



Office of the Director and C.E.O.

To the joint committee on Environment, Sen. Kennedy and Rep. Albis (co-chairs):

On behalf of the Wadsworth Atheneum Museum of Art, I am testifying in regard to S.B. No. 227 AN ACT CONCERNING CECIL'S LAW. This museum (along with the North American art museum community) deplores the senseless killing of big game animals in Africa and wants to discourage the illicit ivory trade. Notwithstanding, the draft bill as currently written would imperil our institution—criminalizing its prudent care of more than 1,000 objects of cultural heritage in our collection that contain “worked ivory” made before February 26, 1976, the day when the African Elephant was placed on the endangered species list.

Specifically, the bill’s absolute ban on the possession and exchange of any material that may have been “any part, product or offspring thereof, or the dead body or parts thereof, except fossils, whether or not it is included in a manufactured product” would have the following unintended consequences:

- a. Lead to confusion of the issue of poaching and the best strategies signaled by the international community to restrict poaching, as well as working in direct opposition to federal and NGO strategies to restrict poaching;
- b. Injure unreasonably an array of individuals and entities here in the United States—including religious and civic organizations, as well as private persons—by exposing them to criminal prosecution with extreme penalties and the seizure and destruction of their property, in violation of international law, common sense, and our common duty to protect cultural patrimony;
- c. Conflate (to sinister effect) hunting trophies with works of art of significant age and great rarity that have no connection to the modern phenomenon of elephant poaching.

Our colleagues who are actively examining the art museum dimension of the ivory trade issue have reviewed the draft bill with me this week. They work within two major international professional networks of which the Wadsworth is a member—the Association of Art Museum Directors (AAMD), representing the 240 largest art museums in North America, and the International Council of Museums (ICOM), representing more than 33,000 professionals in 140 countries. A number of deficiencies in the bill that would lead to the destruction of cultural property if so enacted. Please note that great thought has gone into exploring possible remedies that would avoid the unintended consequence of destroying our common history. I have enumerated the major issues for clarity’s sake.

Major deficiencies

1. Current exclusion for museums as not-for-profits of educational purpose is inadequate. Our needs as a community of stewards of history and custodians of future knowledge of culture go beyond a simple exemption for property in our care. Last year’s draft bill, and our testimony about it, included provision for a bright line of February 26, 1976, the day on which the African Elephant was deemed an endangered species. Cecil’s Law, as currently drafted, does not.

Our needs as a healthy and high-functioning cultural institution devoted to the preservation of global cultural heritage require sensitivity. We need to be able to:

- Transport and circulate these objects, ideally without State-level interference. Reasons for such circulation include:
 - Transport as loan for temporary (up to a year) or long-term (multi-year) exhibition
 - Transport to appropriate storage
 - Transport to appropriate facility for repair
 - Transport to appropriate facility for particular study
- Dispose of the items as we see fit, including their sale, barter, or trade in the event that we decide to withdraw them (“deaccession”) from our collection, within the strict guidelines of our professional associations; funds from deaccessions are used solely for the acquisition of other works of art of aesthetic and historic significance
- Borrow such items for our scholarly and public-facing purposes (e.g. exhibitions, scholarly comparison) without injuring or exposing to criminal prosecution our counterparties in such loans
- Acquire by gift, purchase, bequest, barter, or trade objects made of old ivory for the long-term health of our collections. Approximately 80% of museum acquisitions come from donations; to deprive the Wadsworth Atheneum of the opportunity to offer great works of art from generous donors would be a serious misstep by the legislature. Moreover, our trade organizations and common sense dictate that a healthy, legal trade in old objects leads to a better understanding of all objects (especially the known ones in our collection); restraint of trade drives material underground to illicit markets, thereby encouraging speculation, which fuels poaching

All of these purposes could be allowed by amending the bill to establish the bright line date of 1976.

