

March 27, 2022

Drug Enforcement Administration
Attn: Administrator
8701 Morrissette Drive
Springfield, Virginia 22152
Certified Mail 7007 1490 0002 0045 7626

Drug Enforcement Administration
Attn: Diversion Control Division/DC
8701 Morrissette Drive
Springfield, VA 22152
Certified Mail 7007 1490 0002 0045 7633
ODLP@usdoj.gov

Dear Administrator:

Please accept this letter as supplemental to the petition we sent you for an exemption for our state medical cannabis program.

OUR PETITION

The [petition we sent to the DEA on May 14, 2021](#)¹, received by your office on May 19, 2021, certified mail receipts: [7020 2450 0000 8179 6944](#)² and [7020 2450 0000 8179 6968](#)³.

The [supplemental brief we sent to the DEA on June 2, 2021](#)⁴, received by your office on June 7, 2021, certified mail receipts: [7021 0350 0001 0091 0111](#)⁵ and [7021 0350 0001 0091 0616](#)⁶.

EXEMPTIONS ARE NOT FORBIDDEN BY RAICH

In response to [our letter](#)⁷ dated January 28, 2019, on November 10, 2020, [your agency responded](#)⁸ as follows:

In [Gonzales v. Raich](#), the Supreme Court held that Congress has the power, and has exercised that power via the CSA, to ban the personal cultivation and medical use of marijuana, even where otherwise authorized by state law. 545 U.S. 1, 29 (2005).

In response to [our letter](#)⁹ dated December 16, 2020, on April 27, 2021, [your agency responded](#)¹⁰ as follows:

In its opinion in [Raich v. Gonzalez](#) (sic), the Supreme Court found that Congress's Commerce Clause authority, manifested in the CSA, includes the power to prohibit the local use of marijuana in compliance with state law. 545 U.S. 1, 29 (2005). Your petition attempts to distinguish [Raich](#) because the opinion did not address the issue of whether the CSA precluded an exemption under 21 CFR 1307.03. But [Raich](#) makes it clear that the "Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail." [Raich](#), 545 U.S. at 29. It places no limits on this conclusion. [Raich](#) does not suggest that the federal government has a duty to

minimize conflicts with state laws by granting exemptions. Your petition cites no authority that such a duty exists.

While we agree the CSA includes the power to prohibit local use of controlled substances, the CSA also includes the power to grant exemptions. An exemption exists for schedule I peyote, [21 C.F.R. § 1307.31](#), for a church. [Employment Division v. Smith](#), 494 U.S. 872, 906 (1990) (O'Connor, J., concurring). The previous letters we received from you on November 10, 2020, and on April 27, 2021, do not mention the peyote exemption.

While it's true we said the exemption is required, we were referring to an Equal Protection / Establishment Clause analysis (General Applicability, as in [Smith](#)) not the constitutional claim rejected in [Raich](#). How do churches merit greater protection than state governments? Again, your previous letters said nothing about the existing exemption for a church. We would like a response from you that takes into account the exemptions that already exist.

"The Establishment Clause generally prohibits the government from granting certain preferences to religions or religious adherents which are not available to secular organizations or nonreligious individuals. *E.g.*, *Everson v. Board of Education*, 330 U.S. 1 (1947)", [Peyote Exemption for Native American Church](#), Office of Legal Counsel, U.S. Department of Justice, Tuesday, December 22, 1981, at page 410. ¹¹

STATE AUTONOMY

We also drew attention to [21 U.S.C. § 903](#), which indicates an intent by Congress not to interfere with the states. We said your authority to grant exemptions combined with the intent of Congress not to interfere with states suggests your agency should do whatever it can to resolve any potential conflict, positive or otherwise. You replied that we cited no authority for this assertion, but we cited the CSA, § 903, and we cited [Gonzales v. Oregon](#), 546 U.S. 243, 271 (2006) ("regulation of health and safety is 'primarily, and historically, a matter of local concern'").

AVAILABLE ADMINISTRATIVE REMEDIES

The decision in [Raich](#) suggests administrative remedies, such as rescheduling, rather than reversing well established principles of federalism regarding preemption and supremacy. [Id.](#), 545 U.S. at 28 n.37.

But the possibility that the drug may be reclassified in the future has no relevance to the question whether Congress now has the power to regulate its production and distribution. Respondents' submission, if accepted, would place all homegrown medical substances beyond the reach of Congress' regulatory jurisdiction.

[Gonzales v. Raich](#) 545 U.S. 1, 28 n.37 (2005). An exemption is an administrative remedy that avoids the constitutional question of whether state law creates immunity from federal preemption and supremacy. The religious exemption for peyote, [21 C.F.R. § 1307.31](#), is an example of how your agency exercises that regulatory jurisdiction to avoid conflicts between state and federal law.

See the [Office of Legal Counsel Memorandum](#) (1981)¹² for an explanation of how the federal exemption your agency maintains was created because of state laws and state court decisions recognizing a state right to use peyote for religious purposes, and why an administrative exemption was chosen for the federal exemption instead of a statutory exemption.

Exemptions for states are not required by the Tenth Amendment ([Raich](#)) and exemptions for churches are not required by the First Amendment ([Smith](#)), but consideration of requests for exemption are required by the CSA, and we expect a thorough analysis based on [21 U.S.C. § 822\(d\)](#) (“consistent with the public health and safety”).

This conclusion is reinforced by the Controlled Substances Act itself. The Act contains a provision authorizing the Attorney General to “waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.” 21 U.S.C. § 822(d). The fact that the Act itself contemplates that exempting certain people from its requirements would be “consistent with the public health and safety” indicates that congressional findings with respect to Schedule I substances should not carry the determinative weight, for RFRA purposes, that the Government would ascribe to them.

