

No. 08-74457

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**Marc Perkel / Church of Reality,**  
*Petitioners,*

v.

**U.S. Department of Justice, Drug Enforcement Administration**  
*Respondent.*

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Petition for Review  
From the Drug Enforcement Administration

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**BRIEF FOR THE PETITIONER**

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Marc Perkel, Pro Se  
754 Glenview Dr. #201  
San Bruno CA 94066  
415-987-6272  
marc@churchofreality.org

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## **II. STATEMENT REGARDING ORAL ARGUMENT**

Petitioner respectfully request oral argument. The issues presented here are unique and interesting enough that the court is going to want to talk to both parties in person.

## **III. STATEMENT OF RELATED CASES**

No related cases are pending and there have been no previous appeals concerning this matter.

## **IV. JURISDICTIONAL STATEMENT**

Marc Perkel individually and in his role as the founder of and in behalf of the Church of Reality (CoR) hereby petitions the court for review of the final decision of the United States Drug Enforcement Agency (DEA) denying the church's petition for religious exemption from the Controlled Substances Act (CSA), 21 U.S.C. §§ 801 *et seq.*, under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb *et seq.*, for the religious use of marijuana by church members. This court has jurisdiction under 21 U.S.C. § 877.

On March 24th 2006 petitioner Marc Perkel submitted a request of the DEA Division of Diversion Control for an exemption for the religious use of marijuana. On October 1st 2008 the DEA entered a final decision denying petitioner's request

for exemption. The denial was received by the petitioner by certified mail on October 10th 2008. Petitioner timely filed a Petition for Review in this court on October 17th 2008.

## **V. STATEMENT OF THE CASE**

In 1990 the Supreme Court decided the case of *Employment Division v. Smith*, 494 U.S. 872 (1990), which reduced the standard for religious rights from the “compelling government interest” test to “laws of general applicability”. Congress, not happy with the decision, passed the Religious Freedom Restoration Act (RFRA) restoring the strict scrutiny standard as established in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972). RFRA was first tested in the context of the Controlled Substances Act (CSA) in 2006 in the case of *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006) (The UDV case). Based on RFRA the Supreme Court reestablished strict scrutiny, ruling that UDV had a religious right to use Hoasca tea, which contains a psychoactive drug DMT. DMT, like marijuana, is a Schedule I substance under the Controlled Substances Act (CSA).

On March 24th 2006 Marc Perkel, founder of the Church of Reality (CoR), a religion established in 1998 and based upon the belief that the pursuit of the understanding of reality by humans has value, applied for an exemption under CSA for the religious use of marijuana to the DEA’s Division of Diversion Control.

After a number of exchanges of letters on October 1st 2008, DEA denied petitioners' request for exemption stating a number of reasons and also stating that their decision was a final determination for the purposes of 21 U.S.C § 887.

When the Supreme Court made the UDV decision the DEA was burdened with the task of figuring out how to implement it. In the DEA's decision they note that this decision for the CoR is the first DEA response for an exemption under RFRA since the UDV case. Congress has not implemented any laws to guide DEA and religions in how to apply for and process petitions for exemptions. It is our contention that this case raises issues of importance and asks this court to help establish guidelines and procedures for both DEA and religions who apply for an exemption.

To establish a prima facie case under RFRA, as decided under the new UDV standard, a claimant must demonstrate that the application of the CSA's prohibitions on the use of a controlled substance would: (1) substantially burden, (2) religious exercise, (3) based on a sincerely held belief. If the claimant meets these tests, the burden shifts to the government to demonstrate that it has a compelling interest and that interest uses the least restrictive means as set forth in *Sherbert v. Verner*, 374 U. S. 398 (1963), and *Wisconsin v. Yoder*, 406 U. S. 205 (1972). 42 U.S.C. §2000bb(b)(1).

The right to assert a religious claim also requires the claimant to have religion and not just a personal philosophy. *Wisconsin v. Yoder*, 406 U. S. 205, 215-216 (1972).

## **VI. ISSUES PRESENTED FOR REVIEW**

When Congress passed RFRA to restore strict scrutiny and when the Supreme Court upheld RFRA in the UDV case it fell upon DEA to figure out how to determine how to implement the law in the real world without the benefit of any guidance from Congress or the courts. DEA has the burden of trying to figure out the question of what defines a religion, what is a sincere religious practice, and balance that against their duties to protect the population from drug abuse.

This is the first case that DEA has decided since the UDV decision. It is clear to the petitioner, and DEA would probably agree, that DEA could use some judicial guidance as to how to proceed, not just in this case but also future cases that come before DEA. The petitioner feels his application was not only wrongly decided, but that the reason it was wrongly decided in part is that no one has established any guidelines or procedures for DEA to follow in making a decision. Because of the lack of procedures and guidelines the Petitioner couldn't determine what exactly to ask for and DEA probably doesn't know what it can grant or how to grant it. RFRA grants exemption to law based on sincere religious practice but

no where in statute or case law is religion defined and the DEA as an administrative agency can not be the institution that makes that definition.

The Petitioner contends that DEA has been given an impossible task and that both the CoR and the DEA as well as future petitioners need the guidance of this court to determine how to implement RFRA under UDV.

The Petitioner asks this court to overturn DEA's denial and to grant an exemption for the CoR to use marijuana and to state the terms and conditions for such use.

## **VII. STATEMENT OF THE FACTS**

### **A. The DEA decision**

The DEA denies the CoR's request for exemption for two reasons. (1) that the CoR cannot demonstrate that enforcement of the CSA against it substantially burdens its exercise of religion, and (2) that enforcement of the CSA is the least restrictive means of furthering a compelling government interest.

In its decision the DEA asserts that the CoR has no religious rights because it is not a religion but rather a philosophy. DEA asserts that only religions have religious rights under the First Amendment, philosophies do not. DEA further argues that even if the CoR has a First Amendment claim, that the religious belief in question (regarding the use of marijuana) is not sincerely held. DEA claims that



the use of marijuana by the CoR is an ad hoc claim that is based on some alternate goal of supporting a drug lifestyle or for political, social, and/or other non-religious purposes. DEA then argues that the enforcement of the CSA against the CoR is not a substantial burden, arguing essentially that the CoR can get along just fine without the use of marijuana.

DEA goes on to argue that even if the above tests were met that the exemption should still be denied because the exemption for the CoR would undermine the government's compelling interest to enforce the law and that enforcement of the CSA against the CoR is the least restrictive means of fulfilling that compelling interest.

