

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

STATE OF ALABAMA

Plaintiff,

v.

CASE NO: CC 2006 002398.00

BRENDA WILLIAMS,  
a.k.a. Reverend Brenda Shoop  
Defendant,

**REPLY TO STATE'S RESPONSE TO DEFENDANT'S MOTION AND BRIEF TO DISMISS FOR VIOLATION OF RELIGIOUS FREEDOM RESTORATION ACT AND ALABAMA RELIGIOUS FREEDOM AMENDMENT AND RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT**

**COMES NOW Brenda Sue Williams, a.k.a. Reverend Brenda Shoop, *pro se*, and** files this Reply to Assistant District Attorney Christopher H. Murray's Response to Defendant's Motion and Brief to Dismiss for Violation of Religious Freedom Restoration Act and Alabama Religious Freedom Amendment and Religious Land Use and Institutionalized Person Act in the above-styled case.

In support of said reply, it is shown unto this Honorable Court as follows:

1. Since my paid counsel was allowed to withdraw from my case and court-appointed counsel has been denied to me, I would ask for a liberal interpretation of my pleadings.

The Federal Religious Freedom Restoration Act, the Religious Land Use and Institutionalized Persons Act, The First Amendment, Equal Protection of the Law and Due Process under the Fifth and Fourteenth Amendments, Hybrid Rights and a Federal Right to Privacy all apply in this case.

I would ask that the Court proceed with the compelling interest test as set forth in the Alabama Religious Freedom Amendment and allow a continuance for the additional claims pending the outcome of an evidentiary hearing for the compelling interest test under the Alabama Religious Freedom Amendment.

The decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), changed the analysis applicable to Free Exercise claims. *Smith* holds that where a criminal prohibition is "neutral and generally applicable," it need not be supported by a compelling interest in order to be applied in a way that burdens the religious exercise of individuals. However, if a law is not "neutral and generally applicable," the government must demonstrate that an application which infringes upon the religious liberty of an individual is supported by a compelling governmental interest and that the law is narrowly tailored to serve that interest. *Tenafly Eruv Assn. v. Borough of Tenafly*, 309 F.3d 144, 165 (3d Cir. 2002) (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532, 542 (1993)).

Additionally, *Smith* recognized two other circumstances in which a law burdening religious exercise is subject to strict scrutiny. First, the Court left open the viability of Free Exercise Clause attacks on laws that violate the First Amendment in conjunction with other constitutional protections. In these "hybrid rights" situations, heightened scrutiny is required. *Cornerstone Bible Church v. City of Hastings*, 948 F.2d 464, 472-73 (8th Cir. 1991) (citing *Smith*, 494 U.S. at 881-82).

Second, "in circumstances in which individualized exemptions from a general requirement are available, the government 'may not refuse to extend that system to cases of 'religious hardship' without compelling reason.'" *Church of the Lukumi Babalu Aye*, 508 U.S. at 537 (quoting *Smith*, 494 U.S. at 884).

The Controlled Substances Acts do not apply across-the-board, either as to Schedule I substances generally or as to marijuana in particular. Instead, both the federal government and the State of Alabama have exceptions in law for the use of Schedule I substances and marijuana under particular circumstances, including as a religious sacrament.

"The Free Exercise Clause 'protect[s] religious observers against unequal treatment,' *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 148 (1987) (Stevens, J., concurring in judgment), and inequality results when a legislature decides that the

governmental interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation." *Church of the Lukumi Babalu Aye*, 508 U.S. at 542-543. The Constitution also is offended when the government prefers certain religious denominations. See *Larson v. Valente*, 456 U.S. 228, 245 (1982) (striking down denominational preference). The grant of exemptions from the Controlled Substances Acts for certain religious and non-religious reasons while denying similar treatment to persons such as the Defendant seeking to exercise sincerely-held religious beliefs prevents these laws from being considered "generally applicable."

*Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal* 546 U.S. (2006) makes clear that under both RFRA and the Free Exercise Clause, the government must show a compelling interest for applying the law to the Defendant, not simply that there is generally a compelling interest for the Controlled Substances Acts' prohibitions. In elucidating the RFRA "compelling interest" inquiry in *O Centro*, the Court noted that RFRA adopts the test set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), cases that were decided under the Free Exercise Clause. *O Centro*, 546 U.S. at 430-31. Therefore, the "more focused" compelling interest inquiry, and not the categorical approach used in the previous cases involving Cannabis claims cited by the State, must be applied. Because a different compelling interest test applies, the previous decisions do not apply to Free Exercise claims within the framework of the Supreme Court decision in *Smith* or the Supreme Court decisions that have come down since.

Defendants claims based upon the Fifth and Fourteenth Amendments' guarantees to equal protection apply because the Defendant is similarly situated to Native American Church members in their sacramental use of a substance considered a Schedule I controlled substance under the Federal and Alabama version of the CSA. Nevertheless, Plaintiffs have refused to accord the same deference to the Defendant.

The Defendant is similarly situated to UDV Church members in their sacramental use of a substance considered a Schedule I controlled substance under the Federal and Alabama

versions of the CSA. Nevertheless, Plaintiffs have refused to accord the same deference to the Defendant.

Consequently, the Plaintiffs' decision to allow the members of the Native American Church to use peyote and members of the UDV church to use DMT for religious purposes, while denying the same protection to the Defendant, violates the Establishment Clause of the First Amendment and the Equal Protection rights of the Defendant guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

2. Since the State has conceded that the Alabama Religious Freedom Amendment does indeed apply to the substantial burdening of this defendant's sincere religious practice, with its compelling interest test, *strict scrutiny* is required in reviewing the religious exemption that this defendant claims.

It is not sufficient for the State to claim a general compelling interest in the enforcement of a criminal statute. *Callahan v. Woods*, 736 F.2d 1269, 1272-1273 (9th Cir. 1984):

The government must shoulder a heavy burden to defend a regulation affecting religious actions. It is usually said that the challenged regulation must be the least restrictive means of furthering a compelling state interest. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972); *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963).

Commentators have observed that, because of its broad and indefinite nature, this test is often inadvertently reduced to an inquiry which stops after the discovery of a compelling state interest. See, e.g., Tribe, *American Constitutional Law* 855 (1978). The purpose of almost any law, however, can be traced to a fundamental concern of government. Balancing an individual's religious interest against such a concern will inevitably make the former look unimportant. It is therefore the "least restrictive means" inquiry which is the critical aspect of the free exercise analysis. This prong forces us to measure the importance of a regulation by ascertaining the marginal benefit of applying it to all

individuals, rather than to all individuals except those holding a conflicting religious conviction. See Clark, Guidelines for the Free Exercise Clause, 83 Harv.L.Rev. 327, 331 (1969).

