INDIAN RELIGIOUS FREEDOM
BILLS NEAR PASSAGE

As legal counsel to the Native American Church of North America and a founding member of the American Indian Religious Freedom Coalition, NARF is supporting two bills to protect Native American religious freedom. The legislative status of these two bills is discussed below.

H.R. 4230, an Amendment to the American Indian Religious Freedom Act to protect the religious use of peyote by Indians:

The first measure is a bill to amend the American Indian Religious Freedom Act (H.R. 4230) to protect the religious use of peyote by Indians. This bill was introduced by Rep. Bill Richardson (D-NM), Chairman of the Native American Affairs Subcommittee of the House’s Natural Resources Committee. The sole purpose of H.R. 4230 is to protect the religious use of peyote by Indians, which is done by codifying the existing regulation of the Drug Enforcement Administration (DEA) which presently allows the religious use of peyote by Indians and by making this applicable in all 50 states. Broad support for H.R. 4230 was expressed by the Clinton Administration, including the DEA and the Justice Department, and the national Native American Church organizations at a June 10 hearing of the Native American Affairs Subcommittee. Because this measure is non-controversial — no opposition to the bill has been expressed from any quarter — and reflects consensus among the affected parties and agencies, NARF expects H.R. 4230 to move through the House in July and August with bipartisan support.

Here's what you can do to support H.R. 4230:

Write a letter to the Honorable George Miller, Chairman of the Natural Resources Committee, United States House of Representatives, Washington, D.C. 20515. (Fax: 202-225-5609) Express your support for H.R. 4230 and ask for his leadership as Chairman of the Natural Resources Committee in getting this bill advanced through the Natural Resources Committee and passed by the House of Representatives.

continued on page 2
Religious Freedom Bills
continued from page 1

S. 2269, Native American Cultural Protection and Free Exercise of Religion Act of 1994:

S. 2269 was introduced by Senator Inouye on July 1, 1994. This bill refines and supersedes the Native American Free Exercise of Religion Act (NAFERA) (S. 1021). S. 2269 offers protection for:

1) Native American cultural and religious sites,
2) the religious use of peyote by Indians,
3) the cultural and religious rights of Native prisoners,
4) cultural or religious uses of Eagle feathers and other animals or plants by Native Americans.

S. 2269 reflects 12 months of work between the Senate Indian Affairs Committee staff, the Clinton Administration and the American Indian Religious Freedom Coalition to develop a comprehensive and consensus bill to protect Native American religious freedom.

Legislative status of S. 2269:

A hearing on S. 2269 was held on July 14, 1994, before the Indian Affairs Committee and a mark up by the Committee is expected in August. One troubling issue that arose at the hearing was a concern expressed by Senator McCain that provisions of Title I to protect sacred sites should be expanded to apply to Indian tribes and lands. This proposal runs counter to NARF’s position that, based upon tribal sovereignty considerations, protection of sacred sites located on Indian lands is best protected as a matter of tribal law and that the provisions of Title I should be applied to an Indian tribe only if the tribe affirmatively elects to have those provisions apply to its lands. The implications of this and other issues are being assessed by NARF and other advocates to determine the best way to proceed.
Remarks on the Native American Cultural Protection and Free Exercise of Religion Act of 1994 as Introduced by Senator Inouye

For additional background on S. 2269, Senator Inouye's floor statement made upon the introduction of this bill, which we hope will advance through the Senate in the coming weeks, is quoted at length below:

Mr. INOUYE. Mr. President, I introduce legislation that is fundamental to the sovereignty of the Indian nations and which is in furtherance of the policy established in the "Joint Resolution American Indian Religious Freedom" enacted by Congress in 1978. For, Mr. President, what can be more fundamental to sovereignty than the freedom to practice one's culture, one's religion, and one's traditions?

