

The American Indian Religious Freedom Act [AIRFA] 1978

The American Indian Religious Freedom Act [AIRFA] 1978 protects the rights of Native Americans to practice their traditional religions, including access to sacred sites and use of sacred objects.

Overview and Purpose

August 11, 1978, AIRFA was designed to protect and preserve the inherent right of American Indians, Eskimos, Aleuts, and Native Hawaiians to believe, express, and exercise their traditional religions. This includes access to sacred sites, ceremonial use of objects, and freedom to worship through traditional rites and ceremonies [42 US Code SS 1996]. The law acknowledged that prior federal policies and laws had often prohibited or restricted Native religious practices, including forced relocation, assimilation policies, and bans on ceremonies.

Historical Context

Before AIRFA, the **Bureau of Indian Affairs and other federal agencies actively restricted Native religious practices**, often under the guise of “civilizing” or Christianizing Native populations. Sacred sites were inaccessible, and possession of sacred objects, such as eagle feathers, was prohibited. The act was a response to decades of **religious suppression and cultural infringement**.

Key Provisions

- **Access to sacred sites:** Federal agencies must, to the extent practicable, accommodate **access to and ceremonial use of Indian sacred sites** while avoiding adverse effects on their physical integrity.
- **Use and Possession of Sacred Objects:** Native Americans are allowed to **possess and use objects considered sacred** in their religious practices, such as eagle feathers and ceremonial items.
- **Agency Consultation:** Federal departments are **required** to consult with Native religious leaders to evaluate and modify policies that may interfere with religious practices, reporting changes to Congress within one year.
- **Legal recognition:** AIRFA is based on the **First Amendment**, affirming **freedom of religion**, and acknowledges prior violations of Native religious rights.

Challenges and Amendments

Despite AIRFA, challenges persisted, particularly regarding **peyote** use in religious ceremonies. In *Employment Division v. Smith* [1990], the Supreme Court ruled that the First Amendment did not protect peyote use in Native American Church rituals, creating legal uncertainty. In response,

Congress amended AIRFA in 1994 to explicitly legalize the use, possession, and transportation of **peyote** for religious purposes by Native Americans.

Significance

AIRFA represents a **landmark step** in recognizing NA **religious freedom and cultural preservation**. It laid groundwork for federal policies that respect Indigenous spiritual practices, though it does **not** provide direct legal remedies if federal actions conflict with these rights. The act remains a **cornerstone of Indian self-determination and cultural autonomy** in the US.

[Source #2 for AIRFA]

This law also **allowed tribes and nations to regain access to sacred sites on federal lands** and the right to possess certain sacred objects such as eagle feathers. This joint resolution directs all federal agencies to examine their policies and procedures and to take appropriate measures to **“protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise traditional religions”** and to allow them to maintain their practices and access their religious sites on government lands.

Until 1934, the BIA had regulations prohibiting the practices of Indian religion and actively pursued a policy aimed at Christianizing and “civilizing” the Indians. To accomplish this, the BIA forbade the practice of most traditional religions. Violators, if caught, could be punished by fines or imprisonment. The goal of these policies, strongly supported by Christian churches, was to stamp out aboriginal religions. The AIRFA is a **key element in Indian self-determination and cultural freedom** in the US. Even with passage of this act, however, NA **continued to experience problems in accessing sacred sites** and using peyote. In the case of *Employment Division v. Smith* [1990], the Supreme Court upheld the state of Oregon’s right to deny unemployment benefits to two men who had been fired for using peyote, although both were members of the NACChurch, an official organized religion whose rituals involve the use of the drug [plant? GK]. In response to this, Congress passed an amendment to the AIRFA in 1994, guaranteeing that the use, possession, and transportation of peyote by an American Indian for religious purposes was fully legal. The **issue of sacred sites, however, remained unsettled into the 21st century.** [Bears Ears? GK]

The 1978 federal statute affirms the right of NA to practice their traditional religion, but it does **not allow Indians to sue when federal agencies disregard Indian religious practices** or when agencies pursue plans despite adverse impact on NA religions. The extension of full religious freedom to NA is an evolving concept, and the AIRFA is an important philosophical foundation.