### **B. The Church of Reality's Request for Exemption**

The CoR requested that the DEA provide an exemption for the religious use of marijuana. The request specifies three specific uses of marijuana by CoR members: (1) Marijuana inspires creative thinking and is used to develop CoR doctrine; (2) Under the doctrine of "Self Ownership" CoR members have control of their lives in order to write their "Life Story" (This gives CoR members a religious right to make their own decisions as to the use of drugs for visionary or medical reasons); and (3) Under the "Sacred Principle of Compassion" members of the CoR have a religious right to give medicine to those who need medicine, even in spite of federal laws, as a religious act of compassion.

The CoR's request for an exemption does not contemplate the CoR obtaining marijuana, possessing marijuana, or distributing marijuana by the Church itself. Our modest request is that the DEA and the Justice Department recognize a religious exemption for possession of "personal use" quantities of marijuana. We also ask that where there exists an infrastructure for distributing marijuana, such as California medical marijuana clubs, that CoR member be permitted to obtain marijuana through legal distribution channels. We also believe that DEA has some duty to help members the CoR obtain marijuana so CoR members don't have to obtain it illegally.

In its request for exemption the CoR recognizes that marijuana is considered by the DEA to be a dangerous street drug and has therefore narrowly tailored its request for exemption in a manner that respects, but does not agree with, DEA's conclusions that marijuana should be a Schedule 1 drug. The CoR takes the position that if it is granted its exemption that drug related lawlessness would actually be reduced. Or, if there was an increase in illegal marijuana use, that the increase, caused specifically by this exemption, would be negligible, falling far short of the compelling governmental interest test.

### **C. The Church of Reality's Relationship with Marijuana**

The CoR was conceived by founder Marc Perkel in the evening of November 7th 1998. I was smoking a joint and was significantly stoned and

thinking about religion wondering about the role of religion in society and wondering if there was any way to objectively evaluate religions to determine if there was such a thing as a “one true religion”, if that were even possible. What would be the characteristics of such a religion? It occurred to me that such a religion would have to be based on reality. And then the name “Church of Reality” came to mind. And thus the CoR was born.

Although the DEA disputes it, it is an absolute fact that drugs like marijuana, Peyote, Hoasca, DMT, and LSD actually do enhance certain mental abilities allowing the user of these substances to function at a superior level. We use marijuana because marijuana actually does work.

Besides the initial idea for the CoR we use marijuana to come up with ideas for the church doctrine. About 3/4 of the church doctrine is marijuana inspired. We turn marijuana into religious doctrine and marijuana is essential to our development.

The CoR is not a druggy church that advocates a druggy lifestyle. Even though our doctrine was mostly written with the assistance of marijuana, the religion is about reality. Of the 650 web pages of the CoR doctrine, (Our Holy Book is our web site and known as the Kernel), drug references represent less than 1% of church doctrine. Most references to drugs in the kernel are against drug

abuse. Our position on drug use is that drugs should never be abused and used with caution. We are strong advocates of good judgment.

In addition to the visionary qualities of marijuana the CoR recognizes that marijuana does in fact have significant medical benefits despite DEA's determination to the contrary. Generally, the determinations of DEA would be considered authoritative and deference should be given to DEA. But in the case of marijuana the legislatures of over a dozen states and dozens of cities have passed laws in favor of medical marijuana in direct opposition to the authority of the federal government. Marijuana is the most political of any drug, with U.S. Justice Department policy changing from election to election.

We conclude that it is the states and not the federal government that are correct in assessing the medical usefulness and the dangers of marijuana use. We conclude that the DEA's position and the position of Congress are not grounded in reality.

#### **VIII. INTENT OF CONGRESS IN PASSING RFRA**

Congress passed RFRA specifically to allow religions to override federal law in cases where federal law places a substantial burden on a sincere religious practice where there is no compelling government interest in enforcing the law against that group of people. DEA complains that the petitioner mentioned in a

church edict that our religious beliefs trumps federal law, but Congress did in fact give religions that power.

So if Congress passed a law (RFRA) that gives religions some authority over federal law and the Supreme Court in *UDV* upheld that right then DEA can't come before this court and make the same argument it made in *UDV* and lost. If the Pope declared marijuana a sacrament or the Pope declared that Catholics can give marijuana to the sick as an act of compassion then under RFRA Congress has granted them that authority. In this case the petitioner, Marc Perkel, is the religious authority of the CoR. He is to reality what Buddha is to Buddhism, what Muhammad is to Islam, what Jesus is to Christianity. He has this religious authority and he has ruled.

Even though the petitioner even has the right to make Ad Hoc decisions, this is, after all, the Church of Reality. Our religious standards are in fact higher than that of other religions when it comes to logical consistency. Other religions can make up absolutely anything. Our religion values a logical consistency and establishing a basis in reality for making decisions. So besides the fact that the petitioner can legally, as the religious leader, decide anything, he has laid out a logical basis for the CoR's relationship to marijuana for three specific uses. Even if it turns out the CoR is wrong, Congress has given us, through RFRA, the right to be wrong.

**IX. STANDARD OF REVIEW / DE NOVO REVIEW / STRICT  
SCRUTINY**

While the DEA makes a very long general argument about the dangers of marijuana to the general public, DEA fails to make any argument about how such an exemption would apply specifically to the exemption requested by the CoR as required under RFRA. The UDV case states specifically:

RFRA, and the strict scrutiny test it adopted, contemplate an inquiry more focused than the Government's categorical approach. RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person" – the particular claimant whose sincere exercise of religion is being substantially burdened. 42 U.S.C. § 2000bb-1(b). RFRA expressly adopted the compelling interest test "as set forth in *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972)." 42 U.S.C. § 2000bb(b)(1). In each of those cases, this Court looked beyond broadly formulated interests justifying the general applicability of government mandates and scrutinized the asserted harm of granting specific exemptions to particular religious claimants. In *Yoder*, for example, we permitted an exemption for Amish children from a compulsory school attendance law. We recognized that the State had a "paramount" interest in education, but held that "despite its admitted validity in the generality of cases, we must searchingly examine the interests that the State seeks to promote . . . and the impediment to those objectives that would flow from recognizing the claimed Amish exemption." 406 U.S., at 213, 221, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (emphasis added). The Court explained that the State needed "to show with more particularity how its admittedly strong interest . . . would be adversely affected by granting an exemption to the Amish." *Id.*, at 236, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (emphasis added).

***Gonzales v. O Centro***, 546 U.S. at 430-431.

Thus in order to prevail the DEA would have to make an argument that would be focused on the negative differential impact on law enforcement that would be a direct result of our exemption, not an argument based on the legalization of marijuana for the general population. Our position is that if this exemption were granted then Realists who are currently breaking the law would not be breaking the law resulting in a reduction in crime. Since we are not importing, owning, dealing, or distributing significant quantities of marijuana we would not be a significant source of adding additional marijuana to the “street”. Furthermore the CoR’s position on drug use is a healthy position and if the whole of society adopted our drug use guidelines there wouldn’t be a drug abuse problem in America.