This measure is intended to protect Native American cultures, and guarantees the free exercise of religion by Native Americans that President Clinton spoke so eloquently of when he addressed the tribal leaders at the White House on April 29, 1994. This legislation will not only affirm but will give validity and credibility to the first principle that President Clinton stated must guide relationships between the United States and Indian nations—that first principle is one of respect for Indian values, Indian religions, Indian identity, and Indian sovereignty.

As my esteemed colleagues may be aware, during President Clinton's remarks at that historic meeting with Indian tribal leaders, he acknowledged the unique government-to-government relationship the United States has enjoyed throughout our history with the Indian nations of this country. He pledged to fulfill the trust obligations of the Federal Government, and reaffirmed this Nation's commitment to self-determination for tribal governments. He vowed to honor and respect tribal sovereignty. And, he promised to continue his efforts to protect the rights of Native Americans to practice their religions as they wished.

The President also stated that the first principle in every relationship between the United States and the Indian nations of this country must be to respect the right of Indian people to remain who they are and to live the way that they want to live. Even more importantly, he acknowledged his understanding that for many Native Americans, traditional religion and ceremonies are the essence of Native American culture and existence.

The President made it abundantly clear that no agenda for religious freedom will be complete until Native American traditional religious practices have received the protection that they deserve. He also stated that legislation is needed to protect those Native American religious practices that are threatened by federal action. And, he acknowledged that a law which protects the rights of Native Americans to fully exercise their religion in a manner they choose is long overdue.

Mr. President, the measure I am introducing today will pro-continued on page 4
Religious Freedom Bills

continued from page 3

vide that long overdue protection of which President Clinton spoke so passionately.

Mr. President, the meaning of "religion" for Native Americans has a substantially different connotation than religions which are based on European concepts. This legislation recognizes the importance of traditional cultural practices and spiritual beliefs to Native Americans, and embraces the concept that religion is deeply intertwined with the very fabric of Native American cultural identity and ways of life. This legislation further recognizes that because Native American traditional cultural practices are so intertwined with religious practices, and because the spiritual beliefs and traditional ceremonial practices of Native Americans are such an integral part of life itself, culture and religion cannot be separated.

The legislation also takes into account the inherent differences that exist among Native American traditional cultures and respects the diverse customs, ceremonies, and traditions of Native American religious practices and spiritual beliefs. The bill addresses Native American cultural and religious practices in four areas: sacred sites, prisoner's rights, the sacramental use of peyote, and the use of eagle feathers and other animals and plants within the context of traditional cultural practices.

First, the legislation provides protection of Native American sacred sites and puts into place a mechanism for resolving disputes. Native Americans believe that certain locations are most sacred and believe that these sites should be protected. There are currently over 44 sacred sites that are threatened by tourism, development, and resource exploitation.

Second, the legislation extends protection to Native Americans for the sacramental use of peyote. Currently, the religious use of peyote, which is central to the ceremonies of the Native American Church, is protected under the laws of 28 States. But in the remaining 22 States, the religious use of peyote is a crime punishable by law despite Drug Enforcement Agency exemptions for Native American Church members.

Third, the legislation protects the rights of Native American prisoners to the same extent as prisoners of other religious faiths. Many Native American prisoners are denied access to spiritual leaders, and denied the
opportunity to practice their religions, despite the fact that other prisoners are consistently provided access to priests, ministers, rabbis, and other religious leaders. There are also prison requirements that conflict with Native American cultural and religious customs.

Finally, the legislation facilitates Native American access to and use of eagle feathers and plants for religious ceremonial purposes. While eagle feathers and parts of other sacred plants and animals are sometimes used in cultural and religious ceremonies, Native Americans face criminal prosecution if they are in possession of eagle parts or feathers due to the Bald and Golden Eagle Protection Act. This legislation would permit the use of lawfully obtained eagle feathers.

The bill also provides clear, legally enforceable authority for the protection of Native American cultures and the free exercise of religion by Native Americans.

