Summaries of Religious Use of Marijuana Cases

Alabama

Rheuark v. State (1992) 601 So.2d 135
Statutes prohibiting possession of marijuana and controlled substances did not violate freedom of religion rights of defendant claiming that he worshipped plants as gods and used marijuana and psilocybin as religious practice.
Court compared Defendant's argument to a past ruling on polygamy and quoting the cases *Reynolds v. United State* 98 U.S. 145 and *Cleveland v. United States* 329 U.S. 14 which in sum says that morality is defined by statute and Congress and not the individual's perceptions of morality. Therefore because the possession of marijuana is unlawful, it doesn't matter that the Defendant used it for religious use.

Arizona:

People v. Hardesty (2009) 214 P.3d 1004
FACTS: Hardesty was driving his van at night when an officer stopped him because one headlight was out. The officer smelled marijuana and recovered a baggie containing fourteen grams of marijuana from a daypack on the front floorboard of the van, less than two feet from the driver, and marijuana joint Hardesty had just thrown out the window. Claims that marijuana is the main religious sacrament in the church he attends. The church allows for the members to create their only family's unit mode of worship. In Hardesty's mode was to smoke and eat marijuana without limit as to time or place.
HELD: Hardesty may use religious use as a defense, but fails as a matter of law
DISCUSSION: Analyzed Hardesty's defense under FERA (Arizona's Free Exercise of Religion Act). A party who raises a religious exercise claim or defense under FERA must establish three elements: (1) that an action or refusal to act is motivated by a religious belief, (2) that the religious belief is sincerely held, and (3) that the governmental action substantially burdens the exercise of religious beliefs. State conceded to 1 and 2
ISSUE: whether the State met its burden of proving that the statutory prohibition on the possession of marijuana is the least restrictive means of furthering the government's compelling interest.
HELD: Courts have consistently treated the compelling interest/least restrictive means test as a question of law to be determined by the court and subject to de novo review. As such, state did not have to show that no less restrictive way to regulate was conceivable, only that none had been proposed.

California:

People v. Mullins (1975) 50 Cal. App 3d 61
Facts: A deputy sheriff had gone to defendant's premises at night at the invitation of a man who lived in a teepee on the property and who had told the officer there were marijuana plants growing there. The officer took two plants as samples to be tested and, three days later, went back to the property with a search warrant. Defendant's property is not enclosed or surrounded by a fence. From Ten Mile Creek Road there is a driveway that leads onto defendant's property. There is no gate at the entrance to the property. At the entrance there is a sign reading "Universal Life Church of Christ Light." Defendant's wife testified that on and prior to May 30, 1972, there was a "no trespassing" sign at the entrance to the property; that a church known as "Universal Life Church of Christ Light" is located on the property and is open to members of the public who are interested in "The Urantia Book"; that church services are usually held in the area of the teepees; and that from this area none of the gardens are visible. She testified, however, that people were not told they could not leave the campsite.
Defendant contends that he had a reasonable expectation of privacy from governmental intrusions on his property and particularly the gardens that were hidden from public view. He also asserts that the initial entry upon defendant's property was unreasonable because it occurred at night and that this circumstance adds to defendant's "subjective" expectation of privacy. With respect to the Deputy's initial entry on the premises we (Court) observe that it was with the consent of Satterfield, a resident upon defendant's property. It is not contended by defendant that Satterfield was without authority to invite persons to enter upon defendant's land for business and social relationships with Satterfield but it is apparently his contention that any such invitation could not extend to the gardens which he asserts were hidden from public view.
HOLDING: applicable principle is stated in Katz v. United States, 389 U.S. 347, 351-352 [19 L.Ed.2d 576, 582, 88 S.Ct. 507], as follows: "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. [Citations.] But what he seeks to preserve as private, even in an area

accessible to the public, may be constitutionally protected. [Citations.]" In applying the Katz standard the California courts have used the formula of "reasonable expectation of privacy." (People v. Bradley, 1 Cal.3d 80, 84 [81 Cal.Rptr. 457, 460 P.2d 129]; North v. Superior Court, 8 Cal.3d 301, 308-314 [104 Cal.Rptr. 833, 502 P.2d 1305, 57 A.L.R.3d 155].) Accordingly, the question in each case becomes a weighing of the factual circumstances of the conduct to determine whether it was "reasonable" to expect freedom from the particular observation that occurred. (North v. Superior Court, supra; Vidaurri v. Superior Court, 13 Cal.App.3d 550, 553 [91 Cal.Rptr. 704]; People v. Fly, 34 Cal.App.3d 665, 667 [110 Cal.Rptr. 158].)

The totality of the facts and circumstances discloses that defendant's property had lost its private character and that there was no expectation of privacy at the place where Deputy Agenbroad first viewed the marijuana plants. Defendant and his wife conducted a church on the premises which was open to the members of the public who were interested in "The Urantia Book." Church services were conducted in the area in which Satterfield's teepee was located. This teepee was in close proximity to the garden in which Agenbroad observed the growing marijuana plants. Persons who attended the church services were not precluded from going upon other areas of defendant's property, including the garden area. There were no fences or gates around the garden and although the garden was surrounded by brush there were openings in the brush permitting access to the garden. We apprehend that if defendant had no expectation of privacy insofar as persons who came on the property either in connection with the operation of the church or as invitees of persons residing upon the property, it may not reasonably be contended that public access was restricted solely to the daylight hours.

Religious Use Issue: Applying *Woody.*

"We have concluded that the trial court was correct in its determination that defendant's offer of proof falls short of the Woody standards. Although the offer proffers evidence that defendant worships and sanctifies marijuana and that he uses it in his religious practices, the offer of proof does not proffer any evidence that the use of marijuana is an indispensable part of the religion professed by the Universal Life Church of Christ Light of which defendant is a pastor. The proffered evidence does not indicate that the prohibition of the use of marijuana results in a virtual inhibition of the practice of defendant's religion. As observed in Woody, the effect of the application of the prohibition must be such as "to remove the theological heart" from the religion. (61 Cal.2d at p. 722.) The offer of proof does not proffer any evidence that the prohibition of the use of marijuana bars defendant from practices indispensable to the pursuit of his religious faith. Rather it compels him to abandon what he has discovered is an auxiliary to what is referred to in Collins as a "desired intensification of apperception." (273 Cal.App.2d at p. 488.) Defendant indicates in his offer of proof that he has been experimenting with other self-induced means of attaining the desired apperception and the capacity for communication with the Supreme Being but that he has found marijuana to be the most efficacious. This discovery and conclusion does not necessarily rule out other self-induced means which are not

District of Columbia:

Nesbeth v. U.S. (2005) 870 A.2d 1193

FACTS: Nesbeth was found guilty after a bench trial of simple possession of marijuana, a conviction that resulted from his arrest for motor vehicle violations and an ensuing search of his person, which yielded a small quantity of marijuana. On appeal, his main contention is that the trial judge erroneously barred him from asserting a defense under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb (2005) (the RFRA or the Act), based on his claim that he is an adherent of the Rastafarian religion and that marijuana use is a sacrament of that faith. Nesbeth did not bring up religious defenses until his opening statement. He stated that he was Rastafarian and had been practicing since childhood. He claimed an absolute right under the 1st amendment. When the trial judge (sitting as trier of fact) interrupted and asked what authority appellant had for the defense, he responded by citing *United States v. Bauer*, 84 F.3d 1549 (9th Cir.1996). The judge asked if he had case support from this jurisdiction or the Supreme Court, to which appellant replied that he "merely ha[d] the First Amendment [of] the Constitution of the United States." Displeased with appellant's failure to notify her of the issue until opening statement, the judge directed the prosecution to begin its testimony regarding the arrest and discovery of the marijuana.

At the end of the day's testimony, the judge informed the parties that her own research had revealed a case, *Whyte v. United States*, 471 A.2d 1018 (D.C.1984), relevant to the First Amendment issue. No further discussion of the

point took place before adjournment. At the start of the next court day, however, the judge reminded defense counsel that his “California case [*Bauer*, supra] ... was not binding, of course,” and that besides the *Whyte* case from this court, she had found a controlling Supreme Court decision, *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990). In light of these decisions, she stated, appellant's asserted religious use of marijuana “is not a viable defense based on anything you've said to me so far.” Appellant sought to distinguish *Smith* as well as *Whyte* by arguing that he was “challenging [his prosecution] not only under the First Amendment, but under the due process [clause] of the Fifth Amendment, as well as [that clause's] assurance of equal protection of law,” inasmuch as appellant was “a Jamaican Rastafarian,” part of “a discrete and insular minority ... unable to vote.” Consequently, he said, “this ... is a different case, with different considerations, requiring a different legal analysis.” Unpersuaded by the asserted difference, the judge rejected the defense in light of *Smith* and *Whyte*.

ISSUE: consideration of the issue is limited to plain error review because appellant did not adequately present the statutory claim-as distinct from one under the First Amendment-to the trial judge. Applying plain error analysis to the RFRA claim, and rejecting as well appellant's related arguments for reversal, court affirmed the conviction.

C of A HOLDING: Did not dispute Nesbeth’s religious beliefs and that he was Rastafarian, nor that marijuana laws substantially burdened his free exercise of religion. However the court still held that: 1) First Amendment right of free exercise did not allow defendant to possess and use marijuana as part of religious practices; 2) defendant's status as alien did not entitle him to strict scrutiny of marijuana laws under the Equal Protection Clause; and 3) allowing religious use of marijuana was not viable, less restrictive alternative to enforcement of drug laws (The fact that appellant can cite scarce decisional authority favoring relaxed enforcement in order to accommodate religious use, falls well short of meeting his burden under the plain error standard.)

