

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

Petition by Carl Olsen for the adoption of rules relating to Iowa Code Chapter 124	THIRD BRIEF IN SUPPORT OF PETITION FOR RULE MAKING
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## Absence of Regulations is Unconstitutional

Creating rules to process requests for exceptions, adding religious use of peyote to a list of exceptions, and recommending the legislature repeal the statutory exemption for the Native American Church, resolves the inconsistency between Iowa Code Chapter 124 and the Iowa Constitution:

**Establishment of Religion**, [article 1, § 3](#) of the Iowa Constitution:

The general assembly shall make no law respecting an establishment of religion

**Uniformity of Law**, [article 1, § 6](#) of the Iowa Constitution:

All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens

## Consistency with Federal and Uniform Acts

The general assembly intended Chapter 124 to be consistent with federal and uniform acts.

Iowa Code § [124.601](#)

**Uniformity of interpretation.**

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Iowa Code § [124.602](#)

**Short title.**

This chapter may be cited as the “*Uniform Controlled Substances Act*”.

Uniform Law Commission, [1990 Controlled Substances Act](#):

**Prefatory Note**

This Uniform Act was drafted to maintain uniformity between the laws of the several States and those of the federal government.

*Id.*, at page 1. See Section 201 making control of substances an administrative process, at page 13, and comment, at page 16.

## Regulation in Federal and Uniform Acts

[Congressional Record, July 8, 1965](#)

If the church is a bona fide religious organization that makes sacramental use of peyote, then it would be our view that H.R. 2, even without the peyote exemption which appeared in the House-passed version, could not forbid bona fide religious use of peyote. We believe that the constitutional guarantee of religious freedom fully safeguards the rights of the organization and its communicants.

*Id.*, at page 15,978.

[U.S. House Hearings, February 3, 1970](#)

Under the existing law originally the Congress was going to write in a specific exemption but it was then decided that it would be handled by regulation and we intend to do it the same way under this law.

*Id.*, at page 118. Available at: <https://www.govinfo.gov/app/details/CHRG-91hrg42121p1/context>

Page 24 of the 1990 Uniform Act lists peyote in Schedule I without any exception. See this comment on page 26:

Although peyote is listed as a Schedule I controlled substance in this Act and under Schedule I of the federal act, a separate federal regulation (21 CFR 1307.31 (April 1, 1989)) exempts the nondrug use of peyote in bona fide religious ceremonies of the Native American Church.

## Regulating Peyote is Uniform

[\*Burnett v. Smith\*](#), 990 N.W.2d 289, 301 (Iowa 2023):

In [\*Collins v. State Board of Social Welfare\*](#), 81 N.W.2d 4 (Iowa 1957), for example, we held that the plaintiffs could pursue an action for a declaratory judgment that their state welfare payments were unconstitutionally discriminatory in violation of article I, section 6 of the Iowa Constitution. *Id.* at 6-7. We said, “The rule is . . . well recognized that where no judgment or decree is asked against the State, but the suit is rather to require its officers and agents to perform their duty, there is no immunity recognized.

[\*Employment Division v. Smith\*](#), 494 U.S. 872, 884 (1990):

As the plurality pointed out in [\*Roy\*](#), our decisions in the unemployment cases stand for the proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of “religious hardship” without compelling reason. [\*Bowen v. Roy\*](#), *supra*, at 708.

Dated this 15<sup>th</sup> day of October, 2023

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