

Drug Enforcement Administration  
United States Department of Justice

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Application for Religious Exemption  
from the  
Controlled Substances Act  
pursuant to the  
Religious Freedom Restoration Act

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April 27, 2022

Assistant Administrator  
Diversion Control Division  
Drug Enforcement Administration  
8701 Morrissette Drive  
Springfield, Virginia 22152  
ODLP@usdoj.gov

Certified Mail # 7021 2720 0002 2687 0091

Dear Assistant Administrator,

Pursuant to your "Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act (Revised)" EO-DEA007, DEA-DC-5, November 20, 2020, Version 2, attached is my application for a religious exemption.

I would like to receive immediate notification of acceptance or deficiency. I would also be happy to answer any questions you may have and you can reach me at the address, phone number, and email address I have given.

I request a final ruling within 60 days from the date my request is received. I understand the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb et seq., gives me the right to a judicial proceeding to compel a decision if I don't receive one within the time I have requested.

I agree with your guidance document that an appeal from a final decision is governed by 21 U.S.C. § 877.

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To the Assistant Administrator:

### **Background**

I have previously applied to your agency for an exemption like the one for peyote, [21 C.F.R. § 1307.31](#) (Native American Church), for my church, the Ethiopian Zion Coptic Church. [Olsen v. DEA](#), 878 F. 2d 1458 (D.C. Cir., 1989). In 1989 there were a handful of states that had religious exemptions for the use of peyote but there were no states that had any exceptions for the use of marijuana. Nonetheless, I based my request on a memo dated December 22, 1981, from the Office of Legal Counsel, United States Department of Justice, to your agency.

If such a petition is brought, your agency could: (1) require that the petitioner be a member of a bona fide peyote-using religion in which the actual use of peyote is central to established religious beliefs, practices, dogmas, or rituals; and (2) apply a rebuttable presumption that the exemption is not available, under the foregoing standard, unless the petitioner can allege and establish a significant history of religious use of peyote.

[Peyote Exemption for Native American Church](#), at page 421. My church has a similar history. [Town v. State ex rel. Reno](#), 377 So.2d 648, 649 (Fla. 1979) (“the Ethiopian Zion Coptic Church is not a new church or religion but the record reflects it is centuries old and has regularly used cannabis as its sacrament”).

Your agency attempted to deny my petition by saying your agency cannot grant religious exemptions.

The DEA's contention that Congress directed the Administrator automatically to turn away all churches save one opens a grave constitutional question. A statutory exemption authorized for one church alone, and for which no other church may qualify, presents a “denominational preference” not easily reconciled with the establishment clause.

[Olsen](#), at 1461.

After rejecting your claim that your agency cannot grant religious exemptions for marijuana, the court held that my church was not equally situated to the Native American Church because it lacked any limitations to prevent the diversion of the church's sacrament, marijuana.

Some religions, for example, might not restrict drug use to a limited ceremonial context, as does the Native American Church. See, e. g., [Olsen](#), 279 U. S. App. D. C., at 7, 878 F. 2d, at 1464 (“[T]he Ethiopian Zion Coptic Church . . . teaches that marijuana is properly smoked ‘continually all day’”).

[Employment Div., Dept. of Human Resources of Ore. v. Smith](#), 494 U.S. 872, 918 (1990) (Blackmun, J., dissenting). Again, I point out that in 1989 my church was not authorized to use marijuana by any state, whereas the religious use of peyote was authorized in several states, such as Texas where the peyote comes from.

To exhaust all possibilities, I suggested a narrower personal exemption, self-restricted to a specific time and a specific place, and with marijuana obtained from the only source available at that time, the federal government. See [Licensing Marijuana Cultivation in Compliance with the Single Convention on Narcotic Drugs](#), memo dated June 6, 2018, from the Office of Legal Counsel, United States Department of Justice, to your agency, describing the National Center for Natural Products Research (“National Center”), a division of the University of Mississippi.

Critically, Olsen’s proposal would require the government to make supplies of marijuana available to Olsen’s church on a regular basis.

[Olsen](#), at 1462.

### **Establishment Clause**

The Office of Legal Counsel told your agency the exemption for religious use of peyote, [21 C.F.R. § 1307.31](#) (Native American Church), is not required by the First Amendment and must not violate the Establishment Clause. “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.” [Peyote Exemption for Native American Church](#), at page 410.

Following the enactment of the Religious Freedom Restoration Act of 1993, the U.S. Supreme Court applied an Establishment Clause / Equal Protection / General Applicability analysis to the peyote exemption.

Nothing about the unique political status of the Tribes makes their members immune from the health risks the Government asserts accompany any use of a Schedule I substance, nor insulates the Schedule I substance the Tribes use in religious exercise from the alleged risk of diversion.

[Gonzales v. O Centro Espírita Beneficente União do Vegetal](#), 546 U.S. 418, 434 (2006).

### **Substantial Burden**

My sincere religious exercise is substantially burdened by the CSA. [Olsen v. DEA](#), 878 F.2d 1458, 1459 (D.C. Cir., 1989) (“Petitioner Olsen is a member and priest of the Ethiopian Zion Coptic Church”); [Town v. State ex rel. Reno](#), 377 So.2d 648, 649 (Fla. 1979) (“the Ethiopian Zion Coptic Church represents a religion within the first amendment to the Constitution of the United States”); [State v. Olsen](#), No. 171-69079 (Iowa, July 18, 1984) (“Testimony at his trial revealed the bona fide nature of this religious organization and the sacramental use of marijuana within it”).

Because my use of marijuana was rejected decisively in [Employment Division v. Smith](#), 494 U.S. 872, 889 (1990), citing [Olsen v. Drug Enforcement Administration](#), 279 U. S. App. D. C. 1, 878 F. 2d 1458 (1989), I stopped using marijuana in 1990.

### **Peyote Source**

My request for federally supplied marijuana was denied in 1989. At that same time the Native American Church had a state-authorized, private source of peyote (in Texas). The Ethiopian Zion Coptic Church had no state-authorized source of marijuana, private or otherwise at that time.

Both federal and Texas statutes criminalize the unprescribed distribution and possession of peyote. 21 U.S.C. §§ 812, 841, 844; TEX. HEALTH & SAFETY CODE ANN. §§ 481.101-481.130 (Vernon 1991). But both federal and Texas law exempt bona fide religious use of peyote by NAC members from such criminalization. 21 C.F.R. § 1307.31; TEX. HEALTH & SAFETY CODE ANN. § 481.111 (Vernon 1991).

[Peyote Way Church of God, Inc. v. Thornburgh](#), 922 F.2d 1210, 1212 (5th Cir., 1991).

There are five licensed peyote dealers in the United States, all of them in South Texas: three in the border town of Rio Grande City; one in Roma, 17 miles to the west; and one in Mirando City, a tiny town 30 miles east of Laredo.

Texas Observer, [WITH THE PEYOTEROS, The fruits and thorns of the South Texas cactus trade](#), by Karen Olsson, March 2, 2001.

When the federal peyote exemption was created in 1966, [21 C.F.R. § 166.3\(c\)\(3\)](#), there were several states that had laws protecting the religious use of peyote. See [Peyote Exemption for Native American Church](#), Office of Legal Counsel, U.S. Department of Justice, Tuesday, December 22, 1981. In 1967, Iowa enacted a state law identical to 21 C.F.R. § 166.3(c)(3). [Iowa Acts 1967 Chapter 189, § 2\(12\)](#); [Iowa Acts 1971 Chapter 148, § 204\(5\)](#); [Iowa Code § 124.204\(8\) \(2022\)](#).

## **Diversion Control**

Until 2018, there was no state-authorized source of marijuana in Iowa. In 2017, Iowa authorized two marijuana manufacturers and five marijuana dispensaries. See [Iowa Code §§ 124E.6-124E.9 \(2022\)](#). Iowa's medical marijuana program is carefully controlled to prevent both risk to health and risk of diversion.

On January 12, 2021, I filed a [Petition for Declaratory Judgement](#) requesting the state add religious use as a qualifying condition for registration in the state medical marijuana program. Since your agency does not recognize state medical use as accepted medical use under the CSA (neither does Iowa, marijuana is still in state Schedule I in Iowa), this would be a secular exemption as far as your agency is concerned. A hearing was held on the state's Motion to Dismiss on March 11, 2022. I'm waiting for a ruling from the Iowa district court.

## **Shifting Priorities**

The governmental interest that existed in 1989 when my last application for a religious exemption was submitted to your agency has greatly diminished over time. This was recently highlighted by Justice Clarence Thomas in [Standing Akimbo v. United States](#), 594 U.S. \_\_\_\_ (2021), 141 S.Ct. 2236, No. 20-645 (June 28, 2021).

Whatever the merits of [Raich](#) when it was decided, federal policies of the past 16 years have greatly undermined its reasoning. Once comprehensive, the Federal Government's current approach is a half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana. This contradictory and unstable state of affairs strains basic principles of federalism and conceals traps for the unwary.

[Id.](#), at 2236-2237.

Whether Congress decides to address the gap with the states or not, federal control of cannabis has evolved from the strict laws and enforcement policies of the 20th century to allowing most states to implement laws authorizing the production and distribution of marijuana.

Congressional Research Service, [The Evolution of Marijuana as a Controlled Substance and the Federal-State Policy Gap \(R44782\)](#), April 7, 2022.

## **Conclusion**

There is now a state authorized source of marijuana in Iowa. The state program limits the use of that marijuana to specific forms, times, and places, to prevent diversion. Iowa law currently limits amounts that can be purchased and carefully tracks all transactions to ensure full compliance. Failure to comply with these requirements will result in revocation of registration. The requirements are all clearly defined in [Iowa Code Chapter 124E](#), and in [641 Iowa Administrative Code Chapter 154](#). Your agency will have no difficulty knowing what these requirements are.

Dated this 27th day of April, 2022.

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## URLS

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