An individual asserting a claim or defense under the RFRA must show by a preponderance of the evidence that the government action in question would substantially burden the sincere exercise of his religion, whereupon the burden of proof shifts to the government to show that the action (1) would further a compelling governmental interest (2) that cannot be effectuated by less restrictive means. See 42 U.S.C. § 2000bb-1; *United States v. Israel*, 317 F.3d 768, 771 (7th Cir.2003). Appellant argues that the trial judge improperly rejected his RFRA defense without applying these standards. The government responds that appellant never adequately presented the statutory claim to the trial judge, and that this court, therefore, may review it only for plain error. *See United States v. Olano*, 507 U.S. 725, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993). We agree with the government's position.

As the proceedings summarized above demonstrate, appellant never once mentioned the RFRA to the trial judge. It is true that he cited the Bauer decision and that Bauer in fact was a case interpreting and applying the RFRA. But appellant cited the case for the first time during an opening statement in which he claimed that his use of marijuana was essential “to the free exercise [of] his religion,” an “absolute right [of his] under the First Amendment.” When the judge asked him for case law from this jurisdiction or the Supreme Court supporting the religious defense, he again asserted “the First Amendment.” As the trial progressed, the judge twice informed him of binding decisional law rejecting his constitutional free exercise claim. On neither occasion did appellant attempt to clarify that instead he was making a statutory argument; rather, he tried merely to fold due process and equal protection elements into his claim (i.e., Jamaican Rastafarians were an “insular minority” excluded from the political process), thus confirming that the defense he asserted was a constitutional one.

Appellant's bare citation to a decision (*Bauer*) involving an RFRA defense, while he asserted explicitly only a claim grounded in the First Amendment and never attempted to tell the judge the difference, did not raise the statutory claim with the distinctness necessary to preserve it.

Appellant argues that across-the-board enforcement of the marijuana law is not the least restrictive means by which the government can effectuate its legitimate interest.

For this argument to prevail now, its correctness had to be “obvious” to the trial judge. See *Olano*, 507 U.S. at 732, 113 S.Ct. 1770 (explaining threshold requirement of plain error analysis that unpreserved legal point must have been clear or obvious). Quite the contrary, this

court's decision in *Whyte*, while it did not apply a least restrictive means test to the claim of religious exemption, is all but irreconcilable with the argument that the government's compelling interest in interdicting drugs can leave room for religious use of marijuana. And other courts, before and after the RFRA was enacted, have explicitly rejected the claim that a religious exemption is a viable less-restrictive means of enforcing the marijuana prohibition. See *United States v. Middleton*, 690 F.2d 820, 825 (11th Cir.1982) ("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.") (internal quotation marks and citations omitted); *Israel*, 317 F.3d at 772 (noting that creating a religious-use exception would "open the door to a weed-like proliferation of claims for religious exemptions"); *Balzer,* 954 P.2d at 940 ("[I]f the criminal statutes against marihuana were nullified as to those who claim the right to possess and traffic in this drug for religious purposes [... f]or all practical purposes the anti-marihuana laws would be meaningless, and enforcement impossible."). The fact that appellant can cite scarce decisional authority favoring relaxed enforcement in order to accommodate religious use, falls well short of meeting his burden under the plain error standard.

Hawaii

Hawaii v. Sunderland (2007) 168 P.3d 526
Facts: Officer was looking for a minor who had history of running away. Minor would sometimes be found at Sunderland's home. Officer went to Sunderland's home to check if minor was present. Sunderland was standing on his lanai – officer asked Sunderland if minor was present, Sunderland went to check. Officer could see into the apartment. She was able to see a marijuana pipe and four female minors sleeping on the couch. Officer asked Sunderland about the pipe. Sunderland responded, "That's mine. I use it for religious purposes." Sunderland then produced a "religious card" from his wallet indicating his membership in a religious organization called the "Cannabis Ministry." Sunderland informed Officer Smith that it was his right to exercise his religious beliefs. Officer Smith placed him under arrest. Sunderland was found guilty. Court said that it does not question Sunderland's sincerity of belief. Issue was that minors were present in the home and there is a compelling state interest in prohibiting the possession or use of marijuana for religious purposes ... in the home when minors are present[.]
APPEALS HEARING: Although Sunderland asserted that he used marijuana for religious practices in his own home, he did not seek to draw the conclusion that his right to privacy was implicated. He expressly disavowed any right to privacy argument. Sunderland argued that, despite the inability to succeed on privacy grounds in this jurisdiction, his right to the free exercise of religion required the prosecution to demonstrate a compelling state interest justifying a prohibition on the personal, home-use of marijuana. His focus on the home was meant only to distinguish other potential compelling state interests in preventing public harm that may flow from the use of marijuana outside the home. That argument differs from the argument Sunderland now seeks to assert on appeal-that his right to privacy encompasses the right to possess marijuana for religious purposes within the confines of his own home. Court would not access based on privacy. Instead re-accessed on basis of free exercise of religion.
Court said that *Smith* controls. According to *Smith*, a generally applicable law is not subject to First Amendment attack unless (1) it interferes with "the Free Exercise Clause in conjunction with other constitutional protections," or (2) it creates a mechanism that calls for "individualized governmental assessment of the reasons for the relevant conduct[ ]" Thus, the present matter does not present the type of hybrid rights situation that Smith implies would merit a strict scrutiny analysis. Rather, we are faced with "a free exercise claim unconnected with any communicative activity or parental right." Id. at 882, 110 S.Ct. 1595. Moreover, HRS § 712-1249 does not create a mechanism for governmental assessment of individual applicants for exemptions. Rather, HRS § 712-1249 presents an across-the-board prohibition on specific conduct deemed to be socially harmful by the legislature. Therefore, pursuant to *Smith*, hold that, under the circumstances of the present case, the free exercise clause of the First Amendment is not a viable defense to prosecution under HRS § 712-1249.

State v. Blake (1985) 695 P.2d 336
District court applied the Andrews test and in its Decision made the following findings.
The Andrews test stems from *State v. Andrews*, 65 Haw. 289, 291, 651 P.2d 473, 474 (1982). The test says that to determine whether there exists an unconstitutional infringement of the

freedom of religion, it would be necessary to examine:

1) whether or not the activity interfered with by the state was motivated by and rooted in a legitimate and sincerely held religious belief,
2) whether or not the parties' free exercise of religion had been burdened by the regulation, the extent or impact of the regulation on the parties' religious practices, and
3) whether or not the state had a compelling interest in the regulation which justified such a burden.

First, it accepted "for purposes of its decision that Hindu Tantrism is an accepted religion and that the Defendant is sincere in his religious beliefs." Record at 308-09.
Next, after weighing the conflicting evidence presented by Defendant, the court found that "the role of marijuana in Hindu Tantrism is in fact optional, and that followers of Hindu Tantrism can freely practice their religion without marijuana." Record at 309. The court therefore concluded that "the Hawaii Statutes prohibiting marijuana place no burden on the exercise by Defendant of his religion." Record at 309-10.
Finally, the district court concluded that assuming arguendo that the statute imposes a burden on Defendant's religious practice, "the State does have an interest in prohibiting marijuana of sufficient magnitude to override the Defendant's claimed religious interest." Record at 310.

State v. Adler (2005) 108 Hawai'i 169
Defendant was convicted in bench trial of commercial promotion of marijuana in the second degree and prohibited acts relating to drug paraphernalia.
Police officers seized 82 marijuana plants ranging from one to four-and-one-half feet tall, and seven marijuana seedlings from Adler's residence.
The parties stipulated to the following:
1. On or about August 26, 1998, in the County and State of Hawai'i, Defendant knowingly had in his possession and was cultivating 89 cannabis plants, seven of which were seedlings;
2. Defendant also knowingly possessed 4 pipes used for smoking cannabis, and 34 various plastic pots and bags to grow the cannabis;
3. Defendant is a Reverend in the Religion of Jesus Church;
4. The Religion of Jesus Church is a legitimate religion;
5. Defendant has received a license to perform marriage ceremonies from the State of Hawai'i;
6. Defendant is sincere in his religious convictions concerning the use of cannabis;
7. Defendant sincerely believes that his religion mandates the sacramental use of cannabis;
ISSUE: The question of law as to whether the State of Hawai'i has a compelling interest in prohibiting Defendant's use and cultivation of cannabis which outweighs Defendant's rights [sic] to freely exercise his religion under Article I, Section Four of the Hawai'i State Constitution.
HELD:
In order to find unconstitutional infringement on parties' religious practices, it is necessary to examine whether or not activity interfered with by state was motivated by and rooted in legitimate and sincerely held religious belief, whether or not parties' free exercise of religion had been burdened by regulation, extent or impact of regulation on parties' religious practices, and whether or not state had compelling interest in regulation which justified such burden.
Commercial promotion of marijuana statute, which prohibited possessing or cultivating 50 or more marijuana plants, did not unconstitutionally burden free exercise of religion of defendant who belonged to religion that mandated its members smoke marijuana at least once a year

State v. Kimmel (2009) 119 Hawai'i 467 – Unpublished Disposition Order
The evidentiary hearing on Kimmel's Motion to Dismiss included testimony regarding Kimmel's religious beliefs and practices as a member and reverend in the Religion of Jesus Christ; the religious use of psychoactive substances; Kimmel's personal history and beliefs, especially as it related to his use of marijuana; Kimmel's founding of the Religion of Jesus Christ and the church's mandate to partake of marijuana on a daily basis; the circumstances of Kimmel's arrest (including Kimmel's testimony that he possessed two pounds of marijuana at the time and would sell marijuana to adults who requested it); expert testimony concerning the negative health effects of marijuana; and expert testimony challenging the validity of the premise that marijuana is harmful and supporting marijuana's beneficial uses.
HELD: Per Sunderland, "Because there is no fundamental right to the private use and possession of marijuana, the right to privacy contained in article I, section 6 of the Hawai'i

Constitution is not implicated." Id. at 409, 168 P.3d at 539. For these reasons, Kimmel bears the heavy burden of demonstrating that HRS §§ 712-1249.5 and 329-43.5 lack any rational basis. See, e.g., Mallan, 86 Hawai'i at 446, 950 P.2d at 184. Kimmel has not sufficiently rebutted the presumption of constitutionality nor carried his burden of showing that these statutes are unsupported by any rational basis.