In addressing the many problems that face Native American communities today, it is imperative that we should first address the issue of spirituality and cultural traditions—the very soul of most Native American communities. It is essential for Native American people across the country to be free to practice their cultural and religious ceremonies and to preserve their values and traditions for future generations.

As you may recall, on May 25, 1993, I introduced legislation what would provide for the protection of Native American religious freedom. Prior to the introduction of that bill, the Committee on Indian Affairs held six field hearings in various regions of the country on the draft bill. Following introduction of the bill, two additional hearings were held here in Washington, DC. In addition to the hearings, the committee has worked steadily with the American Indian Religious Freedom Coalition and the administration to review and refine the bill. Throughout the past year, numerous meetings were held with members of the coalition and administration representatives to identify issues and areas of concern, and to discuss provisions and proposals relating to the bill.

I am greatly encouraged by the progress of the past year. It is this progress and the results from the meetings with the administration and coalition that has guided my decision to introduce a new bill which is a reflection of the progress made over the past year.

Mr. President, it is clear of governmental interests to assure the protection of Native American cultural and religious practices. The legislation I am introducing today would create this balance. The cultural and religious rights of Native Americans have not been adequately protected or respected, and as the trustee of the Native peoples of this land, I believe that it is incumbent upon the United States to correct this deficiency. I urge careful consideration and swift passage of this important measure in the 103d session of the Congress.
Eagle Feather Distribution for Native American Purposes

The following is the text of the Governmental Directive having to do with the practice of Native American religions signed by President Clinton at his White House meeting with Indian tribal leaders on April 29, 1994.

Memorandum for the Heads of Executive Departments and Agencies:

Eagle feathers hold a sacred place in Native American culture and religious practices. Because of the feather's significance to Native American heritage and consistent with due respect for the government-to-government relationship between the Federal and Native American tribal governments, this Administration has undertaken policy and procedural changes to facilitate the collection and distribution of sacred eagle bodies and parts for this purpose. This memorandum affirms and formalizes executive branch policy to ensure that progress begun on this important matter continues across the executive branch.

Today, as part of an historic meeting with all federally recognized tribal governments, I am directing executive departments and agencies (hereafter collectively "agency" or "agencies") to work cooperatively with tribal governments and to reexamine broadly their practices and procedures to seek opportunities to accommodate Native American religious practices to the fullest extent under the law.

As part of these efforts, agencies shall take steps to improve their collection and transfer of eagle carcasses and eagle body parts ("eagles") for Native American religious purposes. The success of this initiative requires the participation, and is therefore the responsibility, of all Federal land managing agencies, not just those within the Department of the Interior. I therefore direct each agency responsible for managing Federal lands to diligently and expeditiously recover salvageable eagles found on lands under their jurisdiction and ensure that the eagles are promptly shipped to the National Eagle Repository ("Repository").

To assist agencies in this expanded effort, the Secretary of the Interior shall issue guidelines to all relevant agencies for the proper shipment of eagles to the Repository.

I support and encourage the initial steps taken by the Department of the Interior to improve the distribution of eagles for Native American religious
purposes. In particular, the Department of the Interior shall continue to adopt policies and procedures and take those actions necessary to:

(a) ensure the priority of distribution of eagles, upon permit application, first for traditional Native American religious purposes, to the extent permitted by law, and then to other uses;

(b) simplify the eagle permit application process quickly and to the greatest extent possible to help achieve the objectives of this memorandum;

(c) minimize the delay and ensure respect and dignity in the process of distributing eagles for Native American religious purposes to the greatest extent possible;

(d) expand efforts to involve Native American tribes, organizations, and individuals in the distribution process, both at the Repository and on tribal lands, consistent with applicable laws;

(e) review means to ensure that adequate refrigerated storage space is available to process the eagles; and

(f) continue efforts to improve the Repository's ability to facilitate the objective of this memorandum.

The Department of the Interior shall be responsible for coordinating any interagency efforts to address continuing executive branch actions necessary to achieve the objectives of this memorandum.