[Gonzales v. O Centro Espírita Beneficente União do Vegetal](#), 546 U.S. 418, 432-433 (2006).

ADMINISTRATIVE INTENT HAS CHANGED

In 2013, the U.S. Department of Justice issued guidelines for state cannabis programs, commonly referred to as the [Cole Memo](#)¹³. Iowa cautiously entered into this new regulatory environment by enacting its first medical marijuana law in 2014, Iowa Code Chapter 124D. Chapter 124D did not authorize anyone to grow marijuana, at home or otherwise. [2014 Iowa Acts Chapter 1125](#) (May 30, 2014).

In 2018, your agency created [guidance for religious exemptions](#).¹⁴ Your agency is currently engaged in [rulemaking to register religious organizations](#).¹⁵ To avoid violation of the Establishment Clause, your agency must allow states the same or greater protection.

CONGRESSIONAL INTENT HAS CHANGED

Since 2014, Congress has recognized state medical marijuana programs each year in the federal Justice appropriations acts. Public Law No: 117-103, § 531, Consolidated Appropriations Act,

2022 ([H.R. 2471](#)); [Public Law 116-260, § 531](#), Consolidated Appropriations Act, 2021 ([H.R. 133](#)); [Public Law 116-93, § 531](#), Consolidated Appropriations Act, 2020 ([H.R. 1158](#)); [Public Law 116-6, § 537](#), Consolidated Appropriations Act, 2019 ([H.J. Res. 31](#)); [Public Law 115-141, § 538](#), Consolidated Appropriations Act, 2018 ([H.R. 1625](#)); [Public Law 115-31, § 537](#), Consolidated Appropriations Act, 2017 ([H.R. 244](#)); [Public Law 114-113, § 542](#), Consolidated Appropriations Act, 2016 ([H.R. 2029](#)); [Public Law 113-235, § 538](#), Consolidated and Further Continuing Appropriations Act, 2015 ([H.R. 83](#)).

Emboldened by these events, in 2017 Iowa took a step further, authorizing intrastate production and distribution of medical marijuana products, Iowa Code Chapter 124E. [2017 Iowa Acts Chapter 162](#) (May 12, 2017).

INTERNATIONAL INTENT HAS CHANGED

In 2020 [marijuana was removed from Schedule IV of the Single Convention](#) because it has medical use.¹⁶ And, as we previously pointed out, the Single Convention contains an exception for domestic law. We have such a domestic law here in Iowa. Article 36(2), Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol, May 25, 1967, 18 U.S.T. 1407, 30 T.I.A.S. No. 6298, 520 U.N.T.S. 151

REASONABLE ACCOMMODATION

Zero accommodation is not reasonable. State intent, U.S. Department of Justice intent, Congressional intent, and international intent have all evolved since 1970 and all after 2005 when [Raich](#) was decided.

Our state sent you a [letter](#) on April 23, 2021, to which you have not responded.¹⁷ That letter requests federal funding guarantees for Iowa educational institutions and long-term health care facilities. Our state agrees that federal funding can only be guaranteed by a federal exemption.¹⁸

We think it is unreasonable for your agency to deny an exemption for Iowa's medical cannabis program. The scale should tip toward cooperation with the states rather than interference. We would appreciate a swift response. If you have any questions, we'd be glad to answer them.

We look forward to hearing from you soon.

Respectfully yours,

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¹ <https://iowamedicalmarijuana.org/pdfs/DEA-Petition-2021-May-14.pdf>

² <https://iowamedicalmarijuana.org/images/certified-mail-2021-05-19.jpg>

³ <https://iowamedicalmarijuana.org/images/certified-mail-2021-05-19.jpg>

⁴ <https://iowamedicalmarijuana.org/pdfs/2021-Supplemental-DEA.pdf>

⁵ <https://iowamedicalmarijuana.org/images/certified-mail-2021-06-07.jpg>

⁶ <https://iowamedicalmarijuana.org/images/certified-mail-2021-06-07.jpg>

⁷ <https://files.iowamedicalmarijuana.org/imm/DEA-Petition-2019-January-28.pdf>

⁸ <https://iowamedicalmarijuana.org/pdfs/dea-response-2020-11-10.pdf>

⁹ <https://iowamedicalmarijuana.org/pdfs/DEA-AmendedPetition-2020.pdf>

¹⁰ <https://iowamedicalmarijuana.org/pdfs/dea-response-2021-04-27.pdf>

¹¹ <https://www.justice.gov/olc/opinion/peyote-exemption-native-american-church>

¹² <https://www.justice.gov/olc/opinion/peyote-exemption-native-american-church>

¹³ <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

¹⁴ [https://www.deaiversion.usdoj.gov/GDP/\(DEA-DC-5\)%20Guidance%20Regarding%20Petitions%20for%20Religious%20Exemptions.pdf](https://www.deaiversion.usdoj.gov/GDP/(DEA-DC-5)%20Guidance%20Regarding%20Petitions%20for%20Religious%20Exemptions.pdf)

¹⁵ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1117-AB66>

¹⁶ <https://www.who.int/news/item/04-12-2020-un-commission-on-narcotic-drugs-reclassifies-cannabis-to-recognize-its-therapeutic-uses>

¹⁷ <https://iowamedicalmarijuana.org/pdfs/olsen-iowa-2021/Exhibit-D-2021-04-29.pdf>

¹⁸ <https://iowamedicalmarijuana.org/pdfs/2021-05-21/Page7fromIDPH-2020-09-04.pdf>