Iowa

Olsen v. Mukase (2008), 541 F.3d 827

Although federal and Iowa Controlled Substances Acts (CSAs) excepted use of alcohol and tobacco, certain research and medical uses of marijuana, and sacramental use of peyote, CSAs were neutral laws of general applicability that did not burden religious practice as would require narrow tailoring to achieve compelling government interest, as claimed by plaintiff seeking declaratory and injunctive relief from CSAs for his sacramental use of marijuana, since general applicability of laws did not require absolute universality without exceptions.

Maine

Rupert v. City of Portland (1992) 605 A.2d 63 – FUN CASE!

Rupert seeks to recover from the City of Portland a marijuana pipe seized by the Portland police as drug paraphernalia.

Rupert is a clergyman of the Native American Church of the United States of America. He describes the manner of worship of his church as "shamanic"; "church members experience the deity of nature by ritually ingesting psychedelic plants" and "bear true faith in the sacrality of marijuana." His marijuana pipe is a registered medicine pipe of the New World Church, albeit Rupert himself as the secretary and sole member of that church is the "medicine pipe registrar." He contends that "[t]he pipe is central to Native American worship and constitutes the altar from which prayers ascend to God." Rupert holds a Master of Divinity degree from Harvard University,2 for which he wrote a thesis on the historical use of hallucinogenic mushrooms in Indian religion. Over the years Rupert has had a considerable amount of correspondence with the United States Drug Enforcement Administration (DEA), in which he has sought, without success, to obtain religious exemptions for various scheduled drugs. He has sought an exemption for the use of methylenedioxymethamphetamine, the claimed deity of the New World Church of which he is the sole member; an exemption also for use of "North American Deity Psilocybin Mushrooms" in holy communion in that church; and an exemption for the use of marijuana in the Rastafarian Church of America founded by him. Claims his use of the pipe is protected by the Free Exercise Clauses of Article I, section 3, of the Maine Constitution and the First Amendment to the Constitution of the United States.

Court did not argue his sincere belief. Transferred burden to state.

"Rupert proposes a scheme by which he would give notice to the police or the courts of his intention to use the pipe for smoking marijuana exclusively in the exercise of his religion and the pipe would then be identified with a tag that would permit Rupert to smoke marijuana in it. Rupert in his proposal is not seeking an exemption so that he may regain possession of the marijuana pipe merely for its ornamental or sentimental value to him or for the smoking of lawful substances, but rather he is seeking an exemption for the smoking of marijuana in this particular pipe. His scheme implies that the State should make a religious exemption not only for possession of drug paraphernalia, but also for the possession of marijuana in quantities determined by the religious dictates of the user, and even for the furnishing of that marijuana to the user."

The State in its amicus brief argues that the compelling public interest in prohibiting the use of scheduled drugs, including marijuana, can be adequately served only by rules of general application and that a religious exemption of the breadth here sought would severely hamper the public's effort to control the amount of marijuana in circulation in Maine.

Court agreed.

Minnesota

State v. Pederson (2004) 679 N.W.2d 368

Defendant's medicinal use of marijuana was not a sincerely held religious belief intended to be protected by freedom of conscience clause of State Constitution, and instead, defendant's beliefs in connection with marijuana use were personal beliefs, based on a personal, rather than communal, interpretation of religious significance; defendant failed to provide any evidence that her medicinal use of marijuana involved religious ceremony, and defendant failed to demonstrate how her medicinal use of marijuana was supported or advocated by Essenic or Messianic Judaism in context of their fundamental tenets, precepts, scriptures or rites.

"Appellant's isolated and anecdotal citations to scriptures generally extolling the virtues of plant

life are insufficient to prove that her medicinal use of marijuana is a communal religious belief. Likewise, Reverend Buchanan's general statement that the medicinal use of marijuana is consistent with the teachings of Essenic Judaism and Messianic Judaism is unsupported by any evidence in the record."
To excuse an imposition on religious freedom under the Minnesota Constitution, the government's interest must be one of peace or safety or an interest against an act of licentiousness, and only religious practices that are licentious or inconsistent with peace or safety are denied an exemption.

Missouri
State v. Randall (1976) 540 S.W.2d 156
Via Search warrant, Randall was found to possess marijuana and hashish and LSD. Randall testified he is the 'Done' and a minister of the Aquarian Brotherhood Church. Some of the boxes containing hashish and marihuana were labeled as being sacraments of the church. However, Randall testified the Church did not administer any sacraments and if anyone wanted to use marihuana or LSD, he was required to furnish his own. The use of drugs in his church was for the purpose of enabling people to meditate and to better understand themselves and their problems. From this he seeks to invoke the doctrine adopted in *People v. Woody*, 61 Cal.2d 716, 40 Cal.Rptr. 69, 394 P.2d 813 (1964).
HELD: While the State does not have the power to dictate or control a religious belief, it does have the power to control actions. The use of peyote was approved on a very narrow and specific ground. As held in Collins a supposed desire to heighten awareness or to enable one to have new dimensions opened is hardly a religious purpose. Randall has not shown in any manner that he could bring himself within the tightly drawn confines of the religious exemption for a violation of the law of this state. This point is denied.

New Mexico
State v. Brashear (1979) 92 N.M. 622
Defendant was convicted of possession of marijuana and two counts of distribution of marijuana, and he appealed.
Defendant testified that during readings from the Bible (Book of Revelations) at a marijuana smoking party in 1970, he was "converted"; he knew beyond any doubt that Jesus Christ was the Word of God and the Savior. As a result of this experience, his conduct was radically changed. "I used the Bible totally as my guide as to whether I could or could not do something". Defendant engaged in intensive study of the Bible and came to the conclusion that God gave man every herb-bearing seed, including marijuana. Although defendant used marijuana prior to his conversion, marijuana was important after the conversion because marijuana was the fire with which baptisms were conducted by John the Baptist; "that is the Lord's consuming fire that is being sent upon all of mankind in the last days to destroy the evil out of him. That is the fire that comes first to the youth and then to adults. . . . It cannot be quenched."
HELD: We are not concerned with the validity of these beliefs.
What was the conduct based on these beliefs? Defendant used marijuana and distributed it. If denied the use of marijuana, "It would prevent me from having my free access to any and all herbs which is a blessing coming to me from God". Defendant's justification for selling marijuana was that "it is a free gift of God to me" and Jesus Christ "has delivered over all herbs". The effect of distributing marijuana "(i)n a religious sense" is that "it spreads the herb to more brothers." Defendant has sold marijuana to both adults and minors in the past, and would have no compunction in the future about selling marijuana to minors. However, a sale to minors is not involved in this case.
HELD: Defendant's asserted belief, which was to effect that use and distribution of marijuana was permitted because God gave man every herb-bearing seed and which was derived solely from defendant's personal use of the Bible, was not a "religious belief" for purposes of federal and state constitutional provisions; (2) if a defendant, who desires intensification of perception, can obtain such perception by other means, requiring him to forgo marijuana in obtaining that perception would not be a burden on free exercise of religion; (3) if defendant's belief in regard to herb-bearing seed would have been a religious belief, prohibition of that practice would have been a burden on free exercise of religion, and (4) even if defendant's belief would have been religious, his conviction would not, under the balancing test, have been an unconstitutional denial of the free exercise of religion.

New York
People v. Crawford (1972) 328 N.Y.S.2d 747
The defendant claims that he is a parishioner and minister of the Church of the Missionaries of the New Truth; that in that capacity he uses marijuana and LSD to achieve a religious

experience and to find God, that this is the way he practices his religion; and that therefore he is exempt from law prohibiting the possession of drugs.
Court went into deep discussion on peyote and the religious beliefs/actions associated w/it as well as history of defense in the rest of the states/congress.
There have been no decisions thus far in New York State passing upon the validity of a defense to a criminal narcotics charge that the possession and use thereof were in connection with the practice of one's religion and therefore protected by the First Amendment.
The defendant's principal witness was Walter Houston Clark, an expert in the field of psychology of religion. While his credentials as a scholar are acceptable, his personal knowledge of the defendant and of his religion is highly suspect. Mr. Clark testified that he could not remember the name of the defendant's religion until he referred to his notes. (Record, p. 84.) Although he testified that, to his knowledge, the defendant has had religious experiences through the use of drugs and that his religious beliefs include the use of drugs, he also concedes that he has met the defendant only twice. (Record p. 112.) Mr. Clark never witnessed any religious ceremony in which the defendant took part. He said that his conviction that the defendant had religious experiences through drugs was based on his conversations with the defendant and a questionnaire that the defendant answered. However, this witness has never attended any religious ceremony of the defendant's Church nor has he ever personally witnessed the defendant during one of these religious experiences. (Record, p. 120.)
The defendant himself has testified that it is possible to have a religious experience without the use of drugs. (Record, p. 161.) Also, he used marijuana before he ever became associated with the Missionaries of the New Truth about 500 times, and LSD about 35 or 40 times. (Record, pp. 171-172.) With respect to his religious organization, he testified that he is not sure of the exact number of members and that he does not consider his following as people who are Missionaries of the New Truth but any one who is willing to listen to him. (Record, p. 162). His Certificate of Ordination and his Doctor of Divinity were obtained simply by ‘a signature from a reverend of the Church to get a diploma and based upon his feeling about whether you deserve it or not you receive one.’ (Record, p. 177.) He further testified that to pursue God within the meaning of his religion does not require the indoctrination of other people. Moreover, the defendant has never supplied LSD to anyone else. (Record, p. 178.) The defendant testified that he has been undergoing a religious experience ever since May of 1970 and has not come down from that experience which was ‘aided or abetted by the taking of drugs'. (Record, pp. 180-181.)
There is no evidence that the defendant uses the drugs as part of any religious ceremony; that he has ever passed on drugs to or used drugs in the company of any other members of his Church; that the use of drugs is an intrinsic part of the dogma of his Church; or that the exercise of his own religious beliefs-primarily seeking the truth-would be inhibited without the use of drugs, even if it be conceded that the use of drugs may help him.

