

Department of Justice

Washington, D.C. 20530

AUG 1 1977

Honorable James T. McIntyre, Jr.
Director
Office of Management & Budget
Washington, D. C. 20503

Dear Mr. McIntyre:

This presents the views of the Department of Justice on an enrolled joint resolution, S.J. Res. 102, presently before the President for his signature.

The Department has no objection to Presidential approval of this joint resolution. Its purposes are two: First, §1 makes it federal policy to "protect and preserve" the exercise of native American religious practices; second, §2 requires the President to direct federal agencies to review policies that may affect native American religious freedom to determine whether any changes to substantive federal law are required in order to preserve that freedom.

During this Department's testimony before the Senate Select Committee on Indian Affairs on this joint resolution and in correspondence with Chairman Abourezk of that committee and Chairman Udall of the House Committee on Interior and Insular Affairs, we have taken the position that Congress may not as a constitutional matter extend a "preference" to native American religion vis-a-vis other religions and that Congress should not as a policy matter adopt legislation modifying directly or by implication the substance of federal statutes or regulations absent careful consideration of any such modifications. The language of this enrolled bill as well as the committee reports issued with respect to it clearly establish that our constitutional and policy recommendations have been



incorporated into this resolution. */ Thus, we have no objection to the President's approval of this joint resolution, which we think will have the beneficial effect of spurring our own examination of the relationship between established departmental policies and native American religious freedom.

Sincerely,

(Signed) Patricia M. Wald

Patricia M. Wald
Assistant Attorney General
Office of Legislative Affairs

*/ S. Rep. No. 709, 95th Cong., 2d Sess. (1978); H.R. Rep. No. 1308, 95th Cong., 2d Sess. (1978).