

# HOGAN & HARTSON

COLUMBIA SQUARE  
555 THIRTEENTH STREET NW  
WASHINGTON, DC 20004-1109  
202/637-5600

WRITER'S DIRECT DIAL NUMBER  
202/637-6472

8701 ROCKLEDGE DRIVE  
BETHESDA, MARYLAND 20817  
301/493-0030

111 SOUTH CALVERT STREET  
BALTIMORE, MARYLAND 21202  
301/659-2700

8300 GREENSBORO DRIVE  
MCLEAN, VIRGINIA 22102  
703/648-2600

February 13, 1989

Clerk of the Court  
United States Court of Appeals  
District of Columbia Circuit  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

Re: Olsen v. Drug Enforcement Administration,  
Nos. 86-1442 & 86-5455: Citation of Supplemental  
Authorities under Fed. R. App. P. 28(j)

Dear Madam Clerk:

Oral argument was held in the above-referenced action last week, on February 7, 1989, before a panel of Judges R.B. Ginsburg, Silberman, and Buckley. During oral argument, the Court asked the undersigned counsel whether he was aware of any decisions in which courts had held that the Free Exercise Clause of the First Amendment required government accomodation of religiously motivated conduct, despite the government's assertion that such conduct posed a significant health risk. Unfortunately, counsel was unable to assist the Court at argument with citations responsive to that question. Since the argument, counsel has recalled or has had brought to his attention the following two lines of authority that are pertinent to the question raised by the Court.

First, both federal and state courts have held that the Free Exercise Clause may prohibit the government from compelling medical treatment for a person who objects to such treatment on religious grounds. In contrast to due process objections to compulsory medical treatment, which may be overridden by government concerns supported by a rational basis, religious objections to medical treatment may not be overcome absent a compelling government interest that outweighs the particular

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religious objection asserted. The government's asserted interest in protecting the health of its citizens ordinarily can override a religious objection only where it is necessary "to prevent grave and immediate danger to interests which the state may lawfully protect." See, e.g., Winters v. Miller, 446 F.2d 65, 60-70 (2d Cir. 1971) (Christian Scientist stated damages claim for violation of First Amendment rights, where state forcibly treated her with tranquilizers pursuant to its contention that she was "'possibly' harmful to herself and others"); Osgood v. District of Columbia, 567 F.Supp. 1026, 1034-36 (D.D.C. 1983) (same); Holmes v. Silver Cross Hospital, 340 F.Supp. 125, 129-30 (N.D. Ill. 1972) (First Amendment violated by compulsory blood transfusion intended to protect life and health of religious adherent who objected to treatment); In re Osborne, 294 A.2d 373, 374-76 (D.C. 1972) (same); In re Brooks, 32 Ill.2d 361, 205 N.E. 2d 435 (1965) (same).

Second, several state courts have held that the Free Exercise Clause requires an accomodation of peyote use for religious purposes, notwithstanding determinations by the legislatures in those states that peyote use is a crime because of its harmful effects on individual and public health. See Smith v. Employment Division, 307 Or. 68, 763 P.2d 146, 148 (1988); Whitehorn v. State, 561 P.2d 539 (Okla. 1977); State v. Wittingham, 504 P.2d 950 (Ariz. Ct. App. 1973), cert. denied, 417 U.S. 946 (1974); People v. Woody, 61 Cal. 2d 889, 40 Cal. Rptr. 69, 394 P.2d 813 (1964). See generally L. Tribe, American Constitutional Law 1268-70 (2d ed. 1988).

Respectfully submitted,



Steven J. Routh  
Court Appointed Amicus Curiae

cc: Curtis E. Hall  
United States Attorney

Carl E. Olsen  
Petitioner/Appellant