North Carolina
State v. Bullard (1966) 267 N.C. 599
Search warrant issued upon officer's affidavit for Defendant’s home where peyote and marijuana were seized.
The defendant testified in his own behalf that the peyote and marijuana were his and that they were used in religious beliefs. He said that as a member of the Neo-American Church that both peyote and marijuana, being plants which grow from the earth, are believed to be the incarnation of the spirit of God, and it is necessary to use them in the practice of his religion and he thereupon claimed immunity on constitutional grounds. Jury found Bullard guilty. Bullard appealed. Supreme Court of NC ruled:
HELD: It is not a violation of Bullard’s constitutional rights to forbid him, in the guise of his religion, to possess a drug which will produce hallucinatory symptoms similar to those produced in cases of schizophrenia, dementia praecox, or paranoia, and his position cannot be sustained here-in law nor in morals. First Amendment permits a citizen complete freedom of religion, but it does not authorize him in the exercise of his religion to commit acts which constitute threats to the public safety, morals, peace and order.

Ohio
State v. Flesher (1990) 585 N.E.2d 901
Defendant's conviction for possession of marijuana did not violate his right to free exercise of religion, even if use of marijuana was necessary and indispensable part of his religion on grounds that marijuana smoke “lifts the prayers into heaven,” and even if State did not

have compelling interest which superseded right to exercise religious freedom.
When appellant was pulled over for a loud exhaust, the officer who approached appellant's vehicle noticed a partially burned marijuana cigarette in the ashtray. After the appellant signed a waiver, the police officer searched the vehicle and found a bag of marijuana seeds, an unused marijuana cigarette, and other partially burned marijuana cigarettes. In total, the appellant was found to possess twenty-seven grams of marijuana.
appellant seeks a religious exemption to the law by claiming he is a founder of a bona fide religious group which espouses a belief in a supreme being and has a religious and ethical code.
Appellant asserts that marijuana is indispensable and necessary to the conduct of his religious observances; therefore, it is protected under the First Amendment.
The appellant analogized his circumstances to that of the native *Americans in People v. Woody* (1964), 61 Cal.2d 716, 40 Cal. Rptr. 69, 394 P.2d 813. However, even the requirement of establishing a compelling state interest has been swept away by the most recent United States Supreme Court decision in *Employment Div., Dept. of Human Resources of Oregon v. Smith* (1990), 494 U.S. 872, 110 S. Ct. 1595, 108 L.Ed.2d 876.
Thus, for better or for worse, the United States Supreme Court has signaled a new parameter in the government's ability to curtail religious practice without first demanding that the state set forth and prove that it has a compelling interest which supersedes the individual's right to exercise his religious freedom.
“The *Smith* case therefore reduces appellant's arguments to a puff of smoke.”

Oklahoma
Wahid v. State (1986) 716 P.2d 678
A narcotics agent went to appellant's residence to purchase an ounce of marijuana from appellant. After the Agent was allowed entry by appellant to his apartment, she observed appellant hand a small plastic bag to an unidentified female in the apartment. After examining the contents of the bag, the female paid appellant some money and left the apartment. At that point, Agent asked appellant if she could purchase an ounce of marijuana. Appellant responded affirmatively, and proceeded to retrieve two one- half ounce bags of marijuana and sold them to the agent for seventy dollars ($70).
Appellant contends that the trial court violated his First and Fourteenth Amendment rights of the United States Constitution by not instructing the jury and allowing the jury to conclude whether the actions of the appellant were in fact protected by the Constitution. Appellant contends that his actions are protected by the Constitution in that he uses marijuana in connection with his religious beliefs. However, appellant failed to introduce evidence that tends to support his theory of constitutional protection.
Appellant failed to prove any of the necessary elements to bring his case within the purview of *Lewellyn*. Thus, this assignment of error is without merit.
Defendant in prosecution for sale of marijuana who failed to introduce evidence that his actions were connected with religious beliefs and protected by Constitution was not entitled to jury instruction on that issue.
Defense of religious freedom was not available in prosecution for distribution of marijuana where buyer was narcotics agent and did not intend to use marijuana as part of beliefs of established religion.

Oregon
State v. Venet (1990) 103 Or.App. 363; 797 P.2d 1055
In the second defense, defendant claims that his use and, inferentially, his growing and possessing marijuana is for a religious purpose and is protected by the First Amendment. He presented evidence that he is an ordained minister of the Universal Industrial Church of the New World Comforter and contends that consumption of marijuana is a sacrament of the church. He presented evidence about the role that marijuana plays in church ceremonies.
The court properly rejected the defense. Defendant's conviction for manufacturing marijuana does not violate his rights under the First Amendment. *Employment Division v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990).

Texas
Burton v. Texas (2006) 194 S.W.3d 686
Defendant failed to preserve for appellate review a claim that marijuana possession statute, as applied to defendant in prosecution for misdemeanor marijuana possession, violated Free Exercise Clause; while defendant urged the jury to consider his religious beliefs in determining his guilt, he never argued to trial court or

requested a ruling from trial court that the statute was unconstitutional as applied.
Marijuana possession statute, as applied to defendant in prosecution for misdemeanor marijuana possession, did not violate Free Exercise Clause.
At trial, appellant represented himself and called two witnesses to read Biblical scriptures.
Appellant contends these scriptures support his religious beliefs that “the earth and nature created by God for use by man should not be inhibited by government” and “[b]ecause the marijuana plant was created by God, it was intended for use by man.”
Although appellant urged the jury to consider his religious beliefs in determining his guilt, he never argued to the court or requested a ruling that the statute was unconstitutional.
Even if appellant had preserved his argument that the marijuana possession statute is unconstitutional as applied to him, we reject it. We presume that a statute is constitutional, and it is appellant's burden to prove it unconstitutional as applied to his specific conduct.

Vermont
State v. Rocheleau (1982) 451 A.2d 1144
Facts: The defendant entered the men's restroom of a St. Albans, Vermont, nightclub. Shortly thereafter a college student entered the room and asked aloud, “Does anybody got any dope?” This general inquiry produced an immediate response from the defendant, who brought forth a plastic sandwich bag which contained a green leafy substance. At that moment an off-duty Vermont deputy game warden emerged from a partitioned toilet area. He observed the defendant and the student jointly holding the plastic bag and, believing it contained marijuana, seized it. The officer promptly advised that he was a game warden and was acting pursuant to the authority of his office. He then proceeded to detain virtually all the occupants of the restroom, including the defendant. The St. Albans Police arrived and the warden handed them the plastic bag, which was later determined to contain marijuana.
Assuming that defendant fully subscribed to the doctrines of Tantric Buddhism and that such is a genuine religion which includes the use of marijuana for spiritual purposes, compelling state interest in regulating marijuana was of sufficient magnitude to override defendant's interest claiming protection under the free exercise clause of the First Amendment, so that conviction for possession of marijuana was not precluded, particularly where defendant did not assert that he would be unable to practice his religion without use of marijuana and it was doubtful that he was actually practicing his religion while in the restroom of a nightclub.

Virginia
McNish v. Com. (1994) Not Reported in S.E. 2d
Appellant's stopped for a traffic violation. In response to the Trooper's questions, appellant stated that his vehicle contained no contraband and he consented to a search of the car. Trooper then found almost seventeen pounds of marijuana behind a panel in the jeep. He also found $1,545 in appellant's wallet. During a subsequent police interrogation, appellant told Meredith that the money was part of $2,000 he had received from Peter Johnson to transport the marijuana from Texas to New York City, where Johnson would pick it up. At trial, however, appellant testified that his previous explanation was untrue and that he had received the $2,000 from an unnamed individual who had hired him to do some auto repair work.
He explained that he was a Rastafarian whose religion sanctions the ceremonial use of marijuana and that the marijuana he was transporting had been collected by Texas Rastafarians for use by New York City Rastafarians in upcoming religious celebrations. He denied receiving any payment for the delivery.
Clearly, as argued by the Commonwealth, appellant intended to encourage the use of marijuana, and it is irrelevant that this use was to occur in a religious context.