If the compelling state goal can be accomplished despite the exemption of a particular individual, then a regulation which denies an exemption is not the least restrictive means of furthering the state interest. A synthesis of the two prongs is therefore the question whether the government has a compelling interest in not exempting a religious individual from a particular regulation. See, e.g., *Sherwood v. Brown*, 619 F.2d 47, 48 (9th Cir. 1980) (compelling state interest in not exempting Sikh from Navy helmet requirement because absence of single helmet would endanger entire crew). Such a formulation prevents the government from relying on its generally great interest in maintaining the underlying rule or program for unexceptional cases.

The Alabama Religious Freedom Amendment in its pertinent part requires:

SECTION V. (b) Government may burden a person's freedom of religion only if it demonstrates that application of the burden *to the person*... Ala. Const. Art I §3.01. (Emphasis added)

Under the Government's view, there is no need to assess the particulars of the UDV's use or weigh the impact of an exemption for that specific use, because the Controlled Substances Act serves a compelling purpose and simply admits of no exceptions. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430 (2006).

RFRA, and the strict scrutiny test it adopted, contemplate an inquiry more focused than the Government's categorical approach. RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person" -- the particular claimant whose sincere exercise of religion is being substantially

burdened. 42 U.S.C. § 2000bb-1(b). RFRA expressly adopted the compelling interest test "as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205\_(1972)." 42 U.S.C. § 2000bb(b)(1). In each of those cases, this Court looked beyond broadly formulated interests justifying the general applicability of government mandates and scrutinized the asserted harm of granting specific exemptions to particular religious claimants. *Gonzales v. O Centro*, 546 U.S. 418, 430-431 (2006).

[S]trict scrutiny 'at least requires a *case-by-case determination* of the question, sensitive to the facts of *each particular claim*'. *Gonzales v. O Centro*, 546 U.S. 418 (2006) (Emphasis added)

[S]trict scrutiny *does* take 'relevant differences' into account -- indeed, that is its *fundamental purpose*" *Gonzales v. O Centro*, 546 U.S. 418 (2006) (Emphasis added)

We reaffirmed just last Term the feasibility of *case-by-case* consideration of religious exemptions to generally applicable rules. *Gonzales v. O Centro*, 546 U.S. 418 (2006). (Emphasis added)

*Not one* case cited in the prosecution's response involved the defendant in this case, nor the facts of this case. An independent finding of compelling interest to interfere with the defendant's religion is required.

3. The State has not provided evidence of a clear and compelling interest of the highest order to interfere with the defendant's religion.

The compelling interest test effectuates the First Amendment's command that religious liberty is an independent liberty, that it occupies a preferred position, and that the Court will not permit encroachments upon this liberty, whether direct or indirect, unless required by *clear and compelling*

*governmental interests "of the highest order."* *Wisconsin v. Yoder*, 406 U.S. 205 supra, at 215 (1972). (Emphasis added)

The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion. *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)

Only an *especially important governmental interest pursued by narrowly tailored means* can justify exacting a sacrifice of First Amendment freedoms as the price for an equal share of the rights, benefits, and privileges enjoyed by other citizens. *Bowen v. Roy*, 476 U.S. 693 supra, at 728 (1986). (Emphasis added)

The state attempts to argue from the UDV decision quoting

[T]he government can demonstrate a compelling interest in uniform application of a particular program by offering evidence that granting the requested religious accommodations would *seriously compromise its ability to administer the program*. *Gonzales v. O Centro*, 546 U.S. 418, 421 (2006). (Emphasis added)

Citing to *United States v. Lee*, 455 U.S. 252 (1982), In *Lee*, 455 U.S. at 258, the Supreme Court held that the Free Exercise Clause did not require a religious exemption from payment of Social Security taxes because mandatory participation in the system was indispensable. In connection with considering this accommodation inquiry the state brief similarly argues that the accommodation analysis employed in *Lee* was approved as a method of analysis under RFRA.

In truth, in *O Centro* the Supreme Court **specifically rejected** the analysis used in *Lee*, as a proper test for determining RFRA claims where the burden on religious exercise arises

from the Controlled Substances Act. The *O Centro* decision cited *Lee* as an example of a case involving a government law requiring uniformity and that would be wholly undermined if religious accommodations were allowed. *O Centro*, 546 U.S. at 435. However, the Court went on to hold that the Controlled Substances Act is not a law in which there is a compelling interest in uniformity:

We do not doubt that there may be instances in which a need for uniformity precludes the recognition of exceptions to generally applicable laws under RFRA. But it would have been surprising to find that this was such a case, given the longstanding exemption from the Controlled Substances Act for religious use of peyote, and the fact that the very reason Congress enacted RFRA was to respond to a decision denying a claimed right to sacramental use of a controlled substance. *Id.* at 436-37.

The Court pointed out that the existence of the well-established peyote exemption undermines the contention that there is a compelling governmental interest in not applying the individualized inquiry to RFRA claims based upon burdens imposed by the Controlled Substances Act. *Id.* at 432.

Thus, the *O Centro* decision specifically held that the "accommodation" analysis employed in *Lee* does not apply under RFRA when the burden on religion results from the enforcement of the Controlled Substances Act. The Controlled Substances Act is not a law that demands uniformity of operation such that there is a compelling interest in recognizing no exceptions. Instead, the Controlled Substances Act is a law, which under RFRA, can be applied to burden religious exercise only if it is shown that there is a compelling interest in applying the law to the RFRA claimant. The states reliance on *Lee* as grounds for denying a religious claim is inconsistent with the holding in *O Centro*.

The state does not deny that strict scrutiny applies in this case but insists rather, that the previous decisions involving First amendment cannabis claims cited in *Employment Div., Dept. of Human Resources of Oregon v. Smith* 494 U.S. 872., used the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 1972. This argument is fatally flawed in and of itself because the cases denying cannabis Free Exercise claims cited by the state rely on *Leary v. United States*, F.2d 851 (CA5 1967) (marijuana use by Hindu), rev'd on other grounds, 395 U.S. 6, 89 S.Ct. 1532, 23L.Ed.2d 57 (1969)

*Leary* was decided before *Wisconsin v. Yoder*, 406 U.S. 205 1972 and in regards to *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963) in *Leary v. United States*, F.2d 851 (CA5 1967) (marijuana use by Hindu), rev'd on other grounds, 395 U.S. 6, 89 S.Ct. 1532, 23L.Ed.2d 57 (1969) at page 860 the Court wrote:

Appellant's reliance on *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963), for authority that the constitutionally guaranteed right of free religious exercise imposes on the Government the burden of showing a compelling interest in its abridgement, is misplaced and inapposite on the facts.

And from page 860 to 861 the Court wrote:

Congress has made it a crime to traffic in marihuana and it was not incumbent upon the Government to produce evidence to controvert the testimony of witnesses on the controversial question whether use of the drug is relatively harmless.

