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Members of the Native American coalition Apache Stronghold hold protest cards ahead of formally asking the Supreme Court to overturn an earlier ruling allowing the development of the Resolution Copper mine in Oak Flat, Ariz., outside the court in Washington Sept. 11, 2024. (OSV News/Piroschka van de Wouw, Reuters)

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Catholic bishops, groups and legal scholars have joined other religious groups in offering their support to an Indigenous coalition asking the Supreme Court to protect an Apache sacred site from destruction by a copper mining giant. They argue the case has serious implications for the scope of the Religious Freedom Restoration Act.

In September, a coalition of Western Apache people, along with other Native American and non-Indigenous supporters, under the banner of the non-profit Apache Stronghold, asked the high court to protect their sacred site at Oak Flat, Arizona, after a federal appeals court rejected their request.

Oak Flat in Tonto National Forest — about 70 miles outside of Phoenix — is considered a sacred site by the region's Indigenous peoples and is on the National Register of Historic Places. However, after the discovery of copper deposits on the land, in December 2014, Congress authorized the U.S. Forest Service to swap the land for other sites with Resolution Copper, a foreign-owned mining company, and lifted a mining ban on Oak Flat, known by the Apache as Chi'chil Bildagoteel.

Mining the site would result in a crater nearly 2 miles in diameter and about 800 to 1,000 feet deep, according to an estimate in an environmental impact report mandated by the National Environmental Protection Act. The Apache Stronghold coalition says the mining project would destroy the Apache sacred site, which they likened to Mount Sinai.

A diverse group of religious organizations weighed in to ask the high court to take up the case, including Catholic ones: The U.S. Conference of Catholic Bishops, the Knights of Columbus, and Notre Dame Law School's Lindsay and Matt Moroun Religious Liberty Clinic, all filed friend of the court briefs, also known as amicus briefs, in support.

"This strong showing of support from a diversity of faiths — Catholics, Protestants, Muslims, Jews, Sikhs, and more — demonstrates that the threat to religious freedom

at Oak Flat is a threat to religious freedom everywhere," Wendsler Nosie Sr. of Apache Stronghold said in a statement. "We pray that the justices take our case and ensure that our religious practices receive the same respect that all other faith traditions enjoy."

In March, a divided 9th U.S. Circuit Court of Appeals rejected a request in Apache Stronghold v. United States, to stop the federal transfer of Oak Flat to Resolution Copper. Apache Stronghold argued the site had been home to Indigenous religious ceremonies for generations and mining the land would destroy it.

But the appellate court ruled the Religious Freedom Restoration Act did not protect the group, as they were not being coerced by the government to violate their beliefs.

Apache Stronghold later asked the Supreme Court to intervene, arguing the destruction of their religious site, which cannot be replaced, would place a substantial burden on their religious practice, in violation of that law.

"The proposed mine would devastate Apache sacred land and permanently destroy the Apache people's ability to continue centuries old spiritual practices," John Meiser, an associate clinical professor of law at Notre Dame Law School and director of its religious liberty clinic, said in a statement.

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The Religious Freedom Restoration Act, he explained, "is meant to be a bulwark against threats to religious exercise like this, and the court must ensure that is just as true for Indigenous groups as it is for all others."

Notre Dame's amicus brief in the case argued the appeals court improperly narrowed the scope of RFRA, which should have protected the religious practices of the Indigenous peoples in question.

"The Ninth Circuit's misguided approach uniquely harms Indigenous religious practices and perpetuates a lamentable history of government disregard for Indigenous people," it stated.

A separate brief by the USCCB alongside the Christian Legal Society and the Assembly Of Canonical Orthodox Bishops of the United States Of America argued that the 9th Circuit's "'substantial burden' test is otherwise underinclusive, fosters confusion, and permits absurd results."

"This Court should take the opportunity to correct this error," it said.

It added that the appellate court's reasoning "is squarely incompatible with RFRA's mandate that impact — not intent — governs."

But per the court's approach "destruction of Oak Flat would constitute a substantial burden if the government intended to target Apaches. Yet that same destruction would be presumptively permissible if the government were motivated by financial gain rather than religious animus."

Another amicus brief by the Knights of Columbus argued the lower court's ruling is "devastating to the Western Apache who have long held Oak Flat sacred and stand to lose it forever — along with their central religious practices — in favor of a copper mine."

"It is devastating to the many Native American tribes around the country who use their ancestral lands — often now federal property — for their rituals and worship," the brief said. "And it is devastating to the myriad religious adherents of all faiths and backgrounds who use federal lands every day for their religious exercise, which is subject to arbitrary government interference if RFRA's long-standing protections are suddenly declared to be inapplicable."

Other friend of the court briefs in the case included the states of Oklahoma, South Carolina, Mississippi and Oregon; the Religious Freedom Institute and the Ethics and Public Policy Center; a large number of Christian denominational churches along with various Catholic ministries and groups including Franciscan Action Network, Pax Christi USA and the Ignatian Solidarity Network; the Sikh Coalition and the Jewish Coalition for Religious Liberty; as well as the National Congress of American Indians and 44 tribal nations.

In a statement noting the broad group of supporters in the case, Native American Rights Fund Executive Director John Echohawk said, "Eradicating sacred places where religious practices take place should be a violation of the Religious Freedom Restoration Act for any religious group."

"For many Native religions, eliminating a sacred place may end religious exercise completely," Echohawk said. "The 9th Circuit's decision sanctions the federal government's destruction of sacred places on federal land at its complete discretion."

In a September statement responding to Apache Stronghold's certiorari petition to the high court, a Resolution Copper spokesperson argued the case "does not present any question worthy of Supreme Court review" and that the appeals court correctly applied "well-established Supreme Court precedent."

"This case is about the government's right to pursue national interests with its own land — an unremarkable and long-standing proposition that the Supreme Court and other courts have consistently reaffirmed," the spokesperson said, arguing the mining project "is vital to helping secure America's energy future with a domestic supply of copper and other critical minerals."

The Supreme Court has not yet indicated whether it will take up the case, but Luke Goodrich, vice president and senior counsel at Becket, a religious liberty law firm representing Apache Stronghold, said in a statement, "Obliterating Native sacred land to make way for a copper mine is a tragic betrayal of our nation's promise of religious freedom for all."

"We expect the Supreme Court to take this case and confirm that Native American religious practices are fully protected by federal law," he said.

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