We must continue to be committed to greater intergovernmental communication and cooperation. In addition to working more closely with tribal governments, we must enlist the assistance of, and cooperate with, State and local governments to achieve the objectives of this memorandum. I therefore request that the Department of the Interior work with State fish and game agencies and other relevant State and local authorities to facilitate the objectives of this memorandum.

With commitment and cooperation by all of the agencies in the executive branch and with tribal governments, I am confident that we will be able to accomplish meaningful progress in the distribution of eagles for Native American religious purposes.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

(Signed) William J. Clinton
The White House, Washington, April 29, 1994
Alaska Fishing Rights

Katie John

[Image of fish and person]

[Image of person sitting on grass]

page 8
ALASKA NATIVE SUBSISTENCE FISHING RIGHTS UPHOLD

Two Athabascan elders and long-time Native American Rights Fund (NARF) clients, Katie John and Doris Charles, who were denied their right to subsistence fishing by the State of Alaska and United States governments have achieved a major victory in the federal district court for Alaska. The elders were joined in the case by the Mentasta Village Council and Alaska Federation of Natives (also represented by NARF) in the argument that the federal government has the obligation to provide subsistence fishing rights in all navigable waters in Alaska.

On March 30, 1994, U.S. District Judge H. Russell Holland ruled that the federal subsistence priority applied to all navigable waters in the State of Alaska and that the State of Alaska lacks jurisdiction to manage subsistence fishing in navigable waters. Navigable waters include nearly all lakes and rivers, as well as coastal waters three-miles offshore. The federal subsistence priority was enacted into law in 1980 as Title VIII of the Alaska National Interest Lands Conservation Act and provided for a rural subsistence priority for Alaska residents on the federal public lands. Congress also provided that the State could regulate subsistence uses on such lands if it provided the identical priority on all lands and waters in Alaska.

In 1989 the Alaska Supreme Court ruled that the State constitution precluded the State from providing a rural priority and the United States accordingly assumed management of all public lands. Congress also provided that the federal government has authority to set day-to-day seasons and bag limits on all federal lands and navigable waters. The State argued that the 1980 Alaska National Interest Lands Conservation Act does not authorize the federal government power to exercise management authority over fish and game on federal public lands in Alaska in order to ensure the federal subsistence priority.

The U.S. District Court later issued a stay of proceedings pending an appeal by the State of Alaska and United States to the Ninth Circuit Court of Appeals in San Francisco.
NEW NARF BOARD MEMBERS

Cliv Dore, a member of the Passamaquoddy Tribe, Pleasant Point, Maine, has been the Tribal Governor since November, 1991. He was also Tribal Governor from 1984 to 1986. His responsibilities as Tribal Governor include grants, programs, and tribal administration. Mr. Dore has served as Tribal Health Director, Tribal Lt. Governor, Executive Director of the Tribal Housing Authority, and as a Special Agent for the Department of Defense. He serves as a board member on the committees of Passamaquoddy Technology, Delorma Mapping and is the treasurer for the United South and Eastern Tribes (USET).


Cliv Dore is replacing Richard Hayward, Mashantucket Pequot, on the NARF Board of Directors. Richard Hayward completed his six year term on the Board of Directors.

Theresa A. Gomez, Isleta Pueblo, is Chief Judge, Metropolitan Court in Albuquerque, New Mexico. She has held this position since March, 1991. Theresa Gomez has been employed as the Field Solicitor for the U.S. Department of Interior, Assistant General Counsel for the Health and Environment Department of New Mexico, Public Defender Attorney for the State of New Mexico, and Staff Attorney for the Indian Pueblo Legal Services. She was also a consultant and a Health Education Specialist with the U.S. Public Health Service. Ms. Gomez is a member of the State Bar of New Mexico, the Federal Bar and the Tenth Circuit Court. B.S. degree, University of California Davis (1976) and J.D. from the University of New Mexico (1981).