Washington
State on Behalf of Hendrix v. Waters (1998) 89 Wash.App. 921
Paternity of child was determined by the Superior Court, with full custody awarded to mother and father's visitation rights restricted until he stopped using marijuana. Father appealed.
Waters claims he uses marijuana as part of his Rastafarian religious practices, he asserts that the trial court's decision, in the absence of showing any actual or potential harm to his child's best interests, violates his right to free religious exercise.
The court also found that Waters presently used marijuana on a daily and day-long basis as part of his Rastafarian religion and that he committed acts of domestic violence in the past. Also, Waters used cocaine and alcohol in the past, but does not contest that he is now clean and sober regarding those two vices.

The Court of Appeals, held that the trial court did not abuse its discretion in restricting father's visitation rights, though father claimed his daily, day-long marijuana use was part of his religious practices, as father's marijuana use was illegal and was not protected by the free exercise clause of the First Amendment.

"Although we do not judge whether Mr. Waters's marijuana use was religiously sincere-for in Smith the Supreme Court noted that "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds,"21-given the illegal nature of Waters's marijuana use in relation to the trial court's discretion to determine parentage, we cannot find that the trial court's decision was patently unreasonable or untenable."

Also, concerned for child's immediate and future impairment from father's marijuana use.

Wisconsin

State v. Matteson (1995) 191 Wis. 2d 360 – Unpublished Disposition

Michael Matteson appeals from a judgment convicting him of manufacturing a controlled substance (marijuana) in violation of § 161.41(1)(h), Stats. Matteson, a priest of the Israel Zion Coptic Church, was growing marijuana for sacramental use by church members. Matteson argues that his prosecution and the statutes upon which it is based violate the First Amendment mandate that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." He points to the fact that the State has exempted one religious group-the Native American Church-from the operation of the controlled substance laws for its religious use of peyote, and he argues that the State has thus granted that group a "denominational preference" over all others in violation of the establishment clause. See *Larson v. Valente*, 456 U.S. 228, 246, 102 S.Ct. 1673, ---, 72 L.Ed.2d 33 (1982) (establishment clause requires "denominational neutrality" and State may not adopt programs or practices which "aid or oppose" any religion). As a result, he maintains that his conviction cannot stand.

Court saw little difference between that argument and one putting forth the proposition that exempting one church but not others from the law constitutes an unreasonable classification and thus a denial of equal protection of the laws-the argument they expressly considered (and rejected) in a previously decided case *Peck*.

Federal Cases:

U.S. v. Middleton (1982) 690 F.2d 820

FACTS: The defendant, Clifton Ray Middleton, a member of the Ethiopian Zion Coptic Church, flew into Miami from Jamaica. Upon his arrival, the Customs Inspector asked Middleton to accompany him to a room for a secondary search of his baggage. Mr. Middleton then fled the customs enclosure, pursued by a number of customs personnel, and was caught. The defendant testified that he slipped and fell shortly after reaching the street and was set upon by several men as he tried to get up. Other evidence indicates that upon his capture, the defendant fought off the law enforcement officers by flailing his arms, kicking his feet, and squirming. Middleton continued this behavior as he was taken into the search room and later across the street to the public safety department. Marijuana was found in the defendant's possession and the defendant was taken into custody.

PPO: Middleton also asserted that the statutory prohibitions were unconstitutional as applied to him as a member of the Ethiopian Zion Coptic Church. The trial judge denied this motion.

On Appeal raised four issues (2 applicable here): First, the defendant argues that the classification of marijuana as a Schedule I controlled substance under 21 U.S.C. s 812(c)(10) (1976) is unconstitutional as an arbitrary and irrational classification. Second, Middleton asserts that he is a member of the Ethiopian Zion Coptic Church; that this is a religion within the meaning of the first amendment; and that the use of marijuana is an indispensible part of this religion. Consequently, Middleton argues that the application of the statute in this case would violate the free exercise clause of the first amendment.

ISSUE ONE: Federal statutes are presumptively valid unless it be shown that the statute in question bears no rational relationship to legitimate legislative purpose. Court must limit its inquiry to whether legislative classification or refusal to reclassify is irrational or unreasonable. Congressional classification of marijuana as Schedule I controlled substance was neither arbitrary nor irrational. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 202, 202(b), 21 U.S.C.A. §§ 812, 812(b).

ISSUE TWO: Any free exercise interest of defendant, who was dedicated member of religion using marijuana in its religious practices, was outweighed by compelling governmental interest in regulating and controlling use of marijuana and

its distribution, and thus prosecution of defendant for importation and possession of marijuana did not violate his rights under First Amendment. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 202(c)(10), 21 U.S.C.A. § 812(c)(10); U.S.C.A.Const. Amend. 1.

Whyte v. U.S. (1984) 471 A.2d 1018
FACTS: Search warrant was executed for appellant's home in Northwest, Washington. An envelope containing marijuana and a jar with marijuana seeds were seized. Appellant was subsequently charged with criminal possession and distribution of a controlled substance, marijuana, in violation of D.C.Code § 33-541 (1983 Supp.). Appellant moved to dismiss the charges against him as violative of the free exercise clause. In support of his motion, appellant testified that he was a member of the Twelve Tribes of Israel-more commonly known as the Rastafarians-and that "it is ordained for [him] to indulge in marijuana."
The trial court denied the motion to dismiss. It found that the government's interest in regulating marijuana and curtailing its accessibility in the community outweighed appellant's interest in using marijuana as part of his religious practices. Thereupon appellant pled guilty to the charge of possession, and the government entered a nolle prosequi on the charge of distribution. The trial court sentenced appellant to sixty days in jail, then suspended the sentence and imposed a one year term of probation. This appeal followed.
APPEALS: Court assumed, for purposes of the inquiry, that the Twelve Tribes of Israel is a bona fide religion within the meaning of the first amendment and that appellant fully subscribes to its doctrines. Agreed with previous cases that Congress' interest in regulating the use and distribution of drugs, together with the public's interest in the full enforcement of its drug laws, was of sufficient magnitude to outweigh defendant's interest in the free exercise of his religious practices. Court chose not to accept appellant's suggestions that in balancing competing interests, they take into account evidence minimizing dangers from marijuana abuse. "This court will not substitute its judgment for that of the legislature where, as here, the challenged legislation has seen fit to control a substance on a rational basis.
In conclusion, after balancing appellant's interests under the free exercise clause of the first amendment against the District's interest in the enforcement of the CSA, we find that the governmental interest is compelling and paramount to appellant's interest.

Randall v. Wyrick (1977) 441 F. Supp 312
FACTS: petitioner was charged with possession of marijuana, hashish, and LSD. A jury found him guilty of all three offenses, and he was sentenced to five years imprisonment on the hashish charge, four years imprisonment on the marijuana charge and fifteen years imprisonment on the LSD charge. Petitioner appealed both convictions. In petitioner's first appeal (after the hashish sale conviction), the Missouri Court of Appeals found that petitioner was the religious leader of the Aquarian Brotherhood Church. He lived at the building which also served as the Church. An undercover police officer went to the Church and purchased an ounce of hashish from petitioner. The officer left the premises, analyzed the hashish, and returned to the Church, where he complained to petitioner about the quality of the drug. It appears that petitioner readily exchanged the first sample for another and showed the officer "some packets and a suitcase" on another floor of the building. Petitioner apparently told the officer that the packages and suitcase contained marijuana for use in the manufacture of hashish. 530 S.W.2d at 409.
In petitioner's second appeal, the Court of Appeals found that
Randall lived in a two-story building . . . with a third story referred to as an attic. A stairway on the outside of the building led to a doorway leading onto the second story and entrance to the third floor was obtained through a doorway located on *314 the second floor. He stated he slept on the first floor and a Mrs. Stratton lived on the second. However, Randall told a police officer the entire dwelling was controlled by the church and he was the minister. . . . (T)here was no indication in the building that it was separated into multiple living units.
On the date Randall was arrested, police officers went into the building and mounted the outside stairway to the second floor. When Mrs. Stratton opened the door they informed her they had a search warrant and immediately entered the second floor and proceeded to the third floor where the undercover officer had been shown a large quantity of drugs by Randall together with laboratory equipment used in refining various drugs. Randall was arrested after the officers had gone to the third floor.
APPEAL: Petitioner first asserts that his arrest and conviction for the use and sale of narcotics violate his first amendment right to freedom of

religion. In support of this claim, he asserts that the drugs involved in his arrest were sacraments of the Aquarian Brotherhood Church used to enable people to meditate and better understand their personal problems.
Referred to two cases, *Leary v. United States*, 383 F.2d 851 (5th Cir. 1967), rev'd on other grounds, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969), and *United States v. Kuch*, 288 F.Supp. 439 (D.D.C.1968), as particularly instructive. The Court must balance Missouri's interest in preventing the damages of narcotic drugs, as reflected by legislation, against petitioner's interest in the practice of his religion. The Court assumes for purposes of this inquiry that the Aquarian Brotherhood Church is a genuine religion and that Randall fully subscribes to its doctrines.1
As noted in Kuch, there is considerable scientific evidence to support the view that marijuana poses a substantial health hazard. There is also considerable evidence that marijuana is associated with the commission of non-drug crimes. See United States v. Kuch, supra, at 446, 452-53
There is also a clear and compelling interest in regulation of the transfer and possession of LSD. The drug is more harmful than marijuana and defendant's religious interest in its ingestion does not outweigh the threat to the public health and safety which LSD presents. The free exercise clause of the First Amendment does not prohibit the prosecution of this defendant . . . . The practice of (his) beliefs if beliefs they be must give way to the public good.

