

Faith groups file friend of the court briefs in support of religious liberty

by [Mike Ferguson](#)

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Leaders of Apache Stronghold open a gathering in Lexington, Kentucky, in August. (Photo by Rich Copley, Presbyterian News Service)

The head of the Presbyterian Church (U.S.A.), along with leaders of Mennonite Church USA, and Lipan Native American Church, filed a friend of the court brief in the US Supreme Court case of *Apache Stronghold v. United States et al* on October 15.

The presiding bishop of the Episcopal Church, the general synod of the United Church of Christ, the Evangelical Lutheran Church in America, and the United Methodist Church signed [a similar but separate friend of the court brief](#) in the same case.

The case in question is brought by [Apache Stronghold](#), a Native American-led community organization based in San Carlos, Arizona, [working to preserve from corporate destruction by mining Oak Flat](#), a site about an hour east of Phoenix in the [Tonto National Forest](#) known to the Apache as Chi'Chil Bildagoteel.

A friend of the court brief, also known as an amicus curiae brief, is a written submission to a court from a person, group or organization that is not a party to the case but has an interest in it.

[The amicus curiae brief](#) filed by the PC(USA) and its two partners addresses “the complete physical destruction of an indigenous sacred site, ending forever the ability to engage in religious rituals.”

Such action will constitute “substantial burden on religious exercise,” the petition states. “This brief addresses whether the government would be able to show that its actions are the least restrictive means of achieving its claimed interest when it neglects to investigate and use less restrictive alternatives.”

Over the last 30 years, the Religious Freedom Restoration Act, a 1993 law that protects the right of people to practice their religion without government interference, “and many other laws have demanded strict scrutiny of government actions that burden religious exercise,” according to the friend of the court brief.

The brief states that the [US Forest Service’s 2021 Environmental Impact Statement](#) “identified multiple means of extracting copper in a less religiously destructive way. But the EIS “then rejected those alternatives because they involved ‘higher operational costs.’ In short, the government failed to investigate less restrictive means with the goal of accommodating religion; it was looking to maximize profit.”

The brief argues that “today, in most instances where government burdens the exercise of religion, it must survive [a strict scrutiny test]. As the Petition notes, [the Ninth Circuit avoided strict scrutiny](#) by determining the destruction of a religious site would not burden religious exercise.”

“Assuming this Court reverses,” the petition states, “it should also give guidance to lower courts about what strict scrutiny requires. . . . They need clear direction, as do government actors.” —Presbyterian News Service