

**TESTIMONY TO THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES,
OFFICE OF INDIAN AFFAIRS**

ON

H.R. 724, INDIAN ARTS AND CRAFTS AMENDMENTS OF 2009

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Chairman Rahall II, and Vice Chairman Doc Hastings, thank you for the opportunity to testify today. My name is Shan Lewis and I am the Vice-Chairman of the Fort Mojave Indian Tribe, and President of the Inter Tribal Council of Arizona.

The Inter Tribal Council of Arizona was established in 1952 to provide a unified voice for the member Tribes in Arizona on common issues and concerns. Indian arts and crafts is one of those issues, not just for tribes in Arizona but for all American Indian and Alaska Native communities throughout the country.

Indian hand-made arts and crafts have sustained the Indian people and Indian nations over our lifetimes. Indeed, the Indian Arts and Crafts Board was established in 1935 to promote the economic welfare of Indian tribes, the self-reliance of individual Indians, while recognizing that our arts and crafts are unique and deeply tied to our cultural heritage.

The 1990 passage of the Indian Arts and Crafts Act strengthened the intent of the 1935 establishment of the Indian Arts and Crafts Board by protecting the Indian artisan and the consumer from misrepresentations or “fake” Indian arts and crafts. The 1990 Act put teeth into the law by criminalizing the act of representing that an item is “Indian made” when it in fact is not. Sadly, in the 19 years that it has been the law, the intent of the Act has yet to be met. These crimes are rarely investigated, so the offenders go unprosecuted.

Today, Indian arts and crafts continue to be a major source of tribal and individual Indian income. We witness this every year with events such as the Heard Museum Indian Market which takes place every March in Phoenix, Arizona, and the Santa Fe Indian Market in New Mexico which occurs every August. Hundreds of Indian artisans travel to sell crafts and art that they make throughout the year. Thousands of art patrons and collectors attend these events because they trust that the items that they purchase are authentically made by Indians. If you visit with any of these artists, they will tell you that the income they receive pays for their children’s school supplies, for the food they eat, and gas for their transportation.

For many Indian tribes, employment opportunities in Indian Country are scarce. The Indian unemployment rate is among the highest of any cultural group, nationally. Therefore, tribal members resort to arts and crafts as a means of survival which also keeps them close to home, their families, their culture, and religious obligations. There should be no doubt that today, the need for full implementation of this Act is just as important as it was in 1935 and in 1990.

Unfortunately, millions of dollars are diverted each year from these original artists and Indian tribes by individuals and companies that reproduce and sell counterfeit Indian goods in the United States on the open market, internationally, and over the internet. Many of the items that are sold as “Indian made” or as an “Indian product” are often mass produced using cheap labor. Yet these individuals and companies are rarely, if ever, held accountable. Consequently, we do not know the extent of the problem and the degree to which it impacts Indian artists.

H.R. 725 and S. 151 amend the Act which originally authorized the Federal Bureau of Investigations to address crimes prohibited by the Act. At the time of its enactment, this investigatory responsibility seemed appropriate. It sent a signal that these crimes were to be taken seriously such that they warranted the attention and resources of the FBI.

In 1990, the FBI did not have the full array of national security and anti-terrorism priorities that demand the majority of its resources today. Therefore, now, more than ever, enforcing the criminal law that prohibits the sale of Indian arts and crafts misrepresented as an Indian product is often stalled by the other responsibilities of the FBI.

Even at the time of passage, it was difficult for the FBI to focus on the referrals from the Arts and Crafts Board because their first priority in Indian Country is responding to violent crimes, such as homicide and child sex crimes. Now, more than ever, I’m sure that the FBI would agree that it would not open an investigation of an Indian Arts and Crafts Act violation unless it had some ties to its priority area of national security. Therefore, for the last 8 years, we can assume that little, if any investigative activity has occurred to address these violations.

Expanding the existing federal investigative authority by authorizing other federal investigative bodies, such as the BIA Office of Law Enforcement, *in addition* to the FBI, to investigate cases of misrepresentation of Indian arts and crafts makes sense. The BIA Special Agents are familiar with the impact that these crimes have on tribal members and Indian tribes. Among all other law enforcement agencies, Special Agents of the BIA may be more knowledgeable about the likelihood that an item is misrepresented as being made by an Indian.

Let me clarify and emphasize this important provision in the current amendment - strongly supported by the member tribes of the Inter Tribal Council of Arizona - the expansion of investigative authority would authorize *other federal law enforcement*

officers, other than just the FBI, to conduct investigations of crime not just on tribal lands but all lands within the jurisdiction of the United States. Without these additional federal officers given the authority to conduct these investigations, non-enforcement business-as-usual will continue with the same financial and cultural impact on tribal members, tribal communities and tribal governments. Expanding the investigative authority to include other appropriate federal agencies is intended to promote the active investigation of alleged misconduct.

The Indian Arts and Crafts Board has made meaningful efforts to educate the public and the business sector on the harmful effects of misrepresenting Indian arts and crafts. For example, it has used the injunction provisions to remove misleading information and advertisements from large and small businesses (Time Life Books in 1996). It has also focused on implementing the trademark and patent provisions of the law, and providing support to Indian tribal organizations and Indian artists. However, the Board currently lacks a referral agency that will investigate bona fide criminal complaints.

Currently, the U.S. Department of Justice has stated that Indian issues are a priority. We are heartened by that statement. Therefore, we hope that with passage of these amendments, referrals will be investigated and federal criminal prosecutions initiated through the Justice Department. Where Indians and Indian tribes initiate the civil claims against offending business and individuals, we hope that the Justice Department will also act to review these civil claims for possible criminal prosecution.

Passage of H.R. 725 and S. 151 is long overdue. Versions of these two bills were originally introduced in 2005 and 2007. In fact, this same amendment was included as part of the Native American Omnibus Act, S.536, which was passed out of the Senate Indian Affairs Committee in 2005. I encourage this Committee to pass this bill out of Committee so that it may become law.

Thank you for this opportunity to testify on this important matter.