While the DEA made an extensive argument about the dangers of marijuana in general they failed to make an argument as to how a compelling government interests is affected as the laws apply specifically to us as required by the strict scrutiny standard.

Although it may be proper for the Court to give deference to the conclusions of DEA’s administrative decision, the CoR asks the Court for de novo review of DEA’s conclusion that the CoR is a philosophy and not a religion. Our position is that unlike drug related issues, DEA has no expertise at determining what is and is

not a religion, not does it have the expertise to determine which individuals or religions can exercise a First Amendment claim under RFRA.

RFRA specifically requires the strict scrutiny standard, and when combined with the bright line barriers of the First Amendment, overrides the Administrative Procedures Act, tilts the scales by default in the direction of the CoR's position, and shifts the burden of proof to the DEA. The CoR doesn't have to prove it is a religion. The DEA has to prove it is not.

#### **A. The DEA's Evaluation Process of our Religion**

In its denial, the DEA complains that the CoR failed to adequately respond to DEA's questions, falsely depicting our responses as incomplete. Our position is that our answers not only fully addressed the questions asked, but we anticipated questions that DEA should have asked and we sent supplemental responses based on those unasked issues that we feel the DEA should have asked. We also invited DEA to call us up on the phone and discuss any issues and provide them with any information they requested. DEA chose not to do that. At no point did anyone for DEA call to ask the founder of our religion a single question. Our position is that DEA sat on our application for two and a half years and finally was forced to issue a determination when the petitioners threatened to come to this court for relief for DEA's refusing to decide our application for exemption in a timely manner. Our legal theory would have been that DEA had constructively denied our request by



refusing to issue a decision and would be blocked by estoppel to deny the exemption.

Our responses to DEA included a link to our web site which contains our “Kernel” which is our core religious document on the Internet that outlines in detail our structure, organization, and belief system. Our kernel is an electronic document consisting at the time of over 500 web pages (now over 650 pages) of material. Our position is that we were more than responsive, but DEA failed to do a proper investigation, and because DEA did not do a proper investigation their evaluation should be stricken from consideration. DEA fabricated their claims and avoided a real examination because they had already predetermined that they would deny our request for an exemption.

Furthermore it is our position that when Congress passed RFRA allowing religions to use illegal drugs and the Supreme Court upheld RFRA in the UDV case, it put the job of implementing that decision on the Diversion Control division of the DEA without any guidelines as to how to evaluate which religions qualify for what drugs. In our case we asked for marijuana which is by far the most politically charged drug of any substance DEA deals with. DEA was charged with making politically sensitive decisions during the Bush administration, which at the time had no reservations about firing justice department employees who made policy decisions that were not in line with the Presidents goals. It is our opinion

that the DEA could not have ruled in our favor under the political conditions that existed at the Department of Justice (DOJ) without risking their careers.

It is our position that because of the highly charged political environment surrounding marijuana, and because of the lack of direction or guidelines from Congress and the Supreme Court, and because this is the first case that DEA has decided since the UDV decision, that this court should make an independent determination de novo and that this court should set guidelines as to how DEA is to process future petitions for exemptions.

## **X. ADDRESSING DEA CRITICISMS OF THE CHURCH OF REALITY**

### **A. DEA Conclusion**

Ultimately DEA concluded that the CoR is not a religion primarily for two reasons. DEA concludes that since we are reality based, and that we embrace technology and science, and that because we don't believe in fictional deities, and that we don't perform weird rituals, and that we don't eat strange food, wear strange clothes, or throw virgins into volcanoes, that we can't be a religion. DEA excludes the possibility that a reality based religion can exist.

DEA essentially espouses the view that reality and science is the opposite of religion and that reality and religion are essentially incompatible. However DEA in a footnote in their decision points out that they "cannot rely solely on established

or recognized religions . . . in determining whether a new and unique set of beliefs warrants inclusion.” See *Church of the Lukumi Babalu Aye v, City of Hialeah*, 113 S. Ct. 2217 (1993)

DEA also accuses the CoR of being a religious fabrication that was invented for the purpose of making a political, medical, social, philosophical, and technological statement and to use religion as an excuse to use illegal drugs.

### **B. Technology Based Religion**

The DEA concludes that the CoR is not a religion because it is based in reality, science, and technology, and is therefore a philosophy. Thus the DEA dismisses the idea that a reality based religion is possible. If the CoR were tossing virgins into volcanoes there wouldn't be a question if the CoR were a religion or not. The issue is, “Does the CoR have to believe in things that aren't real in order to be a religion?” Our position is that the answer is NO.

Reality Based Religion is a new classification of religion based on believing in what is actually real. Although we rely on science as our “Sacred Method”, what we do isn't science. Like other religions we are trying to understand who we are, how we got here, and the role of humanity in the universe. All religions start with axioms that they use to evaluate right from wrong, truth from fiction, and the basis for moral behavior. Because we are the Church of Reality, our axioms are

based on the premise that we accept through choice that the pursuit of the understanding of reality by humans has value.

The Universe, as we understand it, started in what we describe as the “Big Bang”. 13.7 billion years later, we here on this planet have evolved to the point where we are self aware and aware of the Universe and aware of the concept of existence. Since we are the creation of reality, and that we are part of reality, it can be said that reality itself has become aware of its own existence through us. We humans are a portal through which the universe becomes self aware of its own existence. Through us reality itself can choose its future and decide what it is going to evolve into. Reality is our creator, we are the children of reality, and we are trying to understand our creator just like all the other religions. This revelation that the Universe becomes self aware through us is an example of one of many marijuana inspired revelations.

### **C. Edicts**

The DEA criticizes the CoR because we issue edicts in response to current events. DEA accuses us of reacting to the *Gonzales vs. Raich* decision as evidence that we are making up religious doctrine just to get drugs. The DEA fails to realize that responding to current events is the purpose of edicts. Edicts are the voice of the Church. Through edicts we have declared that the war in Iraq was a fraud, that the use of torture is immoral, and that realists have the right to control one’s own

“Life Story” and make decisions regarding reproduction, medical choices, and the manner in which one dies. This is the same as other religions. The Pope has issued edicts against war, persecution and torture as well.

#### **D. The Use of Marijuana**

The implication, however, by the DEA is that the use of marijuana in the CoR is an artificial construct that the CoR has constructed in order to support a lifestyle or political agenda for drug abuse. However it is a documented historical fact that the idea for the Church itself was a marijuana inspired idea. DEA implies that we wanted drugs and therefore created a religion as an excuse to get drugs. But the creation of the CoR predates the UDV decision by almost 7 years. The CoR is a religion about reality, not about drugs. Our doctrine, which is over 650 web pages long, barely mentions marijuana, except for that it is a tool used in the creation of the doctrine.

