

# NAGPRA: From Compromise to Catastrophe

## Executive Summary

The Native American Graves Protection and Repatriation Act (NAGPRA), signed into law by President George H.W. Bush on November 16, 1990, was conceived as a genuine legislative compromise — a good-faith attempt to balance the legitimate grievances of Native American tribes whose ancestors' remains had sometimes been taken under coercive or exploitative circumstances against the equally legitimate scientific interests of archaeologists, physical anthropologists, and the broader public. Thirty-five years later, that compromise has collapsed. Driven by regulatory overreach, ideological capture within academia, and a 2024 regulatory rewrite that places religious oral tradition above empirical evidence, NAGPRA has morphed from a reasonable civil-rights corrective into an instrument of scientific destruction. The collateral damage — irreplaceable skeletal collections, shuttered museum halls, chilled academic freedom, and a generation of impoverished research — is incalculable and permanent.[<sup>1</sup>]

## Background: The Original Compromise

The core concern that gave birth to NAGPRA was specific and defensible: the U.S. government, its military, and private collectors had, in some well-documented cases, seized the bodies of known individuals or members of clearly identifiable tribes without consent. Responding to decades of advocacy from Native American leaders, Congress passed NAGPRA to require federally funded museums, universities, and agencies to inventory their holdings of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony, and to return those items to lineally descended or culturally affiliated tribes.[<sup>2</sup>][1]

Critically, the law was constructed with a built-in scientific safeguard: remains that could not be plausibly linked to any modern federally recognized tribe — classified as "culturally unidentifiable" — were explicitly meant to remain available for curation and study. The legislative history of NAGPRA strongly suggests it was *not* intended to mandate the repatriation of culturally unidentifiable remains. Scholars writing at the time recognized the historical and scientific value of those collections; congressional testimony acknowledged they should be "kept with care" at the institutions that held them. This was the compromise: affiliated remains returned to tribes; unaffiliated remains preserved for science.[<sup>1</sup>]

## The Scale of the Problem: By the Numbers

From the outset, the scale of what NAGPRA would touch was enormous. In 1990, the Congressional Budget Office estimated that NAGPRA would apply to the remains of between 100,000 and 200,000 individuals in museum and federal agency collections. Of these, another 111,000 human remains were listed as "culturally unidentifiable" — the very category the original law was intended to preserve for research.<sup>[^3]</sup>

As of the 2024 rewrite, federal data showed institutions still held the remains of over 96,000 individuals. Over 208,698 sets of Native American human remains had been reported by museums since 1990, and the NAGPRA process was complete for only 48%. The 2024 regulations set a hard deadline of 2029 for institutions to complete preparation for return of all remaining material. The majority of this material — much of it prehistoric, most of it scientifically irreplaceable — will be reburied permanently, its data lost to future generations.<sup>[4][5]</sup>

## How the Compromise Collapsed

### The Regulatory Rewrite of 2024

The January 2024 regulatory revisions, issued under the Biden administration's Department of the Interior, represent the most sweeping dismantling of the original NAGPRA compromise to date. The new rules:<sup>[^6]</sup>

- **Eliminated the "culturally unidentifiable" category**, the core protection for scientifically valuable prehistoric collections, leaving institutions with no lawful basis to retain thousands of ancient specimens<sup>[^7]</sup>
- **Required "free, prior, and informed consent"** from tribes before museums may display, allow access to, or conduct research on any covered item — including photography, data collection, and visual access<sup>[^6]</sup>
- **Mandated deference to "indigenous traditional knowledge"** over scientific evidence in all cases of disagreement, meaning that if DNA analysis contradicts a tribal oral tradition, the oral tradition legally prevails<sup>[8][7]</sup>
- **Set strict five-year deadlines** for completion of inventories and repatriation preparations that have overwhelmed museums, universities, and tribes alike<sup>[^9]</sup>