U.S. v. Myers (1995) 906 F. Supp 1494
FACTS: Meyers attempted to prove the bona fides of his alleged religion. Meyers testified that he has smoked marijuana since the age of 16, and that he smoked marijuana because it cured him of manic depression. When he has access to marijuana, Meyers smokes between 10 and 12 joints per day. Although Meyers lived in Ethiopia for a while, he apparently did not join the Ethiopian Zion Coptic Church, which is a Christian sect that uses marijuana as a sacrament. See Olsen v. DEA, 878 F.2d 1458 (D.C.Cir.1989). Meyers stated that he began worshipping marijuana because it brought peace into his life. Meyers founded the “Church of Marijuana” in 1973. The church allegedly has 800 members and one designated meeting spot. The church's “religion” is to grow, possess, and distribute marijuana. The church's “bible” is a ponderously titled book: Hemp & the Marijuana Conspiracy: The Emperor Wears No Clothes-The Authoritative Historical Record of the Cannabis Plant, Marijuana Prohibition, & How Hemp Can Still Save the World (“Hemp ”). The church does not have a formal clergy, but does have approximately 20 “teachers.” Meyers did not explain what the teachers do. Although there are teachers, the church has no hierarchy or governing body. The church does not attempt to propagate its beliefs in any way, and does not assert that everyone should smoke marijuana. Nonetheless, part of the “religion” is to work towards the legalization of marijuana. Meyers testified that he (and presumably other church members) pray to the marijuana plant. The church's only ceremony revolves around one act: the smoking and passing of joints. Joint smoking apparently results in a sort of “peaceful awareness.” Meyers did not assert that this “peaceful awareness” is a religious state. While “peacefully aware” (vulgarly known as being “high”), church members “talk to one another.” Meyers did not divulge the nature of their discussions. There are no formal church services. In response to questioning from the Court about the church's teachings, if any, on “ultimate ideas” such as life, death, and purpose, Meyers essentially stated that his views on these issues are Christian. In fact, he observed, he is a Christian. Although (an apparently Christian) God is at the top of the religion, “the marijuana plant is the center of attention.” Meyers said that all church members are Christians, but did not assert that the church was a Christian sect or denomination.
The Court will consider the following factors to determine whether Meyers' beliefs are “religious” for RFRA purposes:

1. Ultimate Ideas: Religious beliefs often address fundamental questions about life, purpose, and death. As one court has put it, “a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters.” Africa, 662 F.2d at 1032. These matters may include existential matters, such as man's perception of life; ontological matters, such as man's sense of being; teleological matters, such as man's purpose in life; and cosmological matters, such as man's place in the universe.

2. Metaphysical Beliefs: Religious beliefs often are “metaphysical,” that is, they address a reality which transcends the physical and immediately apparent world. Adherents to many religions believe that there is another dimension, place, mode, or temporality, and they often

believe that these places are inhabited by spirits, souls, forces, deities, and other sorts of inchoate or intangible entities.

3. Moral or Ethical System: Religious beliefs often prescribe a particular manner of acting, or way of life, that is "moral" or "ethical." In other words, these beliefs often describe certain acts in normative terms, such as "right and wrong," "good and evil," or "just and unjust." The beliefs then proscribe those acts that are "wrong," "evil," or "unjust." A moral or ethical belief structure also may create duties-duties often imposed by some higher power, force, or spirit-that require the believer to abnegate elemental self-interest.7

4. Comprehensiveness of Beliefs: Another hallmark of "religious" ideas is that they are comprehensive. More often than not, such beliefs provide a telos, an overarching array of beliefs that coalesce to provide the believer with answers to many, if not most, of the problems and concerns that confront humans. In other words, religious beliefs generally are not confined to one question or a single teaching. Africa, 662 F.2d at 1035.

5. Accoutrements of Religion: By analogy to many of the established or recognized religions, the presence of the following external signs may indicate that a particular set of beliefs is "religious"8:

a. Founder, Prophet, or Teacher: Many religions have been wholly founded or significantly influenced by a deity, teacher, seer, or prophet who is considered to be divine, enlightened, gifted, or blessed.

b. Important Writings: Most religions embrace seminal, elemental, fundamental, or sacred writings. These writings often include creeds, tenets, precepts, parables, commandments, prayers, scriptures, catechisms, chants, rites, or mantras.

c. Gathering Places: Many religions designate particular structures or places as sacred, holy, or significant. These sites often serve as gathering places for believers. They include physical structures, such as churches, mosques, temples, pyramids, synagogues, or shrines; and natural places, such as springs, rivers, forests, plains, or mountains.

d. Keepers of Knowledge: Most religions have clergy, ministers, priests, reverends, monks, shamans, teachers, or *1503 sages. By virtue of their enlightenment, experience, education, or training, these people are keepers and purveyors of religious knowledge.

e. Ceremonies and Rituals: Most religions include some form of ceremony, ritual, liturgy, sacrament, or protocol. These acts, statements, and movements are prescribed by the religion and are imbued with transcendent significance.

f. Structure or Organization: Many religions have a congregation or group of believers who are led, supervised, or counseled by a hierarchy of teachers, clergy, sages, priests, etc.

g. Holidays: As is etymologically evident, many religions celebrate, observe, or mark "holy," sacred, or important days, weeks, or months.

h. Diet or Fasting: Religions often prescribe or prohibit the eating of certain foods and the drinking of certain liquids on particular days or during particular times.

i. Appearance and Clothing: Some religions prescribe the manner in which believers should maintain their physical appearance, and other religions prescribe the type of clothing that believers should wear.

j. Propagation: Most religious groups, thinking that they have something worthwhile or essential to offer non-believers, attempt to propagate their views and persuade others of their correctness. This is sometimes called "mission work," "witnessing," "converting," or proselytizing.

Although Meyers' beliefs satisfy few of the criteria that are the hallmarks of other religions, the Court does not on this basis alone conclude that his beliefs are not statutorily "religious." The Court also considers the fact that Meyers' beliefs are more aptly characterized as medical, therapeutic, and social. Here, the Court cannot give Meyers' "religious" beliefs much weight because those beliefs appear to be derived entirely from his secular beliefs. In other words, Meyers' secular and religious beliefs overlap only in the sense that Meyers holds secular beliefs which he believes in so deeply that he has transformed them into a "religion."

Leary v. U.S. (1967) 383 F.2d 851

FACTS: Dr. Leary, the driver of the vehicle, and four passengers, told a U.S. Customs official that

they had driven across the boundary into Mexico within the prior hour, that they had been unable to secure tourist permits and had been told by Mexican immigration officials to return the following morning at 8:00 a.m. at which time the necessary Mexican permits would be given to them. The U.S. inspector asked the group if they had anything to declare from Mexico and was told that they had not. After the occupants alighted from the vehicle, the U.S. inspector observed some vegetable material and a seed on the floor of the automobile which appeared to him to be marihuana. Thus the five travelers were arrested. A search of the baggage, the vehicle and of the individuals was made. Sweepings from the car floor and glove compartment were later proved to be marihuana. While Dr. Leary was being searched, he stated that he had never used marihuana. A woman Customs inspector performed a personal search of the two female travelers, which resulted in the finding of a small metal container on the person of Susan Leary after she had disrobed. Within the container were three partially smoked marihuana cigarettes, a small quantity of semi-refined marihuana and capsules of detroamphetamine sulfate (said to be a nonprohibitive narcotic). Demand was made of Dr. Leary for the required Treasury Department transferee form. He stated that he had no such form. Susan Leary, in response to the same demand, refused to make any statement. Dr. Leary admitted to a U.S. Customs agent that the metal box taken from his daughter, Susan, containing the marihuana, was his property. He further stated in the presence of two Government agents that he knew more about narcotics and marihuana than either of them. He further admitted that while on the trip from New York to Mexico at an overnight stop in New Orleans, Louisiana, he smoked marihuana to relieve a low spiritual state; that this incident was equivalent to an hour of silent meditation from which he derived spiritual benefit. Dr. Leary testified that he was familiar with the laws of the United States relative to marihuana and was aware that his actions were contrary to such laws. In his testimony he attempted to justify use of this drug which he said was for religious and scientific purposes.

Dr. Leary has an impressive academic background. He testified that he received a Ph. D. degree in Clinical Psychology from the University of California. During the years from 1944 to 1960 he wrote and published several publications relative to the use of psychedelic drugs in the treatment of the mentally ill, including thirteen scientific articles and two books. In 1950 he helped found the Kaiser Psychiatric Clinic in Oakland, California. During the next eight years he received nearly one-half million dollars in federal grants at the Kaiser Clinic for research work on mental illness. He published four diagnostic tests relative to mental illness which have been used in diagnosing and treating mental patients in over 750 clinics and hospitals in the United States and which have been translated into several foreign languages. He served on the University of California medical faculty from 1953 to 1956. In 1959 he joined the Harvard University faculty.

In 1960, while visiting Mexico, he testified that he had ‘the most intense religious experience’ he had ever had in his life as the result of having eaten a number of the ‘Sacred Mushrooms' of Mexico. The incident changed his life. Since that time he has written five books and thirty-eight articles pertaining to religious and scientific use of psychedelic drugs, and he has devoted his life to attempting to understand the religious experience and how it can be applied to help others. He said that he formed a religious research group after returning to Harvard University, and with the help of Aldous Huxley, he experimented with certain psychedelic drugs. In 1962 he studied Hinduism and after a year became a member of a Hindu sect. In 1963 he left Harvard, performed further experimental work in Mexico, and later established a center and workshop for religious and scientific research in Millbrook, New York which center is now his home. The building also serves as a place for religious meditation and spiritual retreat. Rooms in the house contain shrines devoted to Hindu, Buddhist and Christian ways of finding God, as well as religious pictures and statues. Dr. Leary has traveled extensively through Asia in pursuit of his religious endeavors and has studied Buddhism and Hinduism with several religious teachers and monks. While studying in India with Sri Asoke Fukir, a religious leader, Dr. Leary participated in religious rituals in which marihuana was used. He was converted to Hinduism, and is now a member of the Brahmakrishna sect in Massachusetts.