The Ninth Circuit Court of appeals has recognized this. *United States v. Bauer*, 84 F.3d 1549 (9th Cir. 1996) ("Bauer " hereafter), was the first court to recognize that *United States v. Leary* is no longer good law under the RFRA:

The district court first found that the challenged law substantially burdened the free exercise of the Rastafarian religion. Relying on several earlier appellate cases, the district court held, however, "that the government has an overriding interest in regulating marijuana." The district court quoted *Leary v. United States*, 383 F.2d 851, 861 (5th Cir. 1967), *rev'd on other grounds*, 395 U.S. 6, 23 L. Ed. 2d 57, 89 S. Ct. 1532 (1969), as follows: "It would be difficult to imagine the harm which would result if the criminal statutes against marihuana were nullified as to those who claim the right to possess and traffic in this drug for religious purposes. For all practical purposes the anti-marihuana laws would be meaningless, and enforcement impossible." The district court concluded that the governments in limine motion would have been granted even if the Religious Freedom Restoration Act had been the law of the land at the time.

*United States v. Bauer*, 84 F.3d at 1557:

The district court treated the existence of the marijuana laws as dispositive of the question whether the government had chosen the least restrictive means of preventing the sale and distribution of marijuana. The district court relied on a drug case decided before the enactment of the Religious Freedom Restoration Act. We do not exclude the possibility that the government may show that the least restrictive means of preventing the sale and distribution of marijuana is the universal enforcement of the marijuana laws. Under RFRA, however, the government had the

obligation, first, to show that the application of the marijuana laws to the defendants was in furtherance of a compelling governmental interest and, second, to show that the application of these laws to these defendants was the least restrictive means of furthering that compelling governmental interest.

In addition to this The Defendant is not Dr. Timothy Leary and the facts of that case are not the facts of this case.

More recently in *Raich v. Gonzales*, No. 03-15481 (9th Cir. March 14, 2007) footnote 8 at pages 39-40, the Court wrote:

As stated above, Justice Anthony Kennedy told us that "times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress." *Lawrence*, 539 U.S. at 579. For now, federal law is blind to the wisdom of a future day when the right to use medical marijuana to alleviate excruciating pain may be deemed fundamental. Although that day has not yet dawned, considering that during the last ten years eleven states have legalized the use of medical marijuana, that day may be upon us sooner than expected. Until that day arrives, federal law does not recognize a fundamental right to use medical marijuana prescribed by a licensed physician to alleviate excruciating pain and human suffering. n16

n16 Because we find no fundamental right here, we do not address whether any law that limits that right is narrowly drawn to serve a compelling state interest. *See Flores*, 507 U.S. at 301-02. We note, however, that, a recent Supreme Court case suggests that the Controlled Substances Act is not narrowly drawn when fundamental rights are concerned. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 126 S. Ct. 1211, 1221-23, 163 L. Ed. 2d 1017 (Feb.

21, 2006) (observing that "mere invocation of the general characteristics of Schedule I substances, as set forth in the Controlled Substances Act, cannot carry the day," and that the government had presented no evidence that narrow exceptions to the Schedule I prohibitions would undercut the government's ability to effectively enforce the Controlled Substances Act).

And in *Multi Denominational Ministry of Cannabis and Rastafari, Inc. v. Gonzales*, No. 3:06-cv-4264 (N.D. Cal. February 2, 2007) (MDMCR hereafter). At pages 10-11, Judge Vaughn Walker wrote:

For reasons discussed *infra*, the Supreme Court's decision in *Gonzales v O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 126 S Ct 1211, 1217, 163 L. Ed. 2d 1017 (2006), shifted the legal terrain surrounding plaintiffs' suit, thereby warranting reexamination of the grounds for relief raised in plaintiffs' previous petition.

And at page 16:

Due to the case-by-case inquiry mandated by the *O Centro* decision, the RFRA forces courts into the awkward position of assessing the sincerity of a group's religious beliefs and then carving out exceptions to federal statutes in order to accommodate these beliefs. See *O Centro* , 126 S Ct at 1222 (concluding that the RFRA contemplates "judicially crafted exceptions" to federal laws) .Moreover, the stringent standard provided by the RFRA suggests that in delegating to the judicial branch the job of ensuring that federal law accommodates religion, Congress underestimated both the diversity of America's religious practices and the resourcefulness of its practitioners (and their attorneys). The present case thus serves as a prelude to the litigation to come.

Judge Walker dismissed all the claims against the Federal Defendants with prejudice except for the claims under the RFRA and invited the individual plaintiffs to re-file their claims under the RFRA.

According to *City of Indianapolis, et al. v. James Edmond, et al.* 531 U.S. 32 (2000), the Supreme Court ruled that drug laws are general criminal statutes which in and of themselves are not compelling interest sufficient to override Fourth Amendment rights.

There is not presently a uniform application of the Controlled Substance laws in general, or the marijuana laws in particular, because there are exceptions written into the Controlled Substance Act itself and judicially crafted exceptions to the laws have been created.

Alabama's drug laws are **not neutral toward religion** because Alabama has not challenged Congress' exemption of peyote from Alabama's drug laws.

42 U.S.C. § 1996a:

(b) Use, possession, or transportation of peyote.

(1) Notwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State.

Alabama's drug laws are **not generally applicable**.

Code of Ala. § 20-2-51 (2007):

(d) The certifying boards may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if they find it consistent with the public health and safety.

*Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 432-433 (2006):

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.

Among these exceptions to the uniform application of the Controlled Substances laws:

- The Federal distribution of 300 Medical Marijuana cigarettes a month to certain patients under the Investigational New Drug Program (IND). *Kuromiya v. United States*, 37 F. Supp. 2d 717 (E.D. Pa. 1999); *Kuromiya v. United States*, 78 F. Supp. 2d 367 (E.D. Pa. 1999).
- The Alabama Controlled Substances Therapeutic Research Act. See Acts 1979, No. 79-472, p.870 (codified at Ala. Code §20-2-110 et seq.) (See below),
- A district court's determination that; "The Court will allow Mr. Valrey's personal use and possession of marijuana exclusively in connection with his practice of his religion." In *United States v. Valrey*, No. CR96-549Z (W.D. Wash., February 22, 2000), applying the compelling interest tests of *Sherbert v. Verner* and *Wisconsin v. Yoder*, concluded under the federal RFRA,
- The exceptions created for Peyote, tobacco and alcohol (See Below)
- The exception created in *Gonzales v. O Centro* for DMT,

#### 4. Concerning the Judicially Crafted Exemption for DMT

In *UDV* the U.S. Supreme Court created a judicially crafted exemption for DMT, a powerful schedule I controlled substance. Based on the evidence presented at the preliminary hearing stage, the *UDV* district court found that Hoasca contained a major hallucinogen (DMT), accompanied by MAO inhibitors; that the DMT caused severe,

abrupt, disorienting visual, aural, and other sensory alterations. The severity of these is sufficient to require that the person not drive or operate machinery, not be off alone without an unimpaired observer, and be made aware prior to the ingestion of the Hoasca tea, that these temporary sensory distorting effects will occur. In addition, the MAO inhibitors could theoretically cause a severe injury or death if the person also ingested foods containing toxic substances that the MAO inhibitors would protect from normal digestion.

