



Native Hawaiian Law - A Treatise, Chapter 15: Religious Freedom

Melody Kapilialoha MacKenzie

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The Free Exercise Clause of the First Amendment to the U.S. Constitution guarantees citizens the freedom to practice their religion. To Native Hawaiians, this implies the freedom to follow a way of life that recognizes and reveres the sacredness of many places, life forms, and natural forces. This chapter begins by providing a summary description of traditional Native Hawaiian religious beliefs.

U.S. courts, however, have increasingly narrowed the scope of the Free Exercise Clause. Various judicial decisions have rendered the American Indian Religious Freedom Act of 1978, which also covers Native Hawaiians, largely devoid of meaningful protection in practice. In addition, several court rulings have essentially nullified the intent of the Religious Freedom Restoration Act of 1993. These developments have cast unsettling doubt on the continued survival and free exercise of indigenous faiths.

This chapter comprehensively recounts the history of the relevant cases. It also seeks to clarify the shifting legal definitions of what constitutes religious practice and the frequently debated distinctions between a burden and a prohibition on such practice. It concludes by expressing the hope that stronger legislation can be passed to safeguard the unique and time-honored religion of Native Hawaiians.

“Religious Freedom” is Chapter 15 of *Native Hawaiian Law: A Treatise*, a volume that updates and expands on the seminal work of the 1991 *Native Hawaiian Rights Handbook*. The publication is a collaborative effort of the Native Hawaiian Legal Corporation, Ka Huli Ao Center for Excellence in Native Hawaiian Law at the William S. Richardson School of Law – University of Hawai‘i at M?noa, and Kamehameha Publishing.

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