Dr. Leary further testified that he first used marihuana in August or September 1964. Marihuana enables him to attain what he describes as the third level of consciousness. Other psychedelic drugs take a person to a higher level. According to the Hindu religion, there are thousands of roads to illumination to the god within a person. Different sects specialze in different aids. The Hindu sect in India of which he became a member uses marihuana for religious

illumination and meditation. He ordinarily uses marihuana less than once a week and then only for religious purposes. He draws no distinction between his religious beliefs and his scientific experimentation. If he could not use marihuana it would not affect his religious beliefs but he would consider it a violation of those beliefs and practices if he were denied its use.
Fred Swain (Sri Kalidas, in religion) testified on behalf of appellant. He is an American Hindu Sanyasa (monk), a renunciant, living in a monastery, who joined the religious order of which appellant is a member in 1948. He met Dr. Leary in 1962 and later participated in psychedelic experiments with him at Harvard University. While traveling in India he was often in the company of Dr. Leary; he smoked marihuana with him in the Rishikesh, a city of holy men, along the banks of the Ganges River, in Hindu religious services. He said that marihuana plays a very important part in the rituals of the Hindu sect conducted by Sri Asoke Fukir in India. The Brahmakrishna sect in the United States of which he and Dr. Leary are members is a highly established authority sect in India, recognized throughout India by all Hindus. He admitted that he was partially able to achieve and practice his religious beliefs in the Hindu sect without the use of marihuana. He does not use marihuana in the United States because it is unavailable; he is forced to use other psychedelic drugs in conjunction with meditation and prayer.
HOLDING: Our concern is with the laws of the United States, which appellant admittedly, knowingly and purposely violated because they conflicted with his personal religious beliefs and practices. Appellant has attempted to demonstrate that the experience he finds through the use of marihuana is the essence of his religion. We do not inquire into the truth or verity of appellant's religious beliefs- to do so would be violative of the Free Exercise Clause of the First Amendment. United States v. Ballard, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944). But appellant's religious creed and the sincerity of his beliefs are not at issue here. The district judge properly refused an instruction to the jury that they should acquit the defendant if they found his religious practices were in good faith.
There is no evidence in this case that the use of marihuana is a formal requisite of the practice of Hinduism, the religion which Dr. Leary professes. At most, the evidence shows that it is considered by some as being an aid to attain consciousness expansion by which an individual can more easily meditate or commune with his god. Even as such an aid, it is not used by Hindus universally. 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 *861 harmless. Thus the question is whether the conduct or action so regulated and prohibited under severe criminal penalties by Congress (i.e., trafficking in marihuana) has posed 'some substantial threat to public safety, peace or order,' Sherbert, supra, 374 U.S. at 403, 83 S.Ct. at 1793 We are not impressed that the California cases are directly in point, and we will not apply them insofar as the circumstances of this case are concerned

Olsen v. State of Iowa (1986) 808 F.2d 652
FACTS: Olsen was convicted of unlawful possession of marijuana with intent to deliver, in violation of Iowa Code § 204.401(1). His sole defense was that, as a member and priest of the Ethiopian Zion Coptic Church, his possession and use of the marijuana were protected by the first amendment's free-exercise clause, and by the equal protection clause. Olsen based his equal protection argument on the legislative exemption granted to members of the Native American Church for the religious use of peyote. The Iowa Supreme Court rejected Olsen's claims, holding (1) that a compelling state interest in regulating the use of marijuana outweighed his free-exercise rights, and (2) that the exemption for the Native American Church's ceremonial use of peyote applied only to controlled and isolated circumstances, in contrast to the Coptic Church members' continuous and public use of marijuana, regardless of age or occupation.
HELD: We agree with the district court that Olsen's claims are without merit. See, e.g., United States v. Rush, 738 F.2d 497, 511-513 (1st Cir.1984), cert. denied, 471 U.S. 1120, 105 S.Ct. 2370, 86 L.Ed.2d 269 (1985) (rejecting free-exercise and equal protection claims by members of the Ethiopian Zion Coptic Church convicted for possession of marijuana); United States v. Middleton, 690 F.2d 820, 824-825 (11th Cir.1982) (rejecting similar free-exercise claim); Randall v. Wyrick, 441 F.Supp. 312, 315-316 (W.D.Mo.1977) (rejecting similar free-exercise claims by members of the Aquarian Brotherhood Church). Accordingly, the district court's order of summary dismissal is affirmed, pursuant to 8th Cir.R. 12(a).

U.S. v. Rush (1984) 738 F.2d 497
FACTS: Suspecting that the two properties might be used for illegal drug trafficking, law enforcement agents established surveillance of both properties in August, 1980.
On the evening of October 19, 1980, a pickup truck was observed leaving the Arkin property loaded with material; it arrived at the Leurs property around 9:30 p.m. Shortly after 9:00 p.m., a dozen people were observed on the Leurs property carrying large objects, later identified as Zodiac rubber boats, down to the dock. Just after midnight the JUBILEE, a large, oceangoing vessel, was observed approaching from the open sea. It followed the shoreline towards the Leurs property without navigational lights, dropped anchor and cut its engines approximately one-tenth of a mile from the Leurs dock. Over a three-hour period, three rubber boats holding two people each made numerous trips between the dock area and the JUBILEE, transporting bales of what was later identified as marijuana from the JUBILEE to shore. The bales, after having been brought ashore, were loaded into pickup trucks and transported further inland. The unloading of the marijuana bales continued for roughly three hours.
Appellants claim that they were denied the opportunity to assert a valid, legally sufficient defense based on the free exercise clause of the first amendment.29 For purposes of this case the government stipulated to the following facts, which we assume, without deciding, are true:

1) that the Ethiopian Zion Coptic Church is a religion embracing beliefs which are protected by the First Amendment; 2) that the use of marijuana is an integral part of the religious practice of the Church; and 3) that [all of the defendants] are members of the Church and sincerely embrace the beliefs of the Church.

The district court ruled as a matter of law that the first amendment did not protect the possession of marijuana with intent to distribute by the defendants, and further ordered that the defendants be precluded from introducing at trial any evidence concerning the Ethiopian Zion Coptic Church and the use of marijuana by its members, insofar as such evidence related to their alleged first amendment defense
HELD: When a law is challenged as interfering with religious conduct, the constitutional inquiry involves three questions: (a) whether the challenged law interferes with free exercise of a religion; (b) whether the challenged law is essential to accomplish an overriding governmental objective; and (c) whether accommodating the religious practice would unduly interfere with fulfillment of the governmental interest. See United States v. Lee, 455 U.S. 252, 256-59, 102 S.Ct. 1051, 1054-56, 71 L.Ed.2d 127 (1982).

(a) court did not question
(b) Every federal court that has considered the matter, so far as we are aware, has accepted the congressional determination that marijuana in fact poses a real threat to individual health and social welfare, and has upheld the criminal sanctions for possession and distribution of marijuana even where such sanctions infringe on the free exercise of religion.
(c) Finally, it has been recognized since Leary that accommodation of religious freedom is practically impossible with respect to the marijuana laws

We reject as well appellants' claim that members of the Ethiopian Zion Coptic Church are entitled as a matter of equal protection to a religious exemption from the marijuana laws on the same terms as the peyote exemption granted the Native American Church. Marijuana is not covered by the peyote exemption; this in itself distinguishes this case from Kennedy v. Bureau of Narcotics and Dangerous Drugs, 459 F.2d 415 (9th Cir.1972), cert. denied, 409 U.S. 1115, 93 S.Ct. 901, 34 L.Ed.2d 699 (1973). Moreover, the peyote exemption is uniquely supported by the legislative history and congressional findings underlying the American Indian Religious Freedom Act, which declares a federal policy of “protect[ing] and preserv[ing] for American Indians their inherent right of freedom to believe, express and exercise the[ir] traditional religions ..., including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.” 42 U.S.C. § 1996.

Korean Buddhist Dae Won Sa Temple of Hawaii v. Sullivan (1998) 87 Haw 217
Maximum height restrictions imposed by ordinance on buildings in residential area satisfied threshold requirements for constitutionality, for purposes of challenge by Buddhist temple to administrative denial of its application for height variance; restrictions modified temple's conduct and not its beliefs, and they had clear secular purpose and effect. Denial of zoning variance

sought by Buddhist temple in connection with main hall that exceeded height restrictions for residential area did not substantially burden temple's constitutional right to free exercise of religion; temple inflicted its problems on itself by purchasing land in area where a variance would be required, and principal burden on temple was the expense and inconvenience of lowering completed roof, which it had proceeded to build before seeking the variance. U.S.C.A. Const.Amend. 1; Const. Art. 1, § 4. In order to find an unconstitutional infringement on the right to free exercise of religion, it is necessary to examine whether or not the activity interfered with by state was motivated by and rooted in legitimate and sincerely held religious belief, whether or not parties' free exercise of religion had been burdened by the regulation, extent or impact of regulation on parties' religious practices, and whether or not state had compelling interest in the regulation which justified such a burden. U.S.C.A. Const.Amend. 1; Const. Art. 1, § 4. As a preliminary matter, it is necessary in a free exercise case for one to show the coercive effect of the law as it operates against him in the practice of his religion; party alleging infringement must show a substantial burden on religious interests. Expense and inconvenience are generally insufficient to constitute a substantial burden on the free exercise of religion. U.S.C.A. Const.Amend. 1; Const. Art. 1, § 4.