In the case of the DMT in the Hoasca tea - protecting the DMT allowed it to pass through the alimentary canal and into the brain without biochemical destruction in the stomach and small intestine. The same protection of DMT can cause injury or death when the toxic substances protected are injurious toxins from aged cheese, wine and meat, and other typical foods that are normally consumed safely - albeit in the absence of MAO inhibitors.

No DEA rescheduling hearings were held on DMT. The trial court in *UDV*, conducted preliminary hearings to gather scientifically derived evidence on the question of whether or not whether the importation and use of DMT can threaten public health and safety. The *UDV* church was acting without a federal DEA drug control license to establish and exercise their religion by importing, distributing, receiving and disbursing money for, and for using DMT, a Schedule I hallucinogen. DMT is known on the street as "the Businessman's LSD" because when smoked as a chemical powder or injected in aqueous solution, it precipitates a 45 minute intensive hallucinogenic or visionary experience that is the practical equivalent as an L.S.D. trip.

In the *UDV* case, the church was captured in possession and transport of over 3,000 doses of this Schedule I hallucinogen on that occasion. The church admitted that it had imported and distributed, received and expended money's, purchased properties and hired labor to establish the church for exercise of use of DMT from 1993 through that date in 1999. Yet because of RFRA, no criminal charges were ever filed. When the church

applied for an injunction and return of property, all the demands were met and the UDV church has operated with a DEA license to import and distribute DEA Schedule I DMT throughout the United States since December 10, 2004.

The determinative fact of the Compelling Interest Test applied in the *UDV* case is the fact that despite the powerful and potentially deadly effects of Hoasca tea, there was no nexus to the Public caused by the church's use of the Hoasca. As long as the use of the Hoasca was limited to church members, and the church members were monitored and protected while under the influence, there was and is no threat to public health and safety caused by the use of even such a powerful mind altering substance as DMT.

The *UDV* district court compared the Hoasca tea to peyote used by the Native American Church and found similar mind altering effects in a church with several hundred thousand members who have continued to use the peyote over 4000 years of recorded history - recorded in cave paintings in the desert - without any threat to public health and safety thereby caused.

Based on the facts presented in preliminary hearing, showing that the Schedule I drug DMT in Hoasca tea, and the Schedule I drug Mescaline in peyote, cause no threat to public health and safety when used in carefully monitored ceremonies, it was obvious to the Court that no Compelling Interest lay to prohibit the UDV church from receiving the proper licenses to import and distribute the Hoasca Tea. This Court should take note that the UDV Church never sought a license from the DEA in its filings. The district court sought to enable the DEA to effectively monitor what had been a non-event from 1993 through 1999 when the UDV church suffered its rape at the hands of DEA agents - that non-event being the illegal and illicit import and distribution of Hoasca by the church.

It is the biochemical nature and effect of Hoasca that determined the lack of threat to public health and safety not the issuance of a license. After all, the UDV church had been operating since 1993 in the United States, importing and distributing, recruiting members and otherwise establishing the church and its ceremonial use of Hoasca.

The *UDV* district court never got to the question of a least restrictive means of regulation where it found that there was no threat to public health and safety demonstrated by the Government (see page 58 of Docket Number 88).

5. The State in this case has not provided *any real, substantial evidence* that prosecuting *this defendant* serves a compelling governmental interest. There has been no evidentiary hearing regarding the facts in this particular case.

The prosecution states in its response brief, “Controlled substances are the cause of countless social ills ranging from adverse health effects to the increase in other crimes when controlled substances are abused, including the increased risk of intoxicated drivers operating on the roadways of the State.” All of this is true for peyote and hoasca. These are just the general findings that supported the enactment of the legislation when it was passed. Every law was passed because of some compelling reason. This is not the end of the inquiry. The fact that there are exemptions for both peyote and marijuana prove that these general findings do not provide any basis for denying a religious claim.

The facts given by the prosecution are not the facts of my case. They are simply facts that were accepted at the time the legislation was passed. The federal legislation contained an exemption for religious use of peyote when it was passed, even though the legislation placed peyote in Schedule 1. No facts related to my case are provided to verify the prosecution’s argument. Because the prosecutor is not alleging that I hurt anyone, this case must be dismissed.

(A) “Controlled substances are the cause of countless social ills...”

The fact that the drug laws contain exceptions for tobacco and alcohol show this argument is merit less when faced with a religious claim under RFRA, because they demonstrate the drug laws are not generally applicable. The State cannot deny a religious claim in the face of such broad secular exceptions – See *Church of Lukumi Babalu Aye v.*

*City of Hiialeah*, 508 U.S. 520 (1993), cited in *Gonzales v. O Centro*, 546 U.S. 418, 433 (2006): "It is established in our strict scrutiny jurisprudence that 'a law cannot be regarded as protecting an interest 'of the highest order' . . . when it leaves appreciable damage to that supposedly vital interest unprohibited'" (citations omitted).

(B) "ranging from adverse health effects..."

Since 1937, when it adopted the "Marihuana Tax Act," the government has justified the criminalization of marijuana use on the grounds that it is a dangerous drug. But this claim looks more and more ludicrous with each passing year. EVERY independent commission appointed to look into this claim has found that cannabis is relatively benign.

The Controlled Substances Act of 1970 gives the Attorney General the power to reschedule a controlled substance if that substance does not meet the criteria for the schedule to which it has been assigned. 21 U.S.C. § 811(a). The Attorney General has delegated this authority to the Administrator of the Drug Enforcement Administration (hereinafter DEA). See 28 C.F.R. § 0.100(b).

According to the federal drug law, it is the DEA Administrative Law Judge who determines the actual danger caused by medical use of a drug. The DEA ruling on threat to public health and safety reached by the DEA Administrative Law Judge on the question of threat to public health and safety is authoritative as to the religious acts of growing and using marijuana. The findings of the federal DEA Administrative Law Judge on the matter of Rescheduling Marijuana for medical use is legally controlling. From page 56 thru 70 the ALJ reports that marijuana is the safest therapeutic substance known to mankind; that there has never been a recorded injury or death caused by marijuana in 5000 years of recorded history and that the toxic dose of marijuana would be about 1500 lbs consumed within 15 minutes.