There are a number of religions that use drugs. In most all cases the drugs used comes from a classification of Schedule 1 substances known as hallucinogens including Peyote, marijuana, Hashes, DMT, and LSD, as opposed to drugs like Cocaine, Valium, Opium, Crack, and Meth. The reason religions ask for hallucinogens is because they actually work. These drugs alter the brain in a way that gives the user superior mental abilities in limited areas for a limited time. DEA disagrees with me on this point and they have the authority to enforce their

viewpoint under law, but it doesn't mean they are correct. The CoR doesn't advocate drug abuse. We advocate responsible drug use and the application of good judgment.

### **E. Good Judgment**

In several places in its decision DEA criticizes the CoR indicating that the only limitation on marijuana use is "good judgment". What DEA fails to realize though is that in the CoR good judgment is a religious requirement. In the CoR we have a religious concept called "Self Ownership", that we are responsible for our own lives and our own decisions and that our personal choices define who we are and govern our "Life Story". A person's "Story" is everything about who they are and what choices they make. It is how you live your life, and when you die it represents some level of immortality in that your life story is left behind to live as part of the "Tree of Knowledge". Thus, there is a difference between secular good judgment and religious good judgment and in our religion good judgment is a far higher standard.

### **F. Our position on Marijuana vs. DEA**

By definition one would assume that the DEA is an expert in the field of drugs. That is after all their mission. However, in the case of marijuana, the CoR takes the position that DEA is just plain dead wrong.

The CoR is generally a law abiding religion. But we are also a religion of thinkers. Thinking is in fact a religious requirement. Although government generally gets it right it, sometimes government gets it wrong. In those cases the acts of government interfere with our religious rights to the extent that we have to seek exemptions from law.

Since we are a reality based religion our decisions are carefully considered. We do not support arbitrary or ad hoc positions. Although DEA has determined marijuana to be a dangerous drug, the legislatures of 12 states have passed laws contradicting DEAs position. Our analysis indicates that the positions of the states are in fact correct. In the case of *Raich v. Gonzales*, 500 F.3d 850, 866 (9<sup>th</sup> Cir. 2007), this court stated:

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

We in the CoR agree with this position. We are not as slow as the DEA is to come to the same conclusion that is court has wisely decided. The Supreme Court

however found no fundamental right to life and health but did find a fundamental right to the exercise of religion. 500 F.3d at 866 n.16. In this case we are not asking for medical marijuana for medical reasons, but rather religious reasons. Our religious use of marijuana under RFRA falls into three classifications.

1. The use of marijuana for creative thinking.
2. The use of marijuana to preserve one's life, health and control one's Life Story under the religious right to Self Ownership and the Principle of Personal Responsibility.
3. The right to give marijuana to the sick and dying under our Sacred Principle of Compassion.

It is a fact that not only was the CoR born of a marijuana inspired vision but that most of the doctrine of the CoR is either written under the influence of marijuana or written later from ideas generated while under the influence of marijuana. The fact that we have developed more than 650 web pages of religious doctrine in merely 10 years is a direct result of the use of marijuana. Without marijuana our progress would be far slower. Clearly the choice of giving up progress or risk going to jail is a substantial burden on our religious freedoms.

Our religion places a higher than average value on personal freedom, personal choice, and personal responsibility than most other religions. Our position is, "My Life, My Choice", even if it's the wrong choice, it's our wrong



choice to make. We value having self control over our own destiny so that we control our “Life Story”. Thus if we are ill we have a greater say so in making choices, even if those choices involve risk and death. These choices aren’t absolute. We would not support the choice of a teenager to commit suicide because of a boyfriend. We would however support the choice of a cancer patient to use marijuana to suppress nausea so that they don’t starve to death from vomiting. If a terminal patient wants to try some experimental unlicensed drug or procedure to attempt to stay alive, that is a reasonable course of action. Even if the result is death, the individual’s right to choose the manner of one’s own death is an important religious value. Even in death the living have a benefit in that something might be learned by the living, or that when one’s time comes that we at least are in control of our destiny and our choices are respected and protected from unreasonable government control or the influence of values of other religions that laws might be based upon.

Every religion recognizes compassion for the sick, dying, and injured. The concept from Christianity of the “Good Samaritan” is often memorialized into law. The CoR is no different. We have our Sacred Principle of Compassion which creates a religious value system that puts compassion over obeying laws that fail common sense tests. Thus the giving of marijuana is not a medical act but rather a religious act of compassion that we believe falls under RFRA.

## **XI.COR SATISFIES INDICIA/GUIDELINES FOR RELIGION**

### **A. Understanding what the Church of Reality is**

The Church of Reality started with the name. The religion is defined by the name. In its simplest form we believe in everything that is real. But since no one knows what is real, the CoR is really a religious commitment to the pursuit of the understanding of reality as it really is.

All religions are established based on a paradigm for experiencing life and understanding the universe around us and to determine how we connect to that universe. Who are we? Why are we here? What is our purpose in life? What is my role? What has meaning? Where does right and wrong come from?

Religions provide a means of understanding. They provide a way of evaluating truth. They provide a personal religious identity in society. Many religions turn to deities. Some believe in the one true God. Some believe in many gods. Some reference great founders who were divinely inspired, seers, prophets, wise men, or oracles. People want to know. People want answers. Religion provides those answers.

The difference between religions is the authority they rely on for the truth. Some religions rely on the Bible. Some rely on the Koran. We are committed to reality. Our holy book is the Kernel. It is stored on the Internet at the web site for the CoR ([churchofreality.org](http://churchofreality.org)).

Reality isn't just science to us. Reality is sacred. Reality is the life story of the universe we live in. We are the children of reality and through us reality contemplates itself. Our purpose for existence is to contemplate, to understand everything, to understand everything the way it really is. Of all the religious truths reality is the greatest of them all. Reality encompasses all truths and everything that is actually real.

Humans understand reality collectively. An individual does not build and launch a space telescope from their back yard. But through the eye of the space telescopes all of humanity stares back into spacetime to the moment the universe was created. Because we understand collectively the human race must evolve forward in order for our understanding of the universe to increase, which leads to the first of the Sacred Principles of the CoR, the Principle of Positive Evolution.

Because humanity must evolve forward the future is our Sacred Direction. We are the caretakers of tomorrow. And the way we manifest our stewardship of the future is to make the right decision in the here and now, which we refer to as the "Sacred Moment". The sum of all sacred moments constitutes our "Life Story". Our Life Story is who we are individually. It is our choices, our identity, and our place in reality.

Because we understand reality collectively we refer to our collective knowledge as the "Tree of Knowledge", the sum total of human understanding.

The Tree of Knowledge is much like case law. It is an accumulation of the wisdom of the ages. When we are born we are taught how to function in society. We are taught language so that we become part of society. It is our link to the Tree of Knowledge. Our mission in life as Realists is to grow the tree.

