

Issue Brief: Native American/First Amendment, Speech, Religion

Key Words (2-4): Sacred Sites, First Amendment, Native Americans, Religion, Peyote, Glen Cove California.

Description (2 sentences): This brief will explore the limitations of the first amendment in regards to the religious freedoms of Native Americans who wish to preserve their place of worship (i.e. their land) and their religious usage of hallucinogens.

Key points (2-4):

- For Native Americans, religion and land are traditionally inseparable. Peyote and other hallucinogens are important to the religious traditions of many native tribes.
- However, land as a place of worship runs counter to capitalist notions of private property.
- Peyote is now legal but other hallucinogens remain illegal.
- The first amendment prohibits the making of any law that infringes on the free exercise of religion but to what extent?

Brief (500-700 words):

The question is still salient today, should the first amendment ignore major violations in the name of Native American religious freedom? When it comes to land, Native Americans are losing against major consortium groups and urban developers. Although coalitions of Native American have been able to gain the support of environmentalist and other non-profit groups, they don't have the political and financial leverage to block future construction plans. Indeed, most tribal communities in the U.S do not control their most sacred lands. Sacred sites are not located directly on reservations which explain why Native Americans have had a difficult time protecting and gaining access to these places. In addition, Native Americans tribes don't have any legal contracts that attest that these sites of worship are their

property. Indeed, one of the major issues with the sacred sites is the issue of private property. Native Americans don't have the financial power to purchase the sacred lands that are now the property of the state and of large corporations. Legal cases to protect mountains or rivers have resulted in disappointing concessions where worship areas have been limited to a few acres. Recently, Glen Cove in California which is a burial site and a sacred place for many Native America tribes was the center of controversy when urban planners in California decided to turn the site into a park. Native Americans rallied and fought to maintain the sacred nature of Glen Cove. They organized a marathon, used social media and raised money. However, amidst growing anger and frustration, the park construction went through. Concessions were made to some tribes such as the Patwin tribe but were not made to other tribes such as the Yocha Dehe and Cortina tribes. These measures have participated in suppressing Native American religious and political freedoms. Supreme Court justices have often used the idea of the separation between church and state to justify the fact that Native American religious freedoms should not impeach on the power of the states. However, the right to practice religion freely is an inalienable right

When it comes to Peyote, the Courts had originally disregarded the first amendment when Peyote was deemed illegal in the 80's. The case *Employment Division vs Smith* took center stage in the question of Peyote in 1989 when two Native Americans who worked as counselors for a private drug rehabilitation organization were fired for ingesting peyote. They were rejected from receiving any sort of compensation from the Supreme Court. At the time, Justice Antonin Scalia argued that an individual's religious beliefs should not excuse him from compliance with an otherwise valid law. For Scalia, exceptions to every state law or regulation affecting religion "would open the prospect of constitutionally required exemptions from civic obligations of almost every conceivable kind". Today, Peyote has been made legalized and Native Americans have full protection under the federal law. Just like Scalia predicted, other cases such as the usage of marijuana for medical purposes were presented to the Supreme Court. Ultimately, legalizing Peyote is in many regards not as threatening as giving Native

Americans full land rights because it doesn't run counter to the capitalist notions of property. Other hallucinogens like *Datura meteloides* which is a plant that is believed to give spiritual well-being.



1.1 Departing from Pit River Territory in Northern California, a group of Native Americans organized a marathon to express their disdain for the new construction plans in Glen Cove(Sogorea Te).



1.2 Native Americans and their supporters protesting at Glen Cove Mountain in California. A woman holds a sign that reads "Respect Indigenous Sacred Lands".

General References:

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