Theresa Gomez is replacing Verna Williamson-Teller, Isleta Pueblo, on the NARF Board of Directors. Verna Williamson-Teller completed her six year term on the Board of Directors.
Will Mayo, tribal member of the Native Village of Tanana, Alaska, has been the President of Tanana Chiefs Conference in Fairbanks, Alaska since March, 1991. Mr. Mayo has served his Tribe in the capacity of Director of Village Government Services, Director of Planning and Development, Director of Subregional Services, as well as Executive Vice-President and Corporate Land Manager for Tozitna, Ltd. Will has represented his tribe on the National Congress of American Indians (Alaska Area Vice-President), ARCTIC, Inc. (President), TCC Substance Abuse Task Force (Chairman), National Panel on Museum/Native American Relations, Tanana Search and Research Team, Tanana Planning and Zoning Commission, Alaska Native Land Managers Assoc., Interior Alaska Land Managers Assoc., Tanana City Land Committee, Yukon-Tanana Mental Health Board (Chairman), Alaska Native Foundation, Inter-American Indian Institute Steering Committee and Rural Alaska Honors Institute (Instructor), and is the recipient of several awards and recognition.

Will Mayo is replacing Anthony Strong, Tlingit-Klukwan, on the NARF Board of Directors. Anthony Strong completed his six year term on the Board of Directors.
Rick Dauphinais, a Turtle Mountain Chippewa, joined NARF as a staff attorney in 1979 and has worked both in the Boulder and Washington, D.C. offices. Previously, Rick served as Deputy Director for two years. He is currently a staff attorney at the Washington, D.C. office. Rick's experience is in litigation and natural resource law, which he has been very successful in winning tribal recognition and water rights cases. Rick has a B.B.A., Notre Dame (1975) and a J.D., Notre Dame (1975). He is admitted to practice law in Colorado and in the District of Columbia.
THE NATIONAL INDIAN LAW LIBRARY

The National Indian Law Library (NILL) has developed a rich and unique collection of legal materials relating to federal Indian law and the Native American. Since its founding in 1972, NILL continues to meet the needs of NARF attorneys and other practitioners of Indian law. The NILL collection consists of standard law library materials, such as law review materials, court opinions, and legal treaties, that are available in well-stocked law libraries. The uniqueness and irreplaceable core of the NILL collection is comprised of trial holdings and appellate materials of important cases relating to the development of Indian law. Those materials in the public domain that are non-copyrighted, are available from NILL on a per-page-cost plus postage. Through NILL's dissemination of information to its patrons, NARF continues to meet its commitment to the development of Indian law.

Available From NILL

The NILL Catalogue. One of NILL's major contributions to the field of Indian law is the creation of the National Indian Law Library Catalogue: An Index to Indian Legal Materials and Resources. The NILL Catalog lists all of NILL's holdings and includes a subject index, an author-title table, a plaintiff-defendant table and a numerical listing. This reference tool is probably currently the best of its kind in this subject area. It is supplemented periodically and is designed for those who want to know what is available in any particular area of Indian law. (1,000 + pgs. Price: $75) (1985 Supplement $10; 1989 Supplement $30).

Bibliography on Indian Economic Development. Designed to provide aid on the development of essential legal tools for the protection and regulation of commercial activities on Indian reservations, this bibliography provides a listing of articles, books, memoranda, tribal codes, and other materials on Indian economic development. 2nd edition (60 pgs. Price: $30). (NILL No. 005166)

Indian Claims Commission Decisions. This 47-volume set reports all of the Indian Claims Commission decisions. An index through volume 38 is also available. The index contains subject, tribal and docket number listing. (47 volumes. Price $1,175). (Index priced separately at $25).

Also available from the National Indian Law Library:

Top Fifty, a Compilation of Significant Indian Cases, $75.00

(PRICES SUBJECT TO CHANGE)
The following materials are available from the Indian Law Support Center (all prices include postage and handling). Please send all requests for materials to: Indian Law Support Center, Attn: Debbie E. Thomas, 1506 Broadway, Boulder, Colorado 80302.

