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House of Representatives

State of Iowa
Eighty-First General Assembly
STATEHOUSE
Des Moines, Iowa 50319

COMMITTEES
Economic Growth
Environmental Protection
Local Government

July 19, 2006

Attorney General Tom Miller
Hoover State Office Building
Des Moines, IA 50319

Dear Tom,

I'm writing on behalf of a constituent, Carl Olsen, who contacted me requesting an Attorney General's opinion on matters related to the religious use of marijuana. I am not personally familiar with the court cases and federal law cited, but I presume your office would be capable of responding to his question. Thank you and please consult the attached document from Mr. Olsen.

Sincerely,

A handwritten signature in blue ink that reads "Ed Fallon". The signature is stylized with a large, sweeping initial "E".

Ed Fallon for Governor

✓ Cc: Carl Olsen

Request for Attorney General Opinion

In light of several recent federal statutes and the Supreme Court decisions interpreting them, please answer the following question. What are the specific threats to public health and safety that are caused by members of the Ethiopian Zion Coptic Church growing, distributing or using marijuana?

In April of 1990 the U.S. Supreme Court held that the State of Oregon could deny unemployment compensation to two Native Americans who had been fired for the sacramental use of peyote, *Employment Div. v. Smith*, 494 U.S. 872; 110 S. Ct. 1595; 108 L. Ed. 2d 876 (April 17, 1990) (hereinafter *Smith*) and denied certiorari to Carl Eric Olsen, an Ethiopian Zion Coptic priest appealing the denial of a DEA exemption for the sacramental use of marijuana, *Olsen v. Drug Enforcement Admin.*, 495 U.S. 906; 110 S. Ct. 1926; 109 L. Ed. 2d 290 (April 23, 1990) (hereinafter *Olsen*). The Supreme Court's holding did not change the fact that Congress and the Drug Enforcement Administration ("DEA"), have accommodated the religious practices of the Native American Church ("NAC"), and have accorded it a preferential position by establishing, pursuant to regulation, its right to religious drug use over and against all other churches. 21 C.F.R. 1307.31

In 1993, in response to the holding in *Smith*, Congress enacted the *Religious Freedom Restoration Act*, 42 U.S.C. sec. 2000bb (hereinafter *RFRA*). Section 2(a)(4) of the *RFRA* states, "in *Employment Division v. Smith*, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion." Section 2(b) of the *RFRA* states, "The purposes of this Act are--- (1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and (2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government."

Responding to the *RFRA*, in *City of Boerne v. Flores*, 521 U.S. 507; 117 S. Ct. 2157; 138 L. Ed. 2d 624 (1997) (hereinafter *Boerne*), the Supreme Court ruled that the *RFRA*, as applied to state laws that place incidental burdens on religion, exceeded Congress' power to interpret state protection of fundamental rights.

In response to *Boerne* Congress then enacted the *Religious Land Use and Institutionalized Persons Act* of 2000 (hereinafter *RLUIPA*), Pub. L. 106-274, 42 U.S.C. § 2000cc, et seq., and used federal payments to states under the Commerce Clause to force the states to protect religious exercise to a greater extent than interpreted by the Supreme Court under the *Smith* decision.

In 2005 the Supreme Court ruled that the *RLUIPA* is a valid exercise of congressional power, that it does apply to the states, and that federal payments to states do cause a contractual obligation on the state to perform to standards set in the Congressional / State contract in exchange for federal contributions to state managed programs. See *Cutter v. Wilkinson*, 544 U.S. 709; 125 S. Ct. 2113; 161 L. Ed. 2d 1020 (2005).

In 2006 the Supreme Court ruled that the *RFRA* applies to the federal drug laws, invalidating them where the government cannot prove a threat to public health and safety caused by the religious exercise of a church. See *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 126 S. Ct. 1211; 163 L. Ed. 2d 1017 (2006) (hereinafter *UDV*). The UDV Church imports, receives money for, transports, distributes and uses DMT, a powerful Schedule I hallucinogen.

The Controlled Substances Act of 1970 gives the Attorney General the power to reschedule a controlled substance if that substance does not meet the criteria for the schedule to which it has been assigned. 21 U.S.C. § 811(a). The Attorney General has delegated this authority to the Administrator of the Drug Enforcement Administration (hereinafter *DEA*). See 28 C.F.R. § 0.100(b). In 1988, the *DEA* Administrative Law Judge ruled that the danger of consuming massive amounts of marijuana was less than the danger of eating 10 raw potatoes or taking a bottle of aspirin. Furthermore, the Federal *DEA* Administrative Law Judge ruled, “marijuana, in its natural form, is one of the safest therapeutically active substances known to man. *In The Matter Of Marijuana Rescheduling Petition*, *DEA* Docket 86-22, Sept. 6, 1988, at pages 58-59. According to the federal drug law, it is the *DEA* Administrative Law Judge who determines the actual danger caused by medical use of a drug

The *DEA* ruling on threat to public health and safety reached by the *DEA* Administrative Law Judge on the question of threat to public health and safety is authoritative as to the religious act of growing marijuana. Because of the federal *DEA* Administrative Law Judge decision on the matter of Rescheduling Marijuana for medical use are legally controlling decision of the Government's own expert witness. Because of the *DEA* marijuana decision, the proven non-toxicity establishes that there is, and cannot be, any threat to public health and safety caused by growing and using the non-toxic plant marijuana. *DEA* Judge Frances Young stated that despite near universal use amongst all societies prior to US prohibition in 1937 there is no record of a single injury or death that has ever been caused by putting marijuana into a human body in over 5,000 years of recorded history.

See: <http://www.ethiopianzioncopticchurch.org/Documents/young.pdf>

In 2006 the Supreme Court ruled that states have the authority to set the standard for medical practice as defined by federal drug statutes. *Gonzales v. Oregon*, 126 S. Ct. 904; 163 L. Ed. 2d 748 (2006). Iowa has determined that marijuana has medical use. Iowa Code Chapter 204. Two of five people currently receiving marijuana from the federal government live here in Iowa. These two patients have been receiving 300 rolled marijuana cigarettes each month from the federal government for the past 15 years. Letters from the Iowa Department of General Services say that these two patients are approved by the Iowa Board of Pharmacy Examiners to use and possess marijuana on state property. If medical users can use marijuana in public without any threat to public health or safety, religious use of marijuana is entitled to the same respect.

See:

http://www.cannabischurches.net/index.php?option=com_content&task=view&id=21&Itemid=2

http://www.cannabischurches.net/index.php?option=com_content&task=view&id=22&Itemid=2

Note that under *UDV*, blanket appeals to general observations made by Congress as to threats posed by drug abuse are not adequate to prove the threat to public health and safety. So, again, specifically, what is the threat to public health and safety caused by marijuana use or possession by members of the Ethiopian Zion Coptic Church?