The Church of Reality gives us a religious identity. We are Realists. Being a Realist says we put reality first. Since we are an evolved species we realize that humanity has to get it right or we will become extinct. If that happens then all knowledge is lost and we are forgotten. However if we continue to evolve and we dedicate our life story to growing the Tree then we leave part of ourselves in the Tree and part of what we are becomes immortal. Einstein is still with us because relativity is still with us. Every time we drive a car we are indebted to the guy who invented the wheel.

Realism defines who we are as a people. It is an expression of our value system. One of the issues in this case is if the CoR is a religion or a philosophy. What is the difference? I think the difference is that a philosophy is what you think. It's an opinion. A religion is who you are. A philosophy is a conclusion. A religion is the method that leads to the conclusion. Religion isn't the answer, it is the value system used for which the answer is derived. If the Church of Reality were just a belief in scientific fact it would possibly be a philosophy. But one of

the things that make the CoR a religion is that the pursuit of the understanding of reality and positive evolution defines who we are individually.

The DEA lists a number of things the CoR lacks that other religions have and claims we lack key indicia of religions. And because we are a young religion we do lack some features in the test developed in *United States v. Meyers*, 95 F.3d 1475 (10<sup>th</sup> Cir. 1996). However we have religious characteristics that are new and unique to us. We have taken religion to levels that no other religion has dreamed of. For example, no other religion recognizes the sum total of human understanding as something that we regard as holy. No other religion sees the future from the perspective of evolution and mandates using good judgment in order to ensure our survival. We have the concept of our personal life story and how our life story is part of the story of humanity, part of the “Tree of Life” which is our evolutionary history and part of the story of the universe.

We are the first “Monorealistic” religion. We believe in the one true reality that includes all other realities that are actually real. Some religions pray. Some meditate. We contemplate. We are a religion of thinkers and we put thinking first. We value curiosity. We identify as explorers rather than followers. Of all the religious choices out there, shouldn’t reality be one of them?

We evangelize reality. One of our sacred missions is to be a beacon of the truth. We believe that humanity would be better off if people put reality first. So

we want people to think about reality, to contemplate reality, to make reality part of their belief system. In our religion whenever two people discuss reality, we call it communion. And I want the Court to know that reality changed my life, and it can change your life too!

Some religions envision the future as the world coming to an end (Armageddon) and that there are next worlds where people live either in Heaven or Hell (reward or punishment) or are reincarnated into a new life based on their actions in this life (Karma).

Our world view is that this life is important and that we are to humanity what cells are to an individual. The cells perform a specific role and they die off but the individual lives on. In the same way we, are the cells of humanity and even though we as individuals die, humanity lives on. None of us knows how long humanity will last. Will we evolve forever, or will we become extinct? One of our religious missions is to ensure that we survive and continue to evolve in a positive direction. We see extinction as punishment for ignoring reality. We see that only by embracing reality and using reality to guide our decisions that Humanity can achieve immortality.

Humanity has evolved technology that both serves and threatens us depending on how we as a society choose to use our technology. Nuclear energy can be used to generate electricity or to destroy cities. We are on the verge of

learning how to create life. We will soon be able to alter our DNA to get rid of genetic imperfections or to evolve superhuman capabilities. We could clone people if we chose to do so. We will be able to develop self replicating microscopic robots that live in our bodies to maintain our health, or to enslave us. The outcome will depend on the choices that we as a society make and we will either reap the benefits or suffer the consequences depending on what we choose, or what our values are behind our choices.

We Realists evangelize reality because we believe that the survival of humanity is at stake and that embracing reality, as opposed to other holy books, deities, seers, prophets, or oracles, is the best way to make the important choices before us. We believe that in the world of religious ideas that Reality should be one of the religious choices.

We see the world in terms of evolution. We see all religions as evolving and interacting with the Tree of Knowledge. We believe that the name of our church, the Church of Reality, sends a message that we call the Sacred Challenge. The Sacred Challenge states our claim on reality and causes other religions to think, “Who are these people who claim Reality as theirs? By what authority do they speak?” It puts Reality on the religious table and it makes Reality a religious issue. Our existence is a testament to the importance of Reality. It sends the Sacred Message causing people to think about Reality and be real in the Sacred Moment.

Our goal, as Realists, is to affect the evolution of all other religions and non-religions so that in the future the respect and importance of Reality will become more dominant than it is today.

### **B. The Church of Reality's Standing in the World Community**

The Church of Reality is a pioneer in establishing a new breed of religious doctrine based on the concept of establishing reality as the standard for religious belief. We are a religion whose disciples are focused on contemplation rather than worship and prayer.

We have established a reality based vocabulary introducing new concepts like the "Reality based Community"; a word our church coined and is now in common use.

The Church of Reality is a member of the Non-Commercial User Constituency of ICANN (Internet Corporation for Assigning Names and Numbers). ICANN is an international organization and is responsible for controlling domain names on the Internet and mapping them to IP addresses. The CoR is part of the religious constituency giving voice to religious interests on Internet policy.

On March 31<sup>st</sup> 2009 the Church of Reality was awarded a registered trademark (service mark) by the United States Patent and Trademark Office on the



word REALITY for “Counseling in Religious and Spiritual Matters” in Class 45 (U.S. CLS. 100 and 101). Registration number 3,598,515.

The Church of Reality has a 501(c)3 IRS not for profit organization tax status granted in October of 2005.

### **C. Ultimate Ideas**

The DEA concludes that the CoR fails to meet the religious test because the CoR does not deal with “Ultimate Ideas”. The CoR is about the exploration of reality itself which includes everything. Reality is the ultimate “ultimate idea”. Reality includes everything that is real. There is no greater set than reality. We are a monorealistic religion meaning that our definition of reality includes all realities that actually exist whether tangible or not. This would include all spiritual realms and afterlives that actually exist. We also believe in all deities that other religions believe in that are actually real. Thus unless DEA is arguing that to be a religion we have to believe in things that are not real, that would be beyond the scope of this court to impose. If this court were to rule that in order to be a religion that it has to include the belief in things that aren’t real then other religion would have to object. That would be equivalent to this court deciding God doesn’t exist.

#### **D. Metaphysical Beliefs**

The DEA objects to the lack of metaphysical beliefs. If the metaphysical belief is real then we do believe in it. If the metaphysical belief is not real, then we don't believe in it. The word metaphysical has different meanings in different contexts. In some contexts the word could indicate something outside of reality, which to us would mean not real.

#### **E. Comprehensive Moral and Ethical Systems**

DEA complains that the CoR lacks comprehensive moral and ethical systems. The CoR has the most detailed moral and ethical system of any religion on the planet. Not only do we have a detailed set of values, but we have a logically consistent method of determining new values as the circumstances arise.

