

October 19, 2011

The Honorable Jim Cooper
United States House of Representatives
Washington, D.C.

Dear Representative Cooper,

We are writing today to thank you for introducing HR 3210, the RELIEF Act, which is an important step toward addressing serious concerns about the unintended consequences of the Lacey Act for individual musicians. The Lacey Act, which was first enacted in 1900, was amended in 2008 making it unlawful to import, transport, or sell products derived from illegally harvested plants. The scope of the 2008 amendment included musical instruments made of wood or any other plant materials and applies to individual musicians who possess or travel with their personal instruments for the purpose of performing. **We will be calling on Congress to immediately pass the RELIEF Act and to see that the United States protects domestic and international cultural activity while supporting responsible conservation efforts.**

The American Federation of Musicians of the United States and Canada (AFM) is the largest organization in the world dedicated to representing the interests of professional musicians. The AFM's more than 85,000 members perform all styles of music, including symphonic, jazz, rock, hiphop, and country. Founded in 1942, and chartered by Congress in 1962, the League of American Orchestras' membership encompasses nearly 1,000 symphony, chamber, youth, and collegiate orchestras of all sizes, and links a national network of thousands of instrumentalists, conductors, managers, board members, volunteers, staff members, and business partners.

Individual musicians from all regions of the country and orchestral groups of all budget sizes perform domestically for U.S. audiences and travel abroad to present their music to the world. By inviting foreign musicians to perform, orchestras and other presenters provide American audiences the opportunity to experience a diversity of musical talent. When traveling abroad, America's musicians are ambassadors for American culture, sharing an artistically rich musical experience and reaching across borders to build lasting international partnerships. Every day, American musicians perform throughout this country and represent a significant portion of the U.S. cultural workforce.

We are concerned that lack of clarity in the 2008 Lacey Act amendment and its subsequent administration and enforcement may result in delays in travel, unnecessary fees and burdensome paperwork, and the forfeiture of personal musical instruments. Musicians who possess and travel with their instruments, especially vintage instruments, are concerned that they will be subject to documentation requirements, criminal liability, and confiscation of valued personal tools of their trade.

It is unclear whether musicians are expected to provide complete documentation of the scientific name and country of harvest for any wood or other plant materials in their instruments when traveling. This is an impossible burden for many musicians who are unable to trace every piece of their instrument back to its origins, particularly if the instrument was manufactured prior to the implementation of the 2008 Lacey Act. The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) guidance and Form PPQ 505 should clearly state that personally owned instruments in the possession of musicians traveling to or from the United States are not subject to declaration requirements. This action should be taken by the

Administration immediately. **Passage of the RELIEF Act would ensure that the documentation requirements only apply to items imported only for commerce.**

Musicians fear that even if the possession or travel with an instrument containing wood covered by the Lacey Act is committed “unknowingly” and after “due care” has been exercised in complying with applicable laws, musicians will be subject to criminal liability and/or the forfeiture of their instrument. A September 19, 2011 letter from the Department of Justice to Congressional leaders states that, “people who unknowingly possess a musical instrument or other object containing wood that was illegally taken, possessed, transported or sold in violation of law and who, in the exercise of due care, would not have known that it was illegal, do not have criminal exposure.” Additionally, the U.S. Fish and Wildlife Service has issued a public statement clarifying that “People who, despite exercising due care as consumers, *unknowingly* possess a consumer product, like a musical instrument or other object containing wood that may have been illegally obtained do not have criminal exposure.” While we appreciate these statements, they do not specify that individuals possessing a musical instrument are exempt from forfeiture. And, as a written statement of intent, they do not carry the force of law.

Passage of the RELIEF Act would ensure that individuals owning products manufactured before 2008 are exempt from criminal penalties, forfeiture, and declaration requirements.

Even in the case of instruments manufactured after 2008, it is impossible for a musician to verify the exact species, country of origin, and method of harvest for each type of wood used in the making of a musical instrument. The protections for those unknowingly possessing instruments with wood covered by the Lacey Act are too limited, and could result in a chilling effect on musical activity in the United States. **The RELIEF Act would institute a reasonable “innocent owner” provision that will exempt musicians from automatic forfeiture of instruments in the case of products manufactured pre- or post-2008.** We see this as an important first step to addressing unintended liability for individual instrument owners and hope that future further improvements to the Lacey Act will also offer statutory protection from undue criminal and civil liability.

Musician’s instruments are irreplaceable tools of their trade, and domestic and international performances by musicians advance the national interests of the United States. While we support the underlying goal of the Lacey Act - preserving the world’s protected forests - we believe that Congress and the Administration can accomplish this goal while also ensuring that international and domestic cultural activity and the workforce of U.S. musicians are not unduly impacted. We support HR 3210 as an important step toward clarifying and improving the Lacey Act and look forward to continued work with Congress on this issue.

Sincerely,



Raymond M. Hair, Jr.
President, American Federation of Musicians



Jesse Rosen
President and CEO, League of American Orchestras