

Summary of court cases up to Supreme Court Decision

[District Court Case \(1983\)](#)

In 1983 the Cemetery Protective Association petitioned the U.S. District Court for an injunction against R. Max Peterson, Chief of the U.S. Forest Service, to halt road building and timbering in the high country. After hearing the case on its merits, including testimony by members of the Indian community, U.S. District Court Judge Stanley A. Weigel, in effect, adopted the conclusion of the Theodoratus Report that the high country was sacred ground used for religious purposes. On May 25, 1983, he issued a permanent injunction against building the road and implementing the timber management plan. Peterson appealed the District Court injunction to the U.S. Court of Appeals for the Ninth Circuit.

[Appellate Court Decision \(1986\)](#)

In 1986 a three-judge panel of the Court of Appeals, Ninth Circuit, led by Judge William C. Canby, affirmed the District Court's injunction on grounds that it denied free exercise of religion to the native people.

The Supreme Court

Subsequently, Richard E. Lyng, Secretary of Agriculture and ultimate supervisor of the Forest Service, requested the U.S. Supreme Court to issue a writ of certiorari to the Court of Appeals so the case could be heard at the highest level. The Court issued the writ on May 4, 1987. Attorneys for petitioner Lyng and for the respondents Northwest Indian Cemetery Protective Association submitted written briefs to the Supreme Court in behalf of their respective clients.

- [Precedents Favoring Lyng](#)
- [Precedents Favoring NICPA](#)

Supreme Court Case Decision

The Supreme Court Opinion

On April 19, 1988, Justice Sandra Day O'Connor delivered the opinion of the Court in favor of Lyng in which Chief Justice Rehnquist and Justices White, Stevens, and Scalia joined. Justice Brennan filed a dissenting opinion joined by Justices Marshall and Blackmun. Justice Kennedy, who was not a member of the Court until February, 1988, did not participate in the case. Despite a vigorous dissent by Justice Brennan, the Court ruled 5-3 that the Free Exercise Clause does not prohibit the Forest Service from permitting logging or constructing a paved road in the Chimney Rock area. The decision of the Court of Appeals was reversed and the case was remanded to have the injunction reconsidered by the lower court.

In the Court's Opinion O'Connor acknowledged that the G-O Road "could have devastating effects on traditional Indian religious practices," but she perceived the Road like the Social Security number in *Roy*. For the Court she wrote that "The building of a road or the harvesting of timber on publicly owned land cannot meaningfully be distinguished from the use of a Social Security number." Since she viewed the road as an "incidental" interference with religious freedom, not a deliberate government attack on one's faith, it was permissible.

Incredibly, the opinion written by Sandra Day O'Connor states: "Even assuming that the Government's action here will virtually destroy the Indians' ability to practice their religion, the Constitution simply does not provide a principle that could justify upholding the Indians' legal claims." This opinion states that the government's right to use Forest Service land as it wishes overrides the claim of the Native American religious practitioners, because the government is not literally outlawing their religion. The First Amendment protects belief, but not practice, the court said.

Justice Brennan disagreed by saying the ruling reduced the Indian's religious freedom "*to nothing more than the right to believe that their religion will be destroyed.*"

International Law

After the Court rejected the case on First Amendment grounds, on January 2, 1990, the Northwest Indian Cemetery Protective Association and three individuals appealed to the Inter-American Commission on Human Rights of the Organization of American States.

They stated that legal remedies under U.S. law had been exhausted and requested that the OAS intervene to protect their basic human rights. Their petition was supported by a formal resolution from the Tolowa Nation Tribal Council. Further, they cited provisions in two international documents.

American Declaration of the Rights and Duties of Man, Article III: Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.

American Convention on Human Rights, Article 12: Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain . . . one's religion or beliefs....

Eleven months later, on November 27, 1990, the petitioners wrote to OAS withdrawing their request. They said, Congress has "passed certain legislation that prohibits construction of the G-O Road." Whether the petition to OAS, without any formal action of the body was effective, is a matter of conjecture. If members of Congress and Forest Service administrators were aware of the matter, they could not entirely ignore the potential pressure that might come from an international incident.