The practical effect was immediate and dramatic. Within days of the new rules taking effect, the American Museum of Natural History in New York closed two major exhibition halls — the Hall of Eastern Woodlands Indians and the Hall of Plains Indians — covering displays that could not be shown without tribal consent that had not yet been sought. The Peabody Museum of Archaeology and Ethnology at Harvard began removing funerary objects from its exhibits. The Field Museum in Chicago and numerous other institutions similarly shuttered or covered exhibits.<sup>[5][10]</sup><sup>[8][7]</sup>

## **Oral Tradition as Legal Fact**

Perhaps the most epistemologically radical feature of the evolving NAGPRA regime is its elevation of religious origin stories to the status of legal evidence. Weiss and Springer, writing in *Cato's Regulation* journal, document the Moundville case in Alabama, where a 117-page NAGPRA Review Committee report authorized the repatriation of approximately 10,000 remains — without drawing on a single piece of scientific evidence. Three of the seven claiming tribes explicitly declined to offer biological or funerary evidence, citing "respect," while the Review Committee accepted the assertion that tribal oral history reliably extends back 15,000 years.<sup>[^1]</sup>

Linguistics research, however, has established that oral traditions are unlikely to preserve accurate historical information beyond approximately 500 years, and even within that window are riddled with errors and distortions. Accepting creation myths as legally sufficient proof of affiliation is not an expansion of evidence standards — it is the substitution of religion for science in a federal adjudicatory process. Arizona State University archaeologist Geoffrey Clark stated in the *Skeptical Inquirer* that NAGPRA's allowance of creation myths as evidence for cultural affiliation "betrays a near-total ignorance of evolutionary biology" and promotes religious beliefs indistinguishable from those "embodied in the Judaeo-Christian origin myth (i.e., the Book of Genesis)" — beliefs that "have no place in science".<sup>[11][1]</sup>

California's state NAGPRA statute (CalNAGPRA) goes even further, explicitly placing indigenous knowledge *above* scientific knowledge: if DNA analysis and craniometrics conclude that remains cannot be affiliated with a modern tribe, but indigenous knowledge — including creation myths — asserts an affiliation, the religious narrative must be accepted as legally dispositive. Federal NAGPRA now moves in the same direction.<sup>[^1]</sup>

## **Creeping Scope Expansion**

The original NAGPRA was relatively bounded in its definitions. What has followed is a process of continuous scope expansion that critics describe as a ratchet that only turns in one direction. Examples include:

- **San José State University:** California tribes, operating under CalNAGPRA's broader definitions, have claimed that X-ray images, research reports, photographs of human remains, and even animal bones found in excavated food middens are "sacred objects" subject to repatriation. Some tribal representatives and the NAGPRA Review Committee have formally recommended that the definition of "human remains" be expanded to include 3D scans, casts, replicas, digital data derived from Native American remains, and even soil from sites where remains were previously located.<sup>[11][1]</sup>
- **Non-Native collections:** Some institutions, interpreting NAGPRA overbroadly, have extended restrictions to non-Native collections in medical museums, impeding research that has nothing to do with Native Americans.<sup>[^8]</sup>
- **The California State University system:** A 2025 draft policy by the Cal State system proposed effectively banning the use of even *images or replicas* of Native American human remains or cultural items in research and teaching — a reading of NAGPRA that the Foundation for Individual Rights and Expression (FIRE) found had no basis in the statute itself.<sup>[^8]</sup>

## Irreplaceable Scientific Losses

### What Is Being Permanently Destroyed

Human skeletal remains are a primary data source for understanding population history, migration, disease, diet, trauma, and kinship — especially for prehistoric peoples who left no written record. Unlike documents or artifacts, human remains contain biological information that can never be reconstructed once destroyed. The reburial of tens of thousands of specimens represents a permanent foreclosure of scientific inquiry.<sup>[^12]</sup>

Among the specific areas of knowledge that critics argue are being foreclosed:

- **Disease history:** Skeletal remains have provided crucial evidence about the origins of tuberculosis (which demonstrably reached the Americas before European contact) and the still-debated origins of syphilis. Ancient DNA studies hold promise for resolving these questions, but only if the biological material is available for testing. "Unfortunately, the data — human remains — for such research may no longer be available for testing here in the United States," Weiss and Springer wrote in *Cato's Regulation*.<sup>[^1]</sup>