1988 Update to The Manual for Protecting Indian Natural Resources. The Indian Law Support Center is pleased to announce the availability of the 1988 Update to its Manual for Protecting Indian Natural Resources. The Manual covers the developments in natural resource law over the past six years since the publication of the original manual in 1982.

A Manual For Protecting Indian Natural Resources. Designed for lawyers who represent Indian tribes or tribal members in natural resource protection matters, the focus of this manual is on the protection of fish, game, water, timber, minerals, grazing lands, and archaeological and religious sites. Part I discusses the application of federal and common law to protect Indian natural resources. Part II consists of practice pointers: questions to ask when analyzing resource protection issues; strategy considerations; and the effective use of law advocates in resource protection. (Must be purchased with Update.) The update is available for the price of $30.00. The original manual and the update are available for $50.00.

A Self-Help Manual For Indian Economic Development. This manual is designed to help Indian tribes and organizations on approaches to economic development which can ensure participation, control, ownership, and benefits to Indians. Emphasizing the difference between tribal economic development and private business development, the manual discusses the task of developing reservation economics from the Indian perspective. It focuses on some of the major issues that need to be resolved in economic development and identifies options available to tribes. The manual begins with a general economic development perspective for Indian reserva-

Handbook Of Federal Indian Education Laws. This handbook discusses provisions of major federal Indian education programs in terms of the legislative history, historic problems in implementation, and current issues in this radically changing field. (Must be purchased with update.)

1986 Update To Federal Indian Education Laws Manual. The Update is available for $30.00. The price for original manual and update is $45.00.

A Manual On The Indian Child Welfare Act And Laws Affecting Indian Juveniles. This manual focuses on a section-by-section legal analysis of the Act, its applicability, policies, findings, interpretations and definitions. With additional sections on post-trial matters and the legislative history. (Must be purchased with Update.)

The original manual and the 1992 Update are available for $50.00. If you have the original manual and require only the Update, it is priced at $35.00.

Prison Law and the Rights of Native Prisoners. This manual focuses on the first amendment religious free exercise rights of Indian prisoners in state and federal penal institutions, with an emphasis in legal forms and pleadings for use by prisoners in pro se litigation. $20.00

The Indian Law Support Center Reporter is available to LSC funded programs free of charge. To non-LSC organizations there is a $36.00 subscription fee for 1 year.

ANNUAL REPORT. This is NARF's major report on its programs and activities. The Annual Report is distributed to foundations, major contributors, certain federal and state agencies, tribal clients, Native American organizations, and to others upon request.

THE NARF LEGAL REVIEW is published biannually by the Native American Rights Fund. Third class postage paid at Boulder, Colorado. Ray Ramirez, Editor. There is no charge for subscriptions, but contributions are requested.

TAX STATUS. The Native American Rights Fund is a nonprofit, charitable organization incorporated in 1971 under the laws of the District of Columbia. NARF is exempt from federal income tax under the provisions of Section 501 (c) (3) of the Internal Revenue Code, and contributions to NARF are tax deductible. The Internal Revenue Service has ruled that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code.


The Native American Rights Fund is a nonprofit organization specializing in the protection of Indian rights. The priorities of NARF are: (1) the preservation of tribal existence; (2) the protection of tribal natural resources; (3) the promotion of human rights; (4) the accountability of governments to Native Americans; and (5) the development of Indian law.

Our work on behalf of thousands of America's Indians throughout the country is supported in large part by your generous contributions. Your participation makes a big difference in our ability to continue to meet ever-increasing needs of impoverished Indian tribes, groups and individuals. The support needed to sustain our nationwide program requires your continued assistance. Requests for legal assistance, contributions, or other inquiries regarding NARF's services may be addressed to NARF's main office: 1506 Broadway, Boulder, Colorado 80302. Telephone (303) 447-8760.

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