



National Council of Native American Churches and the Board of Directors of the Indigenous Peyote Conservation Initiative

January 15, 2021

Comments and Recommendations to Senators Wiener's Office regarding California Legislation to Decriminalize "Psychedelics"

We respectfully share our recommendations for language and considerations for the California State Legislative effort to Decriminalize "Psychedelics" as it impacts Peyote (*Lophophora williamsii*).

The National Council of Native American Churches (NCNAC) and the Board of Directors of the Indigenous Peyote Conservation Initiative (IPCI) recognize that Indigenous peoples have utilized entheogenic plants for their health and wellbeing for millennia, and respectfully request that current efforts to decriminalize these relationships should consider the complexities of each plant medicine.

With these recommendations, we ask that Senator Wiener remain cognizant of the various active Native American Treaties and agreements as well as International laws and agreements established under the United Nations Declaration on the Rights of Indigenous Peoples and the Nagoya Protocols relating to biological diversity. The biocultural reality of Peyote as a vulnerable species and has a distinct and particular legal and cultural history in the United States. As such, it requires specific protections and the United States has a historical trust responsibility, legal obligation, and debt to protect the existing rights and sovereignty of Indigenous Native American peoples of North America.

The obligation of the United States to protect Native peoples' cultures, customs, and traditions, stems from more than two centuries of Treaties, statutes and policies, and more recently obligations that are beginning to be codified under international law. Whereas past law and policy worked to try and destroy Indigenous lifeways, in the modern era the federal government and the State of California maintain government-to-government relationships that respect and work to foster the full expression of Indigenous sovereignty. The National Council and IPCI endeavor to effectuate cultural and medicinal sovereignty through their Peyote conservation efforts.

Our requests and recommendations below consider the complex relationship of the law, our history, and social/cultural realities to Peyote, within the United States.

- 1. We request that it is clearly stated that this legislation will do nothing to alter, change, or undermine the federal AIRFA Amendments of 1994, the American Indian Religious Freedom Act, 42 U.S.C. 1996a, or California Health & Safety Code 11363.**

Suggested Legislative Language: The State of California fully respects and supports the continued Indigenous peoples' possession and use of Peyote under federal law, 42 U.S.C. 1996a, understanding that Indigenous peoples in the United States were persecuted and prosecuted for these beliefs for more than a century and had to fight numerous legal and political battles to achieve the current protected status, and by the enactment of this Act does not intend to undermine explicitly or implicitly that status.

The legislation should also expressly mention that California Health & Safety Code 11363 is not amended or repealed. Section 11363 makes it a crime in California to cultivate, harvest, dry, or process any plant of the genus *Lophophora*, also known as Peyote. The legislative history of this legislation should expressly mention that Section 11363 does not preempt 42 U.S.C 1996a, as state law cannot preempt federal law. We would appreciate further discussion concerning this recommendation.

- 2. We recommend that all plants/substances considered for decriminalization should be named specifically, this includes other mescaline containing cacti such as San Pedro (*Echinopsis pachanoi*) and Peruvian Torch (*Echinopsis peruviana*), and that Peyote (*Lophophora williamsii*) should be specifically excluded.**

*Suggested Legislative Language: Expressly excluded from the application of this legislation is the cacti Peyote (*Lophophora williamsii*) and any cultivation, harvest, extraction, tincture or other product manufactured or derived therefrom.*

- 3. Place an Indigenous member from the National Council and IPCI Board of Directors on the proposed advisory committees for the next two years.**
- 4. Continue to utilize the Decriminalization/Communications Committee of IPCI to represent the National Council and IPCI Board of Directors as representative of a primary stakeholder group, designated Native American Churches, and the Azeé Bee Nahaagha of Diné, in developing the specific language and implementation of this legislation including the scope of the committees.**

Further Background and Context:

It is extremely important that Peyote be preserved for utilization by and for Indigenous peoples. Broken treaties in this land, the preciousness of Indigenous traditions, ecological threats to the medicine itself, and the importance of spiritual respect in its use makes Peyote a tenuous plant to include explicitly in any decriminalization effort. It is important that non-Indigenous people respect

and acknowledge the American Indian Religious Freedom Act Amendments of 1994 and take the lead from Indigenous leaders of the Native American Church/Azeé Bee Nahaagha of Diné Nation (ABNDN) and *bona fide* Native American Church organizations.

Due to various anthropological and environmental impacts, there is a shortage of Peyote available for Indigenous practitioners of this venerable *bona fide* religion. The Peyote religious practice is a way of life for generations of Indian people. Many Indigenous people have fought for over a hundred years and will continue to fight for their recognized right to this medicinal sacrament through their inherent respect and responsibility for Peyote's survival and care, as well as the preservation of their traditional way of worship, empirical interaction with it and its environment.

In the United States, Peyote only grows naturally in a small area of southern Texas; its limited natural habitat is a significant factor in the current shortage. The National Council member organizations have for many years been observing the growing crisis in the supply of Peyote in south Texas. Previous studies show unequivocally that Peyote is a threatened species and through IPCI the National Council is working to take the responsibility to restore it to a sustainable status. Peyote does not need further pressures. Indigenous people have already had land, water and other medicines taken away and it is imperative that we maintain the Peyote practice for our children and grandchildren.

In addition, both the federal law and Texas state law permit only Native people who are members of federally recognized tribes to legally cultivate, acquire, possess, use, and transport Peyote. Any local governmental resolution that gives non-Indigenous people who are not affiliated with federally recognized tribes the impression that they now have rights to acquire, possess, use, or transport Peyote in or from Texas would be misleading and may lead to their prosecution.

A concern of the Board of IPCI and particularly its Native American Church/ABNDN leaders is that the message being portrayed within decriminalization resolutions could provide a false sense of legality. Possession, transportation, and use of Peyote by non-natives is illegal under federal and state law. To the extent the "decrim" movement sends a message to local citizens that Peyote is "legal," the collateral and unintended effect could be to increase interest in non-native persons either going to Texas to purchase Peyote, buy it from local dealers who have acquired it illegally and unsustainably in Texas, or poaching on private property.

Due to the complexity of Peyote issues, the Texas ranchers we work with are very concerned about the rampant trespassing and destructive practices of illegal Peyote pickers, which will likely increase with decriminalization efforts. These scenarios, we fear, will further foment the Peyote black market and unsustainable practices in south Texas and compromise the decades long work on the part of Native American Peyote spiritual leaders and allies. The passing of the 1994 Amendments to the American Indian Religious Freedom Act is the result of decades of advocacy to gain legalization for the Peyote practice.

Additionally, one of our IPCI projects is aimed toward improving land management, conservation practices, building relationships with the local ranchers, and to improve growing and harvesting conditions and methods of the habitat.

We strongly encourage non-Indigenous persons to seek alternative medicines so as to not harm the very fragile Peyote population in south Texas or disrespect the spiritual, cultural, and legal norms of our Indigenous peoples.

The opportunity to engage early in the process of developing California legislation is appreciated and we look forward to continued discussions as you move forward.

Respectfully,

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Andrew Tso, *President* Native American Church of North America, IPCI Founding Director

Sandor Iron Rope, *President* Native American Church of South Dakota, IPCI Founding Director

Steven Benally, *President* Azeé Bee Nahaagha of Diné

The Indigenous Peyote Conservation Initiative Board of Directors

The National Council of Native American Churches and

The IPCI Decriminalization/Communications Committee