City of Boerne v. Flores (1997) 521 U.S. 507
FACTS: Respondent, the Catholic Archbishop of San Antonio, applied for a building permit to enlarge a church in Boerne, Texas. When local zoning authorities denied the permit, relying on an ordinance governing historic preservation in a district which, they argued, included the church, the Archbishop brought this suit challenging the permit denial under, inter alia, the Religious Freedom Restoration Act of 1993 (RFRA). The District Court concluded that by enacting RFRA Congress exceeded the scope of its enforcement power under § 5 of the Fourteenth Amendment. The court certified its order for interlocutory appeal, and the Fifth Circuit reversed, finding RFRA to be constitutional.
Held: RFRA exceeds Congress' power. Pp. 2160-2172. RFRA is not a proper exercise of Congress' § 5 enforcement power because it contradicts vital principles necessary to maintain separation of powers and the federal-state balance. RFRA is a considerable congressional intrusion into the States' traditional prerogatives and general authority to regulate for the health and welfare of their citizens, and is not designed to identify and counteract state laws likely to be unconstitutional because of their treatment of religion. Pp. 2168-2172. Regardless of the state of the legislative record, RFRA cannot be considered remedial, preventive legislation, if those terms are to have any meaning. RFRA is so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior. It appears, instead, to attempt a substantive change in constitutional protections. Preventive measures prohibiting certain types of laws may be appropriate when there is reason to believe that many of the laws affected by the congressional enactment have a significant likelihood of being unconstitutional.
It is for Congress in the first instance to "determin[e] whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment," and its conclusions are entitled to much deference. Katzenbach v. Morgan, 384 U.S., at 651, 86 S.Ct., at 1723-1724. Congress' discretion is not unlimited, however, and the courts retain the power, as they have since Marbury v. Madison, to determine if Congress has exceeded its authority under the Constitution. Broad as the power of Congress is under the Enforcement Clause of the Fourteenth Amendment, RFRA contradicts vital principles necessary to maintain separation of powers and the federal balance. The judgment of the Court of Appeals sustaining the Act's constitutionality is reversed.

SUPREME COURT OF THE UNITED STATES
No. 04–1084
ALBERTO R. GONZALES, ATTORNEY GENERAL, ET AL., PETITIONERS v. O CENTRO ESPIRITA BENEFICENTE UNIAO DO VEGETAL ET AL.
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
[February 21, 2006]

FACTS: A religious sect with origins in the Amazon Rainforest receives communion by drinking a sacramental tea, brewed from plants unique to the region, that contains a hallucinogen regulated under the Controlled Substances Act by the Federal Government. The Government concedes that this practice is a sincere exercise of religion, but nonetheless sought to prohibit the small American branch of the sect from engaging in the practice, on the ground that the Controlled

Substances Act bars all use of the hallucinogen. The sect sued to block enforcement against it of the ban on the sacramental tea, and moved for a preliminary injunction.

O Centro Espírita Beneficente União do Vegetal (UDV) is a Christian Spiritist sect based in Brazil, with an American branch of approximately 130 individuals. Central to the UDV's faith is receiving communion through hoasca1 (pronounced "wass-ca"), a sacramental tea made from two plants unique to the Amazon region. One of the plants, psychotria viridis, contains dimethyltryptamine(DMT), a hallucinogen whose effects are enhanced by alkaloids from the other plant, banisteriopsis caapi. DMT, as well as "any material, compound, mixture, or preparation, which contains any quantity of [DMT]," is listed in Schedule I of the Controlled Substances Act. §812(c),Schedule I(c). In 1999, United States Customs inspectors intercepted a shipment to the American UDV containing three drums of hoasca. A subsequent investigation revealed that the UDV had received 14 prior shipments of hoasca. The inspectors seized the intercepted shipment and threatened the UDV with prosecution.

The UDV filed suit against the Attorney General and other federal law enforcement officials, seeking declaratory and injunctive relief.

It relied on the Religious Freedom Restoration Act of 1993, which prohibits the Federal Government from substantially burdening a person's exercise of religion, unless the Government "demonstrates that application of the burden to the person" represents the least restrictive means of advancing a compelling interest. 42 U. S. C. §2000bb–1(b).

PPO: The District Court concluded that the evidence on health risks was "in equipoise," and similarly that the evidence on diversion was "virtually balanced." Id., at 1262, 1266. In the face of such an even showing, the court reasoned that the Government had failed to demonstrate a compelling interest justifying what it acknowledged was a substantial burden on the UDV's sincere religious exercise. Id., at 1255. The court also rejected the asserted interest in complying with the 1971 Convention on Psychotropic Substances, holding that the Convention does not apply to hoasca. Id., at 1266–1269.

The court entered a preliminary injunction prohibiting the Government from enforcing the Controlled Substances Act with respect to the UDV's importation and use of hoasca. The injunction requires the church to import thetea pursuant to federal permits, to restrict control over the tea to persons of church authority, and to warn particularly susceptible UDV members of the dangers of hoasca. See Preliminary Injunction ¶¶2, 5–12, 32–33, App. F to App. to Pet. for Cert. 249a, 250a–252a, 258a–259a. The injunction also provides that "if [the Government] be-lieve[s] that evidence exists that hoasca has negatively affected the health of UDV members," or "that a shipment of hoasca contain[s] particularly dangerous levels of DMT, [the Government] may apply to the Court for an expedited determination of whether the evidence warrants suspension or revocation of [the UDV's authority to use hoasca]." Id., at 257a, ¶29.

The Government appealed the preliminary injunction and a panel of the Court of Appeals for the Tenth Circuit affirmed, O Centro Espirita Beneficiente Uniao do Vegetal v. Ashcroft, 342 F. 3d 1170 (2003), as did a majority of the Circuit sitting en banc, 389 F. 3d 973 (2004). We granted certiorari. 544 U. S. 973 (2005 The District Court granted the preliminary injunction, and the Court of Appeals affirmed.

HELD: We conclude that the Government has not carried the burden expressly placed on it by Congress in the Religious Freedom Restoration Act, and affirm the grant of the preliminary injunction. Under RFRA, the Federal Government may not, as a statutory matter, substantially burden a person's exercise of religion, "even if the burden results from a rule of general applicability." §2000bb–1(a). The only exception recognized by the statute requires the Government to satisfy the compelling interest test—to "demonstrat[e] that application of the burden to the per-son—(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest." §2000bb–1(b). A person whose religious practices are burdened in violation of RFRA "may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief." §2000bb–1(c).1

The Controlled Substances Act, 84 Stat. 1242, as amended, 21 U. S. C. §801 et seq. (2000 ed. and Supp. I), regulates the importation, manufacture, distribution, and use of psychotropic substances. The Act classifies substances into five schedules based on their potential for abuse, the extent to which they have an accepted medical use, and their safety. See §812(b) (2000 ed.). Substances listed in Schedule I of the Act are subject to the most comprehensive restrictions, including an outright ban on all importation and use, except pursuant to strictly regulated research projects. See §§823, 960(a)(1). The Act authorizes the

imposition of a criminal sentence for simple possession of Schedule I substances, see §844(a), and mandates the imposition of a criminal sentence for possession "with intent to manufacture, distribute, or dispense" such substances, see §§841(a), (b).

The Government's second line of argument rests on the Controlled Substances Act itself. The Government contends that the Act's description of Schedule I substances as having "a high potential for abuse," "no currently accepted medical use in treatment in the United States," and "a lack of accepted safety for use . . . under medical supervision," 21 U. S. C. §812(b)(1), by itself precludes any consideration of individualized exceptions such as that sought by the UDV. The Government goes on to argue that the regulatory regime established by the Act—a "closed" system that prohibits all use of controlled substances except as authorized by the Act itself, see Gonzales v. Raich, 545 U. S. ___, ___ (2005) (slip op., at 10)—"cannot function with its necessary rigor and comprehensiveness if subjected to judicial exemptions."

Under the more focused inquiry required by RFRA and the compelling interest test, the Government's mere invocation of the general characteristics of Schedule I substances, as set forth in the Controlled Substances Act, cannot carry the day. It is true, of course, that Schedule I substances such as DMT are exceptionally dangerous. See, e.g., Touby v. United States, 500 U. S. 160, 162 (1991). Nevertheless, there is no indication that Congress, in classifying DMT, considered the harms posed by the particular use at issue here—the circumscribed, sacramental use of hoasca by the UDV.

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

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withrespect to Schedule I substances should not carry the determinative weight, for RFRA purposes, that the Government would ascribe to them.

RFRA, however, plainly contemplates that courts would recognize exceptions—that is how the law works. See 42 U. S. C. §2000bb–1(c) ("A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government"). Congress' role in the peyote exemption—and the Executive's, see 21 CFR §1307.31 (2005)—confirms that the findings in the Controlled Substances Act do not preclude exceptions altogether; RFRA makes clear that it is the obligation of the courts to consider whether exceptions are required under the test set forth by Congress.

Congress has determined that courts should strike sensible balances, pursuant to a compelling interest test that requires the Government to address the particular practice at issue. Applying that test, we conclude that the courts below did not err in determining that the Government failed to demonstrate, at the preliminary injunction stage, a compelling interest in barring the UDV's sacramental use of hoasca. 2