

The first amendment to the constitution of the united states

Law



The First Amendment to the Constitution of the United States The First Amendment to the Constitution of the United States imparts to every citizen, the right to freedom of religion and worship. This First Amendment right was later supplemented in the case of Native Americans through the passage of legislation such as the American Indian Religious Freedom Act (AIRFA) adopted in 1978 and the Native American Graves Protection and Repatriation Act, which upheld the rights of the Native Americans to freely practice their religion, with concomitant observance of all necessary religious rituals and ceremonies. The Native American Graves protection and repatriation Act which was passed on November 16, 1990, designates "burial site" as a physical location where individual human remains are deposited as a part of the death rite (Act 1990). Hence, the sacredness of land in Native American religious belief is all tied up with the graves that exist upon the land. But under the California Environmental Quality Act and the National Historic Preservation Act, developers are encouraged to preserve the archaeological significance of sites, but it is not a mandatory requirement. They can build over the site, but only on the condition that the artifacts and valuable objects that are found are documented.[Bergatta, 2002].

But in the case of *Lyng vs. Northwest Indian Cemetery Protective Association* (1988), the courts dismissed the AIRFA, that guaranteed religious freedom to the Indian tribes as a "policy statement" (Report 1999). The issue was the construction of a road by the Government Forest Service including logging, through land which was deemed sacred by three Native American tribes. The Court ruled against the Native American tribes, stating that they had no right to stop the Forest department from logging through their lands. But this

raises the issue of the First Amendment right to freedom of the native American tribes.

The most important aspect of the First Amendment on religion is that every individual has the right to freedom of religion. In the case of the Native Americans, their religion also encompasses the preservation of lands that they consider sacred as burial sites. But from the perspective of the Courts, the First Amendment to religion means ensuring neutrality, so that no one religion is favored over the other, or any choice made in respect of religion versus non religion (Carter 2000). This principle of neutrality was applied by the Court in the case of Lyng, based upon the rationale that no particular tribe has any right over the land. But while it was enforcing the principle of neutrality, it was encroaching upon the right to freedom of religion of the Native American tribes. The reason for the infringement of religious rights arises since the land was all tied up to their religion and building or logging on the land was equivalent to a defilement of sacred land in a religious sense, thereby violating the Native American's sacred beliefs and the right to those religious beliefs as guaranteed by the First Amendment to the Constitution. In applying the principle of neutrality in this case, the courts actually violated the First Amendment, through a callous disregard of the rights of a minority religion. Although the land was owned by the Government, the reality was that it was also a sacred site for the Native Americans. There are many other religious sites owned by the Government, but when they belong to a majority religion, no such encroachment is considered (Carter 2000). The Court erred in this case. The rights of the Native Americans to freedom of religion cannot be subordinated to the

interests of the majority through the arm of Government for development of sacred land to produce economic benefits. The First Amendment on religion guarantees equal right to freedom of worship to all citizens. Therefore this principle of equality has to be maintained and the Courts should treat all religions equally according to all of them the same importance, rather than applying the principle of neutrality.

References:

- * Bprgatta, Tina (2002): Prehistoric Indian carving imperiled by housing project." Los Angeles Times, January 3, 2002.
- * Carter, Stephen (2000). " Beyond Neutrality". Excerpted from God's Name in Vain: The wrongs and rights of religion in politics. [Online] Available at: <http://www.religion-online.org/showarticle.asp?title=1964>; accessed 11/1/2005
- * Native American Graves Protection and Repatriation Act (as amended) (1990): Public Law 101-601; 25 U. S. C. 3001
- * Rapporteur Report. (1999). " Religious intolerance in the United States" [Online] Available at: <http://www.nativeweb.org/pages/legal/intolerance.html>; accessed 11/1/2005