The lack of toxicity caused by ingestion of marijuana is the single greatest reason the Government cannot produce any proof of harms caused by the defendant growing and otherwise using marijuana. If a substance is non-toxic, then it can't cause harm to the

user. If a substance cannot cause harm to a user, then it is very difficult if not impossible to prove that the user will cause harm to others by using that substance.

## **10 Raw Potatoes Equals 1500lbs of Marijuana as Poison**

The ALJ compares marijuana in toxic dose to other common foods, over the counter pharmaceutical drugs, and things like potatoes. The toxicity of 1500 lbs of marijuana compares favorably with the toxicity of ten pounds of raw potatoes or a bottle of aspirin. Neither of these are characterized as threats to public health and safety - although thousands of Americans die every year from overuse of Aspirin. In contrast, there has never been a single scientifically verified injury or death caused by consumption of marijuana.

Under the strict scrutiny required by *UDV* and the compelling interest test, the Court must consider the findings of fact made by the Chief Administrative Law Judge for the DEA, established by the Federal CSA as the person of authority to review the classification of marijuana. Judge Young found as a fact that "Marijuana, in its natural form, is one of the safest therapeutically active substances known to man." This is a finding of fact under the very statute the State of Alabama is claiming supports their compelling interest in assaulting the Defendant. The consideration of this fact is now mandatory under strict scrutiny of the compelling interest test. In *The Matter of Marijuana Rescheduling*, DEA Docket No. 86-22, September 6, 1988.

Under the strict scrutiny required by *UDV* and the compelling interest test, the Court must consider the finding of fact made by the Commission on Marihuana and Drug Abuse established by the CSA to recommend marijuana's final placement or removal from the CSA. The Commission found the fact that marijuana is not a threat to public health and safety. This is a finding of fact under the very statute the State of Alabama is claiming supports their compelling interest in assaulting the Defendant. Consideration of this fact is mandatory under the strict scrutiny of the compelling interest test.

The First Report of the National Commission on Marihuana and Drug Abuse, at page 150 states, "marihuana use is not such a grave problem that individuals who smoke marihuana, and possess it for that purpose, should be subject to criminal procedures." See Public Law 91-513 - Oct. 27, 1970 [84 Stat. 1280-1281] Part F - Advisory Commission - Establishment of Commission on Marihuana and Drug Abuse - SEC. 601.

And see, H.R. Rep. No. 91-1444, October 10, 1970, 1970 USCCAN 4566, at pages 4578-1580 (explaining the uncertainty of Congress in placing marihuana in Schedule I of the CSA and the temporary nature of this placement while the Commission worked on its report). At page 56-57, the Commission wrote:

A large amount of research has been performed in man and animals regarding the immediate effect of marijuana on bodily processes. No conclusive evidence exist of any physical damage, disturbances of bodily processes or proven human fatalities attributable solely to even very high doses of marijuana. Recently, animal studies demonstrated a relatively large margin of safety between the psychoactive dose and the physical and behavioral toxic and lethal dose. Such studies seem to indicate that safe human study could be undertaken over a wide range of doses.

In 1972 the U.S. National Commission on Marijuana and Drug Abuse recommended that the possession of marijuana for personal use no longer be an offense. It also recommended that casual distribution of small amounts for no remuneration or insignificant remuneration not involving profit would no longer be an offense. The recommendation was endorsed by the American Medical Association, the American Bar Association, the American Association for Public Health, the National Education Association, and the National Counsel of Churches. The consideration of these facts is mandatory under the strict scrutiny of the compelling interest test.

Under the strict scrutiny required by *UDV* and the compelling interest test, the Court

must consider the fact that the principle psychoactive ingredient in marijuana has been rescheduled twice because of its safety in medical use. In 1986, the DEA transferred the pharmaceutically pure psychoactive ingredient in marijuana in sesame oil encapsulated in soft gelatin capsules from Schedule I to Schedule II of the Federal Controlled Substances Act. 51 FR 17476, May 13, 1986 and in 1999, the DEA transferred the pharmaceutically pure psychoactive ingredient in marijuana in sesame oil encapsulated in soft gelatin capsules from Schedule II to Schedule III of the Federal Controlled Substances Act. 64 FR 35928, July 2, 1999

The consideration of this fact is now mandatory under the strict scrutiny of the compelling interest test.

Under the strict scrutiny required by *UDV* and the compelling interest test the Court must consider the fact that the Federal Government is currently supplying medical patients with marijuana under the federal "Compassionate Use Program" in the form of 300 rolled marijuana cigarettes per month. These are facts that must now be considered under the mandatory strict scrutiny of the compelling interest test.

Under the strict scrutiny required by *UDV* and the compelling interest test, the court must consider the fact that in 2007, the DEA Administrative Law Judge, established by Congress in the CSA as the authority for reviewing the placement of Marijuana in the Federal Controlled Substances Act, found as a finding of fact that the National Institute on Drug Abuse has a monopoly on the supply of marijuana for scientific and medical research and that the National Institute on Drug Abuse has been withholding supplies of marijuana for legitimate medical research. The consideration of this fact is now mandatory under the strict scrutiny of the compelling interest test.

The Defendant has never injured anyone and this fact must now be considered under the compelling interest test.

In 2006 the Supreme Court ruled that states have the authority to set the standard for medical practice as defined by federal drug statutes. *Gonzales v. Oregon*, 126 S. Ct. 904; 163 L. Ed. 2d 748 (2006).

Eleven states have determined that marijuana has medical use. Patients are currently receiving marijuana from the federal government. All of these facts which come from the Government themselves, prove that the Defendant cannot injure anyone by using Marijuana as her Sacrament, because these facts prove that no one has ever been injured from using Marijuana and all of these facts must now be considered under the strict scrutiny of the compelling interest test.

For example, President Nixon's National Commission on Marihuana and Drug Abuse, authorized by the Controlled Substances Act itself, concluded in 1972 that, "*There is little proven danger of physical or psychological harm from the experimental or intermittent use of natural preparations of cannabis,*" and recommended that cannabis for personal use be decriminalized. Marihuana: A Signal of Misunderstanding Commissioned by President Richard M. Nixon, March 1972 (Emphasis added)

[I]n order to induce death a marijuana smoker would have to consume 20,000 to 40,000 times as much marijuana as is contained in one marijuana cigarette. National Institute on Drug Abuse-supplied marijuana cigarettes weigh approximately .9 grams. A smoker would theoretically have to consume nearly 1,500 pounds of marijuana within about fifteen minutes to induce a lethal response. In The Matter of Marijuana Rescheduling Petition, DEA Docket 86-22, Sept. 6, 1988 .