DEA really seems to be complaining that our values don't come from a supernatural source, a God who inspired the writing of ancient holy books. However it is beyond the scope of the government to consider where our values come from. All that matters is that we do have them and we have plenty enough to meet the *Meyers* test.

#### **F. The Church of Reality and the IRS**

The DEA goes on to accuse the CoR of artificially constructing its values in order to obtain an IRS 501(c)(3) tax exemption. This is actually partially true, but

presented in a false light. In 2003 the CoR was only five years into its development. When we got the IRS forms the IRS asked interesting questions that at the time we didn't have what we considered to be good answers. It was apparent that the IRS, like the courts, felt that a religion should have some answer to those kinds of questions. And we agree with that. Thus the IRS inspired us to develop the Sacred Principles, and it was then that our religious doctrine really began to crystallize. We give the IRS credit for the religious inspiration because they helped us make a major evolutionary advancement in the development of our Kernel.

### **G. Structural Characteristics of Religions**

DEA also complains that we lack in structural characteristics of religions. We are a young religion and young religions don't have the infrastructure of the older religions. So without going into a lot of detail, we are just going to concede the point. However the CoR is a religion that was born after the invention of the Internet. The Internet changed the nature of the world and it is likely that most all religions from here on out will start on the web. The Internet has created a new social infrastructure that allows people to form societies without the need or limitation of physical location where people meet in at a synchronous time/space coordinate. Our church allows us to commune with each other asynchronously and we are not limited by physical location.

As we explained to DEA, we don't throw virgins into volcanoes. If we did throw virgins into volcanoes, DEA wouldn't question if we were a religion. We contend that it is beyond the scope of this court to make such requirements of a religion.

### **H. Lack of Supernaturalism**

DEA complains that the CoR has a complete lack of supernaturalism. Yet it took the influence of marijuana and LSD to give birth to the CoR. Since DEA doesn't believe the drugs can enhance mental abilities, then perhaps the fact that this idea came from a stoned mind constitutes a supernatural event.

### **I. Holidays**

As to holidays, yes we do steal and repurpose holidays from other religions. But that's a common religious practice. Christmas was a rip off of the Pagan holiday Yule. The fact that we're stealing holidays should count in our favor.

### **J. Evolving Doctrine – Important Writings**

DEA is also troubled that our doctrine is evolving. All religions are evolving. Most resist it. We embrace it. Evolution is one of our core principles. In order to be the CoR, if we find out we are wrong, we are committed to change. But because it is evolving does not make it not an important writing. Our position

is that the more it evolves the more important it becomes. It's the nature of our religion.

### **K. Young Religion Issues**

The landmark case of *United States v. Meyers*, 95 F.3d 1475 (10<sup>th</sup> Cir. 1996), the court outlines a number of indicia used by courts to distinguish a religion for a non-religion. Because the Church of reality is a 10 year old religion, a number of these indicia do not apply to us. We are a religion that is still in our early stages and we are organized using technology that didn't exist when most other religions started, or even back when the *Meyers* case was decided. Even as late as 1996 very few people were on the Internet and many of the courts didn't even know the Internet existed, let alone as a possible place where a religious infrastructure can exist.

Our religion would be like Buddhism might have been 10 years after The Buddha sat under the Bodhi tree and achieved Nirvana. 2500 years later it is clear that Buddhism is a religion. But what test would this court have used 2490 years ago to come to the same conclusion?

We have gathering places but we do not yet have physical gathering places. Some day we will, but not yet. We gather online where people from all over the world can meet together without having to be in the same location at the same time. And together we discuss reality (communion) and we contemplate the

universe we exist in. But because we are young, we lack an intricate structure of clergy, colleges, monks, and deacons. We don't have lots of real estate, money, or building where we meet weekly. Likewise we don't have hymns, rituals, or long held traditions.

We are still in the early stages of development. We are focusing on our doctrine and evangelizing reality. To that end the CoR has developed over 650 web pages of detailed doctrine that actually has one of the most comprehensive foundations of any religion on the planet.

#### **L. Secular Beliefs**

Secular beliefs are beliefs that are held in common by society in general and are considered to be religiously neutral. Beliefs such as acts of murder are considered universally wrong by all religions and non-religious alike. In the secular world the belief in reality and the belief in deities are considered to be equal. A religion that would be an example of having purely secular beliefs that is still a religion is Unitarian Universalism. In that religion they choose to be a religion without a creed because they want to be universally welcoming to all people.

The CoR is not secular in that our religion requires a strong commitment to putting reality first, accepting what is real, and rejecting what is not real. Thus we are not neutral when it comes to things like the belief in deities. In our religion the

deity has to actually exist, in the secular world it does not. Although like other religions a large part of our doctrine intersects the secular world, the reality requirement makes the CoR clearly not secular.

## **XII. WHO CAN ASSERT A RELIGIOUS RIGHTS CLAIM?**

DEA relies on *United States v. Meyers*, 95 F.3d 1475, 1482-84 (10th Cir. 1996), with its lists of indicia as to what is a religion. However there are Supreme Court cases that expand the rights of individuals to assert a religious claim even if the individual is not religious. Even an Atheist or person with no religion can assert a First Amendment religious rights claim.

In *Welsh v. United States*, 398 U.S. 333 (1970), and *United States V. Seeger*, 380 U.S. 163 (1965), the court was faced with the decision of extending conscientious objector exemptions to individuals who were not members of a religion. In both cases the court held that even though they were not members of a religion, they could still assert a religious right.

Noting the “vast panoply of beliefs” prevalent in our country, the Court construed the congressional intent as being in “keeping with its long-established policy of not picking and choosing among religious beliefs,” *id.*, at 175, and accordingly interpreted “the meaning of religious training and belief so as to embrace all religions . . . .”

*Welsh*, 398 U.S. at 338 (citing *Seeger*, 380 U.S. at 165).

The court went on to establish a test as to what qualifies as a religious rights assertion:

In resolving the question whether Seeger and the other registrants in that case qualified for the exemption, the Court stated that “[the] task is to decide whether the beliefs professed by a registrant are sincerely held and whether they are, in his own scheme of things, religious.” 380 U.S., at 185. (Emphasis added.) The reference to the registrant’s “own scheme of things” was intended to indicate that the central consideration in determining whether the registrant’s beliefs are religious is whether these beliefs play the role of a religion and function as a religion in the registrant’s life. The Court’s principal statement of its test for determining whether a conscientious objector’s beliefs are religious within the meaning of § 6 (j) was as follows:

“The test might be stated in these words: A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition.” 380 U.S., at 176.

*Welsh*, 398 U.S. at 339.

Welsh, an individual Atheist asserted his First Amendment religious rights even without having a religion. So we contend that even if the DEAs assertion that the CoR fails the *Meyers* test that we still have a RFRA right under the *Seeger/Welsh* test.