- **Population migration and prehistory:** The peopling of the Americas — one of the great unresolved questions of human prehistory — depends critically on skeletal and ancient DNA evidence. The Kennewick Man case (see below) illustrates how NAGPRA can block research into remains that predate any plausible connection to modern tribes by thousands of years.
- **Forensic anthropology training:** Physical anthropologists use skeletal collections to train forensic anthropologists who later identify murder victims and provide justice to families. Elizabeth Weiss warned that California's proposed ban on real bone specimens in research and teaching means "casts will be used instead of real bones, and this will lead to poorly trained forensic anthropologists and doctors".<sup>[13][1]</sup>
- **Bone biology and medicine:** Collections allow researchers to understand normal versus pathological bone development, patterns of childhood abuse, and the evolution of diseases like early-onset osteoporosis.<sup>[^1]</sup>

Meanwhile, European scholars — working with cemeteries routinely excavated and preserved for skeletal research, under no equivalent legal restriction — are advancing the study of ancient disease at a rapid pace, leaving American scientists increasingly unable to compete or contribute.<sup>[^1]</sup>

## The Kennewick Man Precedent

No single case better illustrates the collision between NAGPRA and scientific inquiry than the Kennewick Man, whose remains — approximately 8,500 years old — were discovered along the Columbia River in Washington State in 1996. The U.S. Army Corps of Engineers immediately invoked NAGPRA, seized the remains, halted all scientific study, and announced its intention to repatriate them to five local tribes based solely on geographic proximity.<sup>[^14]</sup>

The announcement horrified scientists, who regarded the well-preserved skeleton as priceless evidence about the earliest populations of the Americas. A coalition of anthropologists sued in federal court, eventually winning the right to conduct limited studies after years of litigation that reached the Ninth Circuit Court of Appeals in 2004. The research conducted during that window was scientifically transformative — ultimately including DNA studies published in 2015 that revealed unexpected population complexity in the pre-Columbian Americas. The remains were ultimately repatriated and reburied in 2017 after federal legislation enabled the transfer. Whatever additional information might have been extracted using future technologies is now permanently inaccessible.<sup>[^14]</sup>

The Kennewick Man case also exposed a deep epistemological rift: many Native American activists hold that every set of ancient remains found on traditional lands belongs to a modern tribe, regardless of any

genetic or archaeological evidence of connection — a position that, taken to its logical conclusion, would make the scientific study of pre-Columbian North American populations impossible.<sup>[15]</sup>

The Spirit Cave Man case raised similar issues. Despite initial Bureau of Land Management determinations that the roughly 10,000-year-old Nevada remains could not be culturally affiliated with any modern tribe, the Obama administration transferred them to the Fallon Paiute-Shoshone Tribe in 2016 based on DNA evidence of broad Native American heritage — a standard far more expansive than the cultural affiliation NAGPRA originally required.<sup>[16][17]</sup>

## **The Academic Freedom Dimension**

### **Silencing Scientific Dissent**

The suppression of scientific debate around NAGPRA is now as well-documented as its effects on collections. In 2020, San José State University professor of physical anthropology Elizabeth Weiss and retired attorney-anthropologist James W. Springer published *Repatriation and Erasing the Past* (University Press of Florida), arguing that NAGPRA undermines scientific research, "favours religion over science," and may be unconstitutional in its displacement of empirical standards by religious testimony.<sup>[18]</sup>

The book was met not with scholarly rebuttal but with organized suppression. Representatives of multiple international universities signed open letters calling the work "antithetical to the contemporary practice of anthropology" and "actively harmful to Indigenous people". Approximately a thousand professors and graduate students signed a petition labeling it "anti-indigenous" and "racist". In 2021, the Society for American Archaeology deplatformed Weiss's scheduled talk questioning the use of creation myths in repatriation cases.<sup>[19][11]</sup>

Most consequentially, San José State University issued an interim directive in January 2022 prohibiting Weiss from accessing the skeletal specimens collection she had curated for 17 years. She was removed as curator without cause. Weiss filed a lawsuit against the university for First Amendment retaliation, represented by Pacific Legal Foundation. A federal court ruled in 2023 that her case could proceed, and the matter was ultimately settled. The chilling effect on other researchers — who observed what happened to a tenured professor willing to defend the scientific consensus of a decade prior — needs no elaboration.<sup>[20][21]</sup>

The Heterodox Academy has documented that in the public comment period for the 2022-proposed NAGPRA revisions, out of over 200 public comments, only two specifically raised concerns about the negative effects on scientific research. The Wyoming State Archaeologist and the president of the Wyoming Association of Professional Archaeologists were among those rare voices. The silence of the broader scientific community, Weiss argues, reflects not consensus but self-censorship — researchers who have "thrown in the towel, realizing that Native American activists will win in their 'everything back' agenda".<sup>[11]</sup>

## **A Field in Retreat**

The practical consequence of this environment is that talented researchers are abandoning the field. As one unnamed archaeologist told Heterodox Academy contributor Alice Dreger: "There is no doubt that legislation and misinterpretation of legislation has had an impact on physical anthropology and its ability to do paleoanthropology in the United States. Many who studied Native American human remains migrated to more acceptable and less contentious arenas such as pathology, anatomy, medically related research, or forensics".<sup>[8]</sup>

Weiss's own research has found that "the repatriation process has caused the cessation of human remains research at California's public universities". With journal editors declaring certain images off-limits and conference organizers canceling heterodox presentations, what was once a rigorous scientific field has, in the words of one researcher, "become a political minefield".<sup>[8]</sup>

## **Constitutional and Property Rights Concerns**

Conservative legal scholars have raised structural objections to NAGPRA that go beyond its practical effects. Weiss and Springer have argued the law may be unconstitutional in several respects. The most pointed concerns include:<sup>[20][19]</sup>

- **Establishment Clause:** By requiring institutions to defer to Native American religious knowledge — including creation myths — over scientific evidence in determining legal rights to property, NAGPRA arguably uses the federal government to enforce a specific religious worldview. Geoffrey Clark's observation that the law embodies beliefs structurally identical to creationist narratives reinforces this concern.<sup>[11]</sup>
- **Equal Protection:** The law creates a racial classification — Native American — that determines legal rights over property, academic freedom, and scientific inquiry in ways that would not survive scrutiny if applied to any other ethnic group. As Weiss stated directly: "Repatriation is an ideology

that places Native American voices above those of non-Native Americans. Thus, the narrative given by a Native American elder is favoured over the facts provided by a non-Native scientist".<sup>[22][18]</sup>

- **Regulatory Ultra Vires:** Weiss and Springer argue that the 2010 regulations extending repatriation rights to culturally unidentifiable remains, and the 2024 revisions that eliminated the category entirely, exceed the statutory authority Congress granted — effectively allowing the executive branch to amend, rather than implement, the law.<sup>[^1]</sup>

## **The Federalism Problem: States Pile On**

Federal NAGPRA's overreach is compounded by state-level expansions that go further still. California's CalNAGPRA explicitly mandates that indigenous knowledge trump scientific evidence. The California State University system's 2025 draft policy proposal — banning even *images and replicas* of Native American remains from research and teaching — illustrates how, once the federal framework legitimizes subordinating science to political identity, there is no natural limiting principle. No institution or individual is willing to be the one accused of disrespecting Native Americans, so each expansion goes uncontested and becomes the new baseline for the next.<sup>[8][1]</sup>

## **Conclusion: The Buried Compromise**

The conservative critique of NAGPRA is not an argument against all repatriation. The return of remains of known individuals, or of remains clearly affiliated with identifiable modern tribes, to lineal descendants is a defensible exercise of property and civil rights principles — principles that conservatives, properly understood, should support. The original NAGPRA compromise, for all its imperfections, reflected a genuine effort to honor those claims while protecting something else conservatives also value: the integrity of science, the freedom of academic inquiry, and the permanent public record of human prehistory.

What has replaced that compromise is neither principled nor limited. It is an open-ended mandate, driven by ideological pressure rather than law, that:

- Substitutes religious narrative for empirical evidence in legal determinations
- Permanently destroys irreplaceable collections that belong, in a meaningful sense, to all of humanity
- Suppresses academic dissent through professional retaliation and institutional cowardice

- Closes museums and impoverishes public education
- Trains the next generation of forensic scientists on plastic casts rather than real specimens
- Forecloses answers to questions about human disease, migration, and prehistory that future generations may never be able to ask again

The compromise that NAGPRA established allowed three subsequent decades of important research. Human remains still have so much to teach us. What is happening now is not compromise; it is the collapse of the original intention of NAGPRA — and with it, a significant portion of America's scientific inheritance.[^1]

## References

1. [NAGPRA: From Compromise to Collapse](#) - The collections that were kept at the museum and curated after the repatriation contained culturally...
2. [Native American Graves Protection and Repatriation Act of ...](#) - NAGPRA addresses the repatriation and disposition of Native American human remains, funerary objects...
3. [NAGPRA | U.S. Department of the Interior](#) - In 1990 the Congressional Budget Office estimated that NAGPRA would apply to the remains of between ...
4. [NAGPRA – 2024 Revamped Rule Strengthens Process for ...](#) - The new regulations, which became law on Jan. 12, 2024, revamp and clarify the repatriation process ...
5. [Leading Museums Remove Native Displays Amid ...](#) - The American Museum of Natural History will close two major halls exhibiting Native American objects...
6. [An Introduction to NAGPRA: Native American Graves ...](#) - At its core, NAGPRA was created to address the historical mistreatment of Native American human rema...
7. [Peabody Museum Removes Native American Funerary ...](#) - The Peabody Museum of Archaeology and Ethnology has begun removing Native American funerary objects ...
8. [Overinterpretations of Laws and Ethics Are Stifling ...](#) - Anthropologist and Heterodox Academy member Elizabeth Weiss has been at the forefront of arguing for...
9. [New NAGPRA rules aim to simplify and accelerate ...](#) - One of the new rules that took effect in January 2024 requires institutions to obtain consent from t...

10. [New NAGPRA Rules: 'We Have an Obligation to Change'](#) - This is the final installment of a three-part series examining the impact of new rules under the Nat...
11. [Burying Bones, Burying Dissent](#) - NAGPRA is a federal law that governs universities and museums' abilities to curate and research Nati...
12. [Students research skeletal remains to understand Pre- ...](#) - Skeletal analysis has generated controversy in recent years. Under the federal Native American Grave...
13. [California State U. draft policy | News List](#) - "Casts will be used instead of real bones, and this will lead to poorly trained forensic anthropolog...
14. [Kennewick Man | Anthropology | Research Starters](#) - In 2004, after an appeal that again temporarily blocked further scientific studies of Kennewick Man,...
15. [Is Science Being Buried to Appease Indigenous Beliefs ...](#) - The irony is that a big part of why indigenous people created those beliefs was a desire to understa...
16. [Nevada tribe is apparent winner in dispute over Spirit Cave ...](#) - Nevada tribe is apparent winner in dispute over Spirit Cave Man's remains. The ancient remains of Sp...
17. [Fallon Paiute-Shoshone Tribe finally reclaims ancestral ...](#) - The Obama administration put an end to a dispute over the remains of a 10000-year-old ancestor known...
18. [Anthropologist opposed to Indigenous repatriation sues ...](#) - Professor Elizabeth Weiss has filed a lawsuit against San José State University claiming she was dis...
19. [A Balancing Act: Addressing the History and Examining the ...](#) - Springer, arguing that NAGPRA undermines scientific research and "favors religion over science." The...
20. [Weiss v. Perez](#) - Court holds that case against University's suppression of Professor's free speech may proceed, leadi...
21. [Anthropologist says she's being punished for views on bones](#) - A professor of physical anthropology is suing San José State University, saying she's being retaliat...
22. [Elizabeth Weiss and James W. Springer, 2020. ...](#) - The second goal of this book is to openly criticize the postmodernist ideology that NAGPRA is built ...