In 1999, the National Academy of Sciences issued its finding that, "Over the past forty years, marijuana has been accused of causing an array of anti-social effects including...provoking crime and violence...leading to heroin addiction...and destroying

the American work ethic in young people. *[These] beliefs have not been substantiated by scientific evidence.*” Marijuana and Medicine: Assessing the Science Base National Academy of Science, Institute of Medicine (IOM) (Emphasis added)

Alcohol is legal to purchase and consume in Alabama, and has been proven time and time again to cause “adverse health effects” and “societal ills.” And in fact the evidence before this court shows that alcohol is far more dangerous than marijuana.

In *Ravin v. State* 527 P.2d 494 (Alaska 1975) the Alaska Supreme Court stated,

It appears that the use of marijuana as it is presently used in the United States today, does not constitute a public health problem of any significant dimensions. It is for instance, far more innocuous in terms of physiological and social danger than alcohol or tobacco. It appears that effects of marijuana on the individual are not serious enough to justify widespread concern at least as compared with the far more dangerous effects of alcohol, barbiturates and amphetamines." *Ravin v. State* 527 P.2d 494 (Alaska 1975) Id. at 506, 509-511 (footnote omitted).

And in *People v. Sinclair*, the Michigan Supreme Court said,

Comparison of the effects of marijuana on both the individual and society with the effects of other drug use demonstrates not only that there is no rational basis for classifying marijuana with the 'hard narcotics' but, also, that there is not even a rational basis for treating marijuana as a more dangerous drug than alcohol. *People v. Sinclair*, 387 Mich. 91, 194 N.W. 2d 878 (1972)

(C) “to the increase in other crimes when controlled substances are abused...”

There is a large difference between using and abusing. The absolute truth is that alcohol, which is legal for purchase and consumption in the state of Alabama, is a major factor in most domestic disturbances, motor vehicle accidents, fights, murders, and other

VIOLENT crimes. There is no proof whatsoever that religious use of alcohol causes an increase in crime and there is no proof whatsoever that cannabis use *by this defendant* would cause an increase in crime.

(D) “including the increased risk of intoxicated drivers operating on the roadways of the State.”

Federal Department of Transportation studies on the effects of cannabis on actual driving performance included a summary of the published literature on marijuana and driving. They concluded this review with the following paragraph:

*The foremost impression one gains from reviewing the literature is that no clear relationship has ever been demonstrated between marijuana smoking and either seriously impaired driving performance or the risk of accident involvement.*

Very importantly our city driving study showed that drivers who drank alcohol overestimated their performance quality whereas those who smoked marijuana underestimated it....This evidence strongly suggests that alcohol encourages risky driving whereas THC encourages greater caution. Marijuana and Actual Driving Performance, Washington , DC : Department of Transportation DOT HS 808 078 (1993)

In the matter of alcohol there is no question that even relatively small amounts can be fatal and or induce severe impairment of motor skills.

This study examined drug presence in blood specimens from nearly 2,000 drivers killed in motor vehicle crashes. Alcohol was found in slightly more than half of the specimens, other drugs in about 18% of the specimens. In about two-thirds of the drug cases, alcohol (usually at high levels), was also present. Analysis of crash responsibility suggested that drugs other than alcohol are most likely to present a hazard when combined with alcohol or other drugs. The Incidence and Role of Drugs in Fatally Injured Drivers 1992, DOT HS 808 065

[W]here volunteer subjects participated in several sessions in which they were dosed on alcohol, marijuana, or a placebo, then drove motor vehicles in various controlled on-road traffic situations (e.g., closed interstate highway). Dual-controlled vehicles were used, and a researcher was always along to take control if warranted. Marijuana was found to have a performance impairment effect equivalent to an alcohol blood alcohol concentration (BAC) level between .04 and .08 only in lane maintenance performance measures. Marijuana and Actual Driving Performance 1993, DOT HS 808 078

It is factual, then, for the prosecution to state with certainty: “*Alcohol* is the cause of countless social ills ranging from adverse health effects to the increase in other crimes when alcohol is abused including the increased risk of intoxicated drivers operating on the roadways of the State.”

In addition to not being able to prove that cannabis use by *anyone for any reason* should be prohibited, the State has not been able to prove its allegation that religious cannabis use by *this defendant* causes these “countless social ills.”

6. The State again errs in stating that there are no exemptions to the prohibition of cannabis in Alabama law. The Alabama legislature, in fact, has recognized the potential therapeutic action of cannabis and the fact that *exemptions would be required*.

(d) The certifying boards may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if they find it consistent with the public health and safety. Ala. Code § 20-2-51 (d)

In 1979, the Alabama Legislature enacted the Controlled Substances Therapeutic Research Act. See Acts 1979, No. 79-472, p.870 (codified at Ala. Code §20-2-110 et seq.). That Act established within the state Board of Medical Examiners a research program, pursuant to which an authorized practitioner could certify a chemotherapy or glaucoma patient for strictly supervised cannabis-based treatment...persons are *exempt from prosecution in this state for possession, production, manufacture or delivery of cannabis*” Ala. Code §20-2-114 (Emphasis added)

Gonzales v. O Centro (2006), page eleven slip opinion:

The Controlled Substances Act *itself* “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.” (Emphasis added)

The government may not refuse to extend the exemption to a claim of religious hardship without a compelling reason. *Church of the Lukumi Babalu Aye*, 508 U.S. at 537. In *Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3d Cir. 1999), the court, in an opinion authored by current Justice Alito, held unconstitutional a police department policy that granted exemptions from a “no beards” policy for medical reasons but refused to grant exemptions to officers whose religious beliefs required growing a beard. In holding that the policy was subject to strict scrutiny under Smith, the court wrote as follows:

[T]he medical exemption raises concern because it indicates that the Department has made a value judgment that secular (i.e., medical) motivations for wearing a beard are important enough to overcome its general interest in uniformity but that religious motivations are not. As discussed above, when the government makes a value judgment in favor of secular motivations, but not religious motivations, the government's actions must survive heightened scrutiny. *Id.*, 170 F.3d at 366.

7. The prosecution also states, “If the defendant was given an exemption to the State’s laws as it relates to the use of marijuana, it would be impossible for the State to enforce marijuana prohibition laws.”

This assertion did not carry the day when the Catholic Church was allowed an exemption from alcohol prohibition in order to distribute sacramental wine, and it cannot carry the day in this case either.