The U.S. Supreme Court recently applied *Seeger* as the standard under 42 U.S.C. § 2000cc-5(7)(A) for judging sincerity and burden on religion in *Cutter v. Wilkinson*, 544 U.S. 709, 725 n.13 (2005) (“The ‘truth’ of a belief is not open to question”; rather, the question is whether the objector's beliefs are “truly held.”). RFRA incorporates 42 U.S.C. § 2000cc-5(7)(A) by reference in 42 U.S.C. § 2000bb-2(4) (“the term ‘exercise of religion’ means religious exercise, as defined



in section 8 of the Religious Land Use and Institutionalized Persons Act of 2000 [42 USCS § 2000cc-5]”).

### **XIII. SUBSTANTIAL BURDEN**

To establish a prima facie case under RFRA the CoR must show that the DEA’s restrictions impose a substantial burden on the exercise of a sincerely held religious practice.

Under federal law mere possession of marijuana is a felony punishable by time in prison. Thus, if members of the CoR had to go to prison to practice their religion, that would be a substantial burden. The question is, is the use of marijuana substantial, rather than inconsequential, in the CoR?

#### **A. History**

As stated previously the CoR was a marijuana inspired idea. If not for marijuana there would be no Church of Reality. Marijuana is to Realists what the Bodhi Tree, the tree that Buddha sat under where he achieved enlightenment, is to Buddhism. In most all religions the founding events are considered to be very religiously significant. In our case it was the name “Church of Reality” that was revealed and that name because the basis for all CoR doctrine. We are a creation of Reality, and through us Reality comprehends the nature of its own existence.

## **B. Current Marijuana Use by Church of Reality Members**

The Church of Reality uses marijuana for three specific purposes; 1) we use it in contemplation to inspire creating thinking so our religion can evolve, 2) we use it as an act of compassion under the Sacred Principle of Compassion to give to the sick for medical purposes, 3) it is part of our self ownership where we as individuals take control of our life story which includes the choice to use substances for the purpose of self preservation, or to inspire creative thinking.

### **1. Creative Thinking**

As founder of the Church of Reality I still use marijuana as a tool to inspire creative thinking. About 3/4th of the CoR doctrine comes from marijuana inspired ideas. Often members of the CoR meet where we all smoke a few bowls and talk about new ideas to grow the CoR doctrine and the nature of reality itself. The ideas for the CoR doctrine most often come from these meetings. If not for marijuana the CoR would still exist and still progress, but it would do so at a far slower pace. Our position is that marijuana is essential to the development of the Kernel and this constitutes a substantial burden.

### **2. The Sacred Principle of Compassion**

Under federal law we are prohibited from giving medical marijuana to the sick and dying when we know that there is no reality based justification for

denying marijuana to people who need it. Our Sacred Principles include the Sacred Principle of Compassion making it a religious act to, in this case, break the law, in order to give compassionate medical care to those who need it. Our view of the medical benefits of marijuana is that the DEA is just plain dead wrong on the issue and we agree with over a dozen states that passed laws to overturn the DEA's position. Although we recognize that DEA has the authority under federal law to make a determination, even if that determination is dead wrong, we in the CoR answer to a higher authority. We put reality first. Thus if the DEA chooses to ignore reality and leave marijuana as a Schedule 1 drug, under RFRA and UDV the CoR can be exempt because the religious exercise of compassion is essential to our religious beliefs. It would be repugnant to allow someone to suffer because a drug was barred by mere politics.

### **3. Self Ownership / Life Story**

We also have the concept of "Self Ownership" and that one's life is one's "Life Story" and we place a high value on personal freedom, exercising good judgment, and personal responsibility. Thus it is within our religious rights to exceed certain norms in order to pursue the understanding of reality as it really is, to have a religious right to abortion, and to have doctor assisted suicide to control the time and manner of one's own eventual death, or using a drug to prolong life or ease one's suffering, which like the use of some drugs for reasonable purposes are

considered to be methods for taking control of one's life story. Unlike other religions that put a higher value on the "next life" we Realist believe that this life is all we have and that it is essential to our beliefs that we exercise our choices so that our life story is truly our own.

#### **4. Marijuana is Essential**

If the CoR were denied marijuana we would have to choose between a far slower process of developing our religious doctrine or face criminal sanctions. We would also have to abandon our principles of self ownership and we would have to abandon our Sacred Principle of Compassion. All three of these exercises are integral and indispensable.

#### **C. Why Marijuana and how the CoR relates to other drugs**

Marijuana is not the only drug used by CoR members for religious purposes, but it is the most common. I personally credit LSD as a significant drug that prepared me to be the eventual leader of the CoR. We also assert a religious right to use LSD but we are not asking DEA for an exemption for LSD. We may however assert RFRA as a defense for the use of LSD in a court should someone be arrested for using it and the purpose were of a religious nature.

There is a class of drugs know as psychoactive substances that are non-addictive and are powerful and useful to enhance the mind allowing one to

experience reality more clearly. Examples include marijuana, peyote, Hoasca tea (DMT), LSD, and mescaline. There is a reason that religions ask for this classification of drugs – they actually work.

All drug use has a down side and the CoR's view is that all substances should be used carefully, cautiously, with good judgment, and appropriately. The more dangerous the drug the more cautiously it should be used. Of the above mentioned drugs we feel that marijuana strikes the best balance between effectiveness and safety when it comes to use by the average church member. We agree with DEA that it is important not to put our members or the public in danger because of the side effects of using or abusing a dangerous substance. Thus we have asked DEA for an exemption for marijuana to reflect our conservative position. We are not however waiving any religious right to use other drugs in the future by asking only for marijuana. Our position is that for the above stated reasons that marijuana is our drug of choice and that it is commonly used by Realists and that it is therefore prudent to request an exemption.

#### **XIV. COMPELLING GOVERNMENT INTEREST**

##### **A. DEA has not met its burden**

Under RFRA once the petitioners have established a prima facie claim the burden shifts to the government to prove under the standard of strict scrutiny that it

has a compelling government interest in applying the challenged law specifically to the Church of Reality.

The DEA argues against the use of marijuana in general. This argument is essentially the same as the one rejected in the UDV case where the court stated:

We do not doubt that there may be instances in which a need for uniformity precludes the recognition of exceptions to generally applicable laws under RFRA. But it would have been surprising to find that this was such a case, given the longstanding exemption from the Controlled Substances Act for religious use of peyote, and the fact that the very reason Congress enacted RFRA was to respond to a decision denying a claimed right to sacramental use of a controlled substance. See 42 U.S.C. § 2000bb(a)(4). And in fact the Government has not offered evidence demonstrating that granting the UDV an exemption would cause the kind of administrative harm recognized as a compelling interest in *Lee, Hernandez, and Braunfeld*. The Government failed to convince the District Court at the preliminary injunction hearing that health or diversion concerns provide a compelling interest in banning the UDV's sacramental use of hoasca. It cannot compensate for that failure now with the bold argument that there can be no RFRA exceptions at all to the Controlled Substances Act. See Tr. of Oral Arg. 17 (Deputy Solicitor General statement that exception could not be made even for “rigorously policed” use of “one drop” of substance “once a year”).