2. The draft legislation’s concept of treating such biological material as contraband subject to regulatory registration (much like a handgun) is patently absurd we would need to apply for a permit to possess each 18th century button and each 14th century carved plaque to what end? It is a rule without a practical purpose. Handguns are used to kill people; Renaissance crucifixes and Torah scroll handles as well as African Senafu initiation masks from the last century, while made of ivory, were once articles for personal devotion and are now appreciated for their cultural, historical, and aesthetic value. They pose no lethal threat to anyone or anything, and their appreciation and use—by living cultures, individuals, and institutions such as art museums engaged in the study of culture—does not endanger African big game animals. The modest-sized staff of cultural not-for-profit enterprises such as ours (we have but 75 employees) that possess such articles would spend years applying for registration permits that, in effect, would not change the poaching dynamic in southern Africa.

A remedy here would be to allow for the old, worked ivory to be considered differently than actual hunting trophies. Surely the long-standing legal market for old, worked ivory can be maintained, which means antiques, jewelry, and musical instruments could be freely offered for sale, trade, barter, and other exchange without undue processes and cumbersome protocols. Transport of hunting trophies—frustration with which is the stated goal of the bill—is clearly a separate matter entirely.

3. An array of technical hurdles exist that prevents anyone from adequately identifying the material as being from the specific species the bill seeks to protect. Unlike other biological material, there is no non-destructive way to distinguish the ivory of one animal species from another. Elephants have tusks whether from Africa or elsewhere. Walrus have tusks, etc. The

bill assumes that one could know “a specimen” to pertain to “any part, product or offspring thereof, or the dead body or parts thereof, except fossils, whether or not it is included in a manufactured product.” In reality, the age of the crafting is obvious to experts, while the origin of the ivory is not.

I cannot assume a remedy here other than making exception for worked ivory made before 1976. If the point is to prevent hunting trophies, ban trophies and not all works of art and culture containing ivory, and cultural significance when presented in “worked” (that is, artistically carved) form.

4. Destruction of confiscated material is patently wrong-headed. AAMD, working with Fish and Wildlife to examine impounded examples of worked ivory, in fact have recovered objects of historic and cultural significance from the illicit market and placed them in public institutions for scholarly, educational, and popular uses.

A remedy here would be to allow for cultural institutions to examine and assume into their collections examples of old, worked ivory interdicted from illegal private interests. Whether title of such objects passes to public-facing institutions is secondary—its survival from destruction outweighs all other considerations.

Other (big picture) issues

1. The bill confuses the issue of poaching and the best strategies signaled by the international community to restrict poaching, and works in direct opposition to federal and NGO strategies to restrict poaching. Our professional organizations (AAMD and ICOM, on whose US board of directors I serve) are actively working with US Fish & Wildlife on the issue. Counterpart organizations in the UK and elsewhere are doing likewise with their national governments. Does this body presume greater wisdom than these seasoned professionals in law enforcement, environment, and culture?
2. The bill would unreasonably injure an array of individuals and entities here in the United States—including religious and civic organizations, museums (of art, anthropology, etc.), as well as private persons—in the following ways:
 - a. by exposing them and their communities to criminal prosecution with extreme penalties
 - b. by introducing unarticulated and feckless registration and regulation needlessly into the world of antiques, art, and other cultural artefacts
 - c. through the seizure and subsequent destruction of their property, in violation of international law (including the UNESCO declarations on the protection of cultural property), our common duty to protect cultural patrimony as global citizens, and common sense. ISIS and the Taliban blow up our history—I am one of thousands of professionals duty-sworn to protect against such barbarism.

Similar bills recently passed into law in other states including New Jersey, New York, and California have resulted in significant civil and constitutional suits on these grounds.

In sum, the absence of amendments to establish a 1976 a date certain that all can agree allows for the maintenance of legal markets for cultural artifacts and works of the fine and decorative (aka applied) arts made before such date, to establish protocols for the reasonable assessment of cultural context (including dating of works and appreciation for their role in ritual and devotion), and to forestall the

wanton destruction of cultural property make this bill as currently drafted dangerous. My colleagues and I cannot recommend passage of the bill without major amendment. On behalf of the global museum community and cultural interests close to home, we urge caution in advancing any legislation without careful consideration of the numerous errors cited above as well as others that may not have come to mind in the rush to respond to the draft bill.

Respectfully submitted by Thomas J Loughman, Ph.D., Director and CEO on March 3, 2016