creative Economy of New Mexico*



By She-we-na (Zuni Pueblo), Native American (Brooklyn Museum) [No restrictions], via Wikimedia Commons Above: Navajo (Native American). Probably Bayeta-style Blanket with Terrace and Stepped Design, 1870-1880. Wool, dye, 44 x 58in. (111.8 x 147.3cm). Brooklyn Museum, Henry L. Batterman Fund and the Frank Sherman Benson Fund, 50.67.54.