*Gonzales v. O Centro*, 546 U.S. at 436-437.

## **B. The Church of Reality is Clean**

To the best of our knowledge no member of the CoR has ever been charged with a drug offense. Many of us smoke marijuana. Some people, including myself have tried LSD, peyote, and mushrooms. So even though many of us are currently breaking the law, no one has been charged or convicted. We are not interested in drug trafficking or dealing in drugs for money. We would prefer being able to

obtain personal use quantities of marijuana legally or to grow small quantities for our own use.

If the DEA is going to claim a compelling government interest then they have to show where members of the CoR have been arrested for drug trafficking or other kinds of drug related offenses so as to rise to the level of compelling. Our argument is that if the CoR were granted an exemption then our uncaught lawbreakers who are unnoticed by DEA would become law abiding citizens and the possibility of crime would be reduced.

### **C. Justice Department stops enforcing Marijuana Laws**

On March 18th 2009 Attorney General Eric Holder announced that the Department of Justice will stop raids on medical marijuana dispensaries. Even though the dispensaries are illegal under federal law the Justice Department has decided not to enforce the law. If the government decides not to enforce the laws prohibiting the States to dispense medical marijuana then how can they now claim a compelling government interest in prohibiting the CoR members from distributing medical marijuana to sick people under our Sacred Principle of Compassion? If the government allows the secular world an exemption to distribute medical marijuana then it can not claim a compelling interest in prohibiting the CoR from doing the same?

No less than 13 states and over a hundred town and municipalities have passed laws and ordinances defying the position of DEA on the dangers of marijuana. DEA has the authority to classify marijuana as a Schedule I drug, even if it does so wrongly. But when it comes to being a compelling government interest, that decision is a separate issue. It is this court, not DEA, that has the authority to determine what rises to the level of compelling. When the DEA's position is considered in the context of the Attorney General's decision not to enforce the marijuana laws, and the legislatures of 13 states and the hundreds of local governments who disagree with DEA, it is hard to conclude that the Strict Scrutiny standard as specified in RFRA and upheld in *UDV* is met.

#### **D. Diversion of Marijuana**

The DEA expresses concern that if the CoR were granted an exemption that it would increase the supply of marijuana on the street, and presumably that this increase would rise to the level of a compelling government interest.

In our application we stated in response to DEA questions that the CoR is not going to import, possess, or redistribute marijuana. It is our intention at this time to obtain small amounts of marijuana from whatever sources are available. Even though the possession of marijuana is illegal, it is not hard to find. Hundreds



of jurisdictions have passed explicit laws and policies making the enforcement of marijuana possession their least important priority.

The CoR has requested of the DEA permission for CoR members to have access to marijuana through legal channels of distribution where legal channels exist. Specifically we gave the example of California marijuana dispensaries. The CoR states to this court and the DEA that we do not prefer having to break laws, whether enforced or not, and asks this court to order the DEA to craft a solution so that CoR members can obtain marijuana without breaking the law.

Our position on the impact of law enforcement is that CoR members who are currently breaking the law would not be breaking the law if we were granted an exemption, thus crime would be reduced. If the CoR had a legal means of obtaining marijuana there is a strong likelihood that some of it would get diverted to people who are not legally entitled to use it. However it is our position that the marijuana that would “leak” from the CoR would displace marijuana that would be obtained from other sources, like Mexican drug cartels, and that the total illegal marijuana consumption would not increase. Or, if there were an increase, the increase would be negligible and would not rise to the level of compelling government interest.

The DEA has the burden to prove to this court that by granting an exemption specifically for the CoR would lead to an increase in crime or drug abuse that

would rise to the level of compelling government interest. DEA has, in their denial, made a number of general arguments about the dangers of marijuana to society. But DEA has made no argument specifically addressing our exemption and thus in our opinion forfeits that claim.

### **E. Church of Reality Membership Issues**

The DEA raises the issue of defining how to distinguish members of the Church of Reality for the purpose of exercising a religious right. Our position is that is beyond the scope of this cause. The issue before this court is whether or not Realist should be granted an exemption under RFRA. If a person is arrested and that person raises a defense that they are a member of the CoR it would be up to them to convince a judge or jury that they are exempt. The CoR could, in theory, issue membership cards to members to help them identify themselves as Realists, but if a Muslim woman wants to assert her right to wear a head scarf in public because of her religion she would not be required to produce a Muslim ID card to assert that right. Membership is an issue, but it is not an issue before this court.

The CoR is however mindful that there will likely be people who falsely claim to be CoR members for the purpose of illegally obtaining marijuana. It is not the intent of the CoR to be used to circumvent existing law. We therefore ask the court for some guidance on this issue. Perhaps this court should order the DEA to develop a constitutional policy to assist the CoR and other future religions in

this manner. The CoR states to this court and the DEA that we are interested in developing a solution.

#### **F. Marijuana sends the wrong message (Publicity and Reputation)**

DEA essentially argues that if the CoR is granted an exemption to use marijuana that it would send the wrong message and as a result more people will be seduced into using marijuana. The CoR concedes that a religious exemption would likely encourage more people to use marijuana but we deny the DEA's implied contention that our exemption would be significant and rise to the level of compelling. Our message about marijuana would be insignificant in relation to the message sent by the dozen states that have passed laws in opposition to the DEA's position or cities that have passed laws making the enforcement of marijuana possession their least important priority. Our exemption is trivial when compared to the number of celebrities who use marijuana or that most every president of the United States and presidential candidates in the last 20 years have smoked marijuana. The DEA's problem with publicity and reputation of marijuana comes from reality itself, not the Church of Reality. Even as compared to legal drugs like Alcohol and Tobacco almost all experts on the subject, with the exception of DEA, consider marijuana to be relatively harmless.

## **G. Least Restrictive Means**

The DEA argues that the denial of the use of marijuana is the least restrictive means of enforcing their compelling government interest. Since marijuana is essential to the CoR, DEA has the obligation to come up with a better solution than to have the CoR do without it. We therefore ask this court to order DEA to come up with a better solution than the denial of our religious rights.

## **XV. ATTACHMENTS**

To support our position that we really are a religion the CoR includes the following attachments so that the Court can make an informed decision de novo as to whether or not it agrees with the DEA that the CoR is not a religion. In addition to these attachments the CoR submits by reference the Kernel, which is our complete web site