In *Morse v. Frederick*, No. 06-278, June 25, 2007, Justice Stevens of the United States Supreme Court compared marijuana prohibition with alcohol prohibition, writing,

Reaching back still further, the current dominant opinion supporting the war on drugs in general, and our anti marijuana laws in particular, is reminiscent of the opinion that supported the nationwide ban on alcohol consumption when I was a student. While alcoholic beverages are now regarded as ordinary articles of commerce, their use was then condemned with the same moral fervor that now supports the war on drugs. The ensuing change in public opinion occurred much more slowly than the relatively rapid shift in Americans' views on the Vietnam War, and progressed on a state-by-state basis over a period of many years. But just as prohibition in the 1920's and early 1930's was secretly questioned by thousands of otherwise law-abiding patrons of bootleggers and speakeasies, today the actions of literally millions of otherwise law-abiding users of marijuana, n9 and of the majority of voters in each of the several States that tolerate medicinal uses of the product, n10 lead me to wonder whether the fear of disapproval by those in the majority is silencing opponents of the war on drugs. Surely our national experience with alcohol should make us wary of dampening speech suggesting -- however inarticulately -- that it would be better to tax and regulate marijuana than to persevere in a futile effort to ban its use entirely. In *Morse v. Frederick* , No. 06-278, June 25, 2007 .

In fact, during national alcohol prohibition, there was a sacramental religious exemption for alcohol, National Prohibition Act, Title II, Ch.85, § 3, 41 Stat. 308 [1919]. See dissent in *Employment Div., Dept. of Human Resources of Oregon v. Smith* 494 U.S. 872.

Even today there is an exemption in Alabama State law allowing for the sacramental use of alcohol by minors, Ala Code 28-3-15 exempts religious use of alcoholic beverages from laws setting the legal drinking age.

Alcohol and tobacco are two of the most dangerous sacramental substances known to man and have both been exempted from the Controlled Substance Act, 21 USCS § 802 (6).

Even in Alabama, with the dangers of both alcohol and tobacco well known, the State Board of Health, held responsible for regulating and controlling scheduled drugs, is given no power of control or regulation over alcohol or tobacco. According to the Code of Alabama:

Section 20-2-20 Administration of chapter.

(a) The State Board of Health, unless otherwise specified, shall administer this chapter and may add substances to or delete or reschedule all substances enumerated in the schedules in Sections 20-2-23 , 20-2-25 , 20-2-27 , 20-2-29 , or 20-2-31 pursuant to the procedures of the State Board of Health.

(d) Authority to control under this section does not extend to distilled spirits, wine, malt, beverages, or tobacco.

However, there is a provision for sacramental alcohol in “dry counties” in Alabama.

Procedure for shipment, delivery, etc., of alcohol and wine to persons for sacramental or non-beverage use Ala Code 28-4-117

In its The Drug Abuse Education Act of 1971, Alabama includes tobacco in its definition of “drug.”

As used in this chapter, the term "drug" shall include barbiturates, central nervous system stimulants, hallucinogenics, and all other drugs to which the narcotic and drug abuse laws of the United States apply. It shall also

include alcoholic and intoxicating liquor and beverages and tobacco. Ala Code 16-41-2

In the matter of tobacco,

[W]e found no positive associations between marijuana use and lung or upper aerodigestive tract cancers. Marijuana Use and the Risk of Lung and Upper Aerodigestive Tract Cancers: Results of a Population-Based Case-Control Study. *Cancer Epidemiol Biomarkers Prev* 2006; 15(10). October 2006.

8. The State goes on to contend that “there has been no indication that the use of marijuana by the defendant is in a strictly religious ceremony.”

The State has no evidence to the contrary. The Defendant in this case continues to assert that the details of her religious practices are not the business of this court. The least restrictive means test puts the burden on the government to show a compelling interest in restricting a religious practice.

As to the matter of a “bona fide religion” in *United States v. Seeger*, 380 U.S. 163 (1965) at 185 the Court wrote:

“While the applicant's words may differ, the test is simple of application. It is essentially an objective one, namely, does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption?

“But we hasten to emphasize that while the "truth" of a belief is not open to question, there remains the significant question whether it is "truly held." This is the threshold question of sincerity which must be resolved in every case.”

Seeger was an atheist who was granted Conscientious Objector Status. See also *Wallace v. Jaffree* 472 U.S. 38 (1985), *Cantwell v. Connecticut* 310 U.S. 296 (1940), *United States v. Ballard* 322 U.S. 78 (1944) and *Welsh v. United States* 398 U.S. 333 (1970).

9. At the very end of the brief, the State asserts that “the State would have no way to ascertain who was a true religious user of the drug and who was using religion as a sham method of illegally using marijuana.” The Supreme Court of the United States believes that the local courts are up to the task.

“Congress’ express decision to legislate the compelling interest test indicates that RFRA challenges should be adjudicated in the same manner as constitutionally mandated applications of the test, including at the preliminary injunction stage.” Slip opinion page 8, *Gonzales v. O Centro Espirita Beneficente Uniao Vegetal*, 163 L. Ed. 2d. 1017; 2006 U.S. LEXIS 1815; 74 U.S.L.W. 4119 ( February 21, 2006 )

The government can propose restrictions – and those restrictions would then have to pass the least restrictive means test. The church cannot propose the restrictions because that test puts the burden of moving forward with the evidence on the government.

10. The State has failed to demonstrate that the government has a compelling interest of the highest order in the continued complete prohibition of cannabis in the State of Alabama.

11. As to the application of the RFRA and the Religious Land Use and Institutionalized Persons Act in this case.

The prosecuting attorney in this case is not factually correct in interpreting the application of the Religious Freedom Restoration Act (RFRA), and thus the Religious Land Use and Institutionalized Persons Act (RLUIPA) in this case. RFRA and RLUIPA

require the state to apply the *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) tests to a religious claim for the use of a controlled substance.

RFRA and RLUIPA apply to any state law that relies on federal funding for its enforcement.

In defense of the Act respondent contends, with support from the United States as *amicus*, that RFRA is permissible enforcement legislation. Congress, it is said, is only protecting by legislation one of the liberties guaranteed by the Fourteenth Amendment's Due Process Clause, the free exercise of religion, beyond what is necessary under *Smith*. It is said the congressional decision to dispense with proof of deliberate or overt discrimination and instead concentrate on a law's effects accords with the settled understanding that § 5 includes the power to enact legislation designed to prevent as well as remedy constitutional violations. It is further contended that Congress' § 5 power is not limited to remedial or preventive legislation. *City of Boerne v. P.F. Flores*, 521 U.S. 507, 517 (1997).

The only argument that was raised in *Boerne* was the Fourteenth Amendment.

In enacting RLUIPA, Congress made it clear that its powers under the Commerce and Spending clauses gave it the authority to demand the *Sherbert v. Verner* and *Wisconsin v. Yoder* tests be applied to any state law which relies on federal funding for its enforcement. In his concurring opinion in *Cutter v. Wilkinson*, 544 U.S. 709, 732-733 (2005), Justice Thomas wrote:

In addition, RLUIPA's text applies to all laws passed by state and local governments, including "rules of general applicability," *ibid.*, whether or not they concern an establishment of religion. State and local governments obviously have many laws that have nothing to do with religion, let alone establishments thereof. Numerous applications of RLUIPA therefore do

not contravene the Establishment Clause, and a facial challenge based on the Clause must fail. See *United States v. Booker*, 543 U.S. \_\_\_, \_\_\_, 543 U.S. 220 (2005) (THOMAS, J., concurring in part and dissenting in part); *United States v. Salerno*, 481 U.S. 739 (1987).

It also bears noting that Congress, pursuant to its Spending Clause authority, conditioned the States' receipt of federal funds on their compliance with RLUIPA. § 2000cc-1(b)(1) ("This section applies in any case in which . . . the substantial burden is imposed in a program or activity that receives Federal financial assistance"). As noted above, n. 2, *supra*, RLUIPA may well exceed the spending power. Nonetheless, while Congress' condition stands, the States subject themselves to that condition by voluntarily accepting federal funds. The States' voluntary acceptance of Congress' condition undercuts Ohio's argument that Congress is encroaching on its turf. *Cutter v. Wilkinson*, 544 U.S. 709, 732-733 (2005)

Although the Supreme Court found RFRA inapplicable to the states in *City of Boerne v. P.F. Flores*, 521 U.S. 507 (1997), and Congress later amended RFRA by enacting RLUIPA by replacing the word "state" with "covered entity", Public Law 106-274, Sept. 22, 2000, 114 STAT. 803, Section 7, the question of how the federal government can fund state drug law enforcement without demanding compliance with federal law (RFRA) is not asked or answered by *Boerne*.

This question is answered by RLUIPA, Public Law 106-274, Sept. 22, 2000, 114 STAT. 803, Section 8:

42 USCS § 2000cc-5(4)

Government. The term "government"—

(A) means--

- (i) a State, county, municipality, or other governmental entity created under the authority of a State;
- (ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and
- (iii) any other person acting under color of State law; and

42 USCS § 2000cc-5

(6) Program or activity. The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4a).

42 USC § 2000d-4a(1)(A):

"a department, agency, special purpose district, or other instrumentality of a State or of a local government". See Justice Thomas' concurrence in *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

42 USC. § 2000c-1(b):

(b) Scope of application. This section applies in any case in which—

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes. 42 U.S.C. § 2000c-1(b)

The State of Alabama voluntarily accepts federal funding for its participation in the DEA's task forces, including the DEA's High Intensity Drug Trafficking Area Task Force (HIDTA).

In fact, Alabama has gone so far as to enshrine RFRA-like language into the state constitution, thereby ensuring that not only the legislature, but all branches of government are held to the compelling interest standard. ALA CONST. Amend. 622

THEREFORE, the facts regarding this case require the application of RLUIPA and consequently RFRA.

12. Fundamental Rights and the Hybrid Rights Mentioned in *Smith*

"The only instances where a neutral, generally applicable law had failed to pass constitutional muster, the *Smith* Court noted, were cases in which other constitutional protections were at stake. *Id.*, at 881-882." *City of Boerne v. Flores*, 521 U.S. 507, 513-514 (1997).

"And it is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns. *Cf. Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984) ('An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State [if] a correlative freedom to engage in group effort toward those ends were not also guaranteed')." *Employment Division v. Smith*, 494 U.S. 871, 881 (1990).

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943).

An individual's freedom to speak, to worship, and to petition the

government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. See, *e. g.*, *Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley*, 454 U.S. 290, 294 (1981).

According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority. See, *e. g.*, *Gilmore v. City of Montgomery*, 417 U.S. , at 575; *Griswold v. Connecticut*, 381 U.S. , at 482-485; *NAACP v. Button*, 371 U.S. 415, 431 (1963); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. , at 462.

Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. See, *e. g.*, *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 907-909, 932-933 (1982); *Larson v. Valente*, 456 U.S. 228, 244-246 (1982); *In re Primus*, 436 U.S. 412, 426 (1978); *Aboud v. Detroit Board of Education*, 431 U.S. 209, 231 (1977).

*Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984).

### 13. Fundamental Right to Privacy

Even in cases where a state has not specifically legislated an explicit fundamental right to privacy, the right to privacy becomes explicit and fundamental in conjunction with other fundamental rights.

In *NORML v. Griffin B. Bell*, Civ. A. No 1897-73 (Feb. 11, 1980) PAGE 132-133

NORML argues that the right of privacy in general and privacy in the home forbids any governmental ban on private possession and use of marijuana. Such a reading stretches the right of privacy too far. This right exists only in conjunction with specific constitutional guarantees that serve as the substantive basis for the privacy right, Paul v. Davis, 424 U.S. 693, 712-13, 96 S. Ct. 1155, 1165-66, 47 L.Ed. 2d 405 (1976) The recognized substantive rights are " 'fundamental' or 'implicit in the concept of ordered liberty,' " *id.* at 713, 96 S.Ct. at 1166 (citation omitted), and "[t]he activities detailed as being within this definition...relat[e] to marriage, procreation, contraception, family relationships, and child rearing and education. " *Id.*

“Smoking marijuana does not qualify as a fundamental right, *Ravin v. State*, 537 P.2d 494, 502 (Alaska 1975) (dictum). n23 In ascertaining whether a right is fundamental, a court must determine whether the right is "*explicitly or implicitly guaranteed by the Constitution.*" *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 33-34, 93 S. Ct. 1278-1297, 36 L. Ed. 2d 16 (1973). On this issue, Justice Stewart once noted:

The Court . . . does not "pick out particular human activities, characterize them as 'fundamental,' and give them added protection \* \* \* ." To the contrary, the Court simply recognizes, as it must, an established constitutional right, and gives to that right no less protection than the Constitution itself demands. *Id.* (Emphasis added and footnote omitted)

The Free Exercise and Establishment of religion are explicitly guaranteed in the First Amendment.

The Ninth Circuit has recognized a fundamental right to use marijuana in religious Establishment an Exercise See *Bauer supra*, *Valrey infra* and *MDMCR supra*, the *United*

*States v. Forchion*, No. 04-949-ALL (E.D. Penn., July 22, 2005) case in Pennsylvania has also recognized a fundamental right to use marijuana in religious Establishment and Exercise and the U.S. Supreme Court has recognized a fundamental right to use a controlled substance in religious Establishment and Exercise See *O'Centro* supra (See also *Raich*) supra.

The Fundamental Right to Privacy restores the compelling interest test and all facts cited above must also now be considered under the strict scrutiny required by the Fundamental Right to Privacy.

**The Court should follow the law and dismiss this case.**

This statement was signed on the 9<sup>th</sup> day of January in the Year of our Lord and Savior Jesus the Anointed Two Thousand and Eight in good faith.

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Rev. Brenda Sue Shoop a.k.a.  
Brenda Sue Williams