

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

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| Petition by Carl Olsen for the adoption of rules relating to Iowa Code Chapter 124 | BRIEF IN SUPPORT OF PETITION FOR RULE MAKING |
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Religious Exception

The federal government created the peyote exception by administrative regulation in 1966 and the Iowa legislature enacted it in 1967. The two are identical. The term “non-drug” indicates this substance is not an approved prescription medication.

FEDERAL EXCEPTION (1966):

The listing of peyote in this subparagraph does not apply to non-drug use

“... in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the Church are required to register and maintain appropriate records of receipts and disbursements of the article.”

IOWA EXCEPTION (1967):

Section three (3) of this Act shall not apply to the following: Peyote used

“... in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to

the church are required to register and maintain appropriate records of receipts and disbursements of the article.”

In 2006, the U.S. Supreme Court recognized an exception for the religious use of hoasca similar to the exception for the religious use of peyote. *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418, 432-433 (2006) (“... the Act itself contemplates that exempting certain people from its requirements would be ‘consistent with the public health and safety’ ...”).

Secular Exception

Iowa has created a secular exception for the “non-drug” use of marijuana. Iowa Code Chapter 124E. Chapter 124E authorizes cultivation of marijuana for the production of highly concentrated marijuana extracts. These extracts do not have any accepted medical use and they are given to individuals who have serious medical conditions. *See State v. Middlekauff*, 974 N.W.2d 781, 798 (Iowa 2022):

“Whereas some other drugs can be dispensed and prescribed for medical use the same is not true for marijuana. Indeed, for purposes of the Controlled Substances Act, marijuana has ‘no currently accepted medical use’ at all.” *United States v. Oakland Cannabis Buyers’ Coop.*, 532 U.S. 483, 491 (2001) (citation omitted); *see Gonzales v. Oregon*, 546 U.S. 243, 269 (2006) (“Congress’ express determination that marijuana had no accepted medical use foreclosed any argument about statutory coverage of drugs available by a doctor’s prescription.”); *see also Bonjour*, 694 N.W.2d at 514.

Giving people with serious medical conditions a Schedule I controlled substance with no accepted medical use defies logic. However, the DEA is currently in the process of removing marijuana from Schedule I. See Statement from President Biden on Marijuana Reform, October 6, 2022 (“Federal law currently classifies marijuana in Schedule I of the Controlled Substances Act, the classification meant for the most dangerous substances. This is the same schedule as for heroin and LSD, and even higher than the classification of fentanyl and methamphetamine – the drugs that are driving our overdose epidemic.”).

As the Drug Enforcement Administration Chief Administrative Law Judge said in 1988, “Marijuana, in its natural form, is one of the safest therapeutically active substances known to man.” DEA Docket No. 86-22, Sept. 6, 1988, pp. 58-59.

Chapter 124E has shown what the DEA ALJ said in 1988 is true. There haven’t been any reports of adverse effects resulting from the use of these highly concentrated extracts in Iowa in a population of Iowans with severe medical conditions.

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. *E.g.*, *Everson v. Board of Education*, 330 U.S. 1 (1947).

It is well accepted that the Establishment Clause prohibits a government from “prefer[ring] one religion over another.” *See Everson*, 330 U.S. at 15:

“The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.”

Cause of Action

We must assume the Iowa legislature did not intend to establish a religion to the exclusion of all others. A religious exception for one church alone, and for one Schedule I controlled substance alone, is permissible as long as a process to consider equally worthy causes exists. Other exceptions must be considered for good cause (both for secular and religious uses). *See, Employment Division v. Smith*, 494 U.S. 872 (1990).

The federal Controlled Substances Act includes processes to petition for exemptions and to petition for the reclassification of controlled substances. *See* 21 U.S.C. § 811(a) (2021); 21 C.F.R. § 1308.43 (2023); 21 C.F.R. § 1307.03 (2023). The federal exception for peyote is found at 21 C.F.R. § 1307.31.

The Iowa legislature has created a means of redress through the Iowa Administrative Procedures Act (Petition for Rulemaking). Iowa Code § 17A.7.

In order to implement the intent of the Iowa legislature (interpreting legislative intent to be consistent with the Iowa Constitution), the department must implement rules to evaluate petitions for other exceptions.

Plants Historically Used in Religious Ceremonies and Folk Medicine

Plants and fungi have been used for traditional religious purposes and folk medicine for millennia. Carod-Artal FJ. *Hallucinogenic drugs in pre-Columbian Mesoamerican cultures*. Neurologia. 2015 Jan-Feb; 30(1):42-9. English, Spanish. doi: 10.1016/j.nrl.2011.07.003. Epub 2011 Sep 3. PMID: 21893367.

The peyote exemption embodies two parts: (1) a non-commercial exemption for members of the church; and (2) a federal registration for persons supplying peyote to the church. 21 C.F.R. § 1307.31; Iowa Code § 124.204(8). The hoasca exemption has the same two parts: (1) a non-commercial exemption for members of the church; and (2) a federal import license for persons supplying hoasca to the church.

Dated this 2nd day of October, 2023

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