



Mashpee Wampanoag Tribe
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Cedric Cromwell, Chairman Testimony
Hearing on S.2053 – January 24, 2012

The Mashpee Wampanoag Tribe is deeply concerned by a proposal to strip the Massachusetts Historical Commission of its authority to protect historic assets of the Commonwealth. This proposal has been submitted in the form of S. 2053, an outside section to the supplemental budget. It appears that the proposal is intended to exempt a specific piece of property from the protections of law that apply across the Commonwealth.

Our concern arises from our responsibility to protect the graves of our ancestors from disruption and spoliation. Massachusetts law has for decades protected such graves as elements of the historic assets of the Commonwealth. The proposed bill would undermine that protection and expose graves and human remains to destruction.

Both archeological research and our own oral history tell us that Peace Haven was the site of a large Native American encampment over several generations. Locations like this one are very rare in their scope and their historical and archeological importance. But more importantly, these sites are of enormous personal and spiritual significance to us, the descendants of the people who lived, died and were buried at Peace Haven.

Over the last 400-plus years, systematic efforts have been undertaken to remove any trace of our existence. It is only through the concerted efforts of our people to preserve our own history, along with strong historic preservation laws in this state, that we have any historically significant sites left at all.

The Massachusetts Appeals Court has recognized that legal protection of graves and human remains is based on "a recognition of principles of ethics, propriety, and common decency" [*Sanford v. Vinal* (1990), quoting the Supreme Judicial Court, *Messina v. LaRosa* (1958)]. The Appeals Court stated that it is "the right of the public generally to insist that due respect be paid to the sanctity of human remains and human burial grounds if they should be uncovered inadvertently: a concern that finds expression in such statutes as G.L. c. 9, § 27C, as amended by St.1983, c. 659, § 4; G.L. c. 114, § 17; and G.L. c. 38, § 6B, as amended by St.1984, c. 189, § 46."

We ask all parties to this matter, especially the legislators proposing this bill, to understand that our concerns are shared by all persons, not only the Mashpee Wampanoag.

Moreover, Massachusetts is not alone in recognizing a special concern for Native American graves and remains. As of 2001, approximately half the states in the United States provided control and protection for Native American burials located on private land. M.G.L. Ch. 9, § 27C, was cited as an example of such protection in the *Connecticut Journal of International Law*, "The Public Interest In The Restitution of Cultural Objects" (2001).

Finally, we point out that there is very little reported litigation involving the application of Ch. 9, § 27C. This fact was cited in *Suffolk University Law Review*, "The Freedom Trail Meets The Big Dig: An Examination Of Historic Preservation In The Planning Of Boston's Urban Center" (2000), as evidence that there is general agreement among the Historical Commission, landowners, and builders: "The limited existence of court action involving conflicts over this evaluation process suggests the Commission and developers are in general agreement about the need to protect ... history and tradition."

Massachusetts has an honorable record of protecting Indian burial sites. The Mashpee Wampanoag people appreciate the protection that the Commonwealth has provided to assist us in our sacred responsibility to protect our ancestors and to preserve our history for future generations. This is not the time to change the law and withdraw that assistance. If the proposed legislation passes, state Unmarked Burials law will not be enforced or even considered if there is an accidental discovery of Native remains which will permanently desecrate those ancients' final resting place. While we fully understand the need to promote job growth and economic development, it simply cannot be at the expense of the permanent destruction of our connection to our ancestors.

We urge this Committee and the General Court to reject any attempt to undermine the protection of law for graves and human remains as part of the historic assets of the Commonwealth. We stand ready to work together with all parties to assure that this protection continues into future generations.

Thank you for your time and attention.

A handwritten signature in cursive script, reading "Cedric Cromwell".

Cedric Cromwell, Chairman & President
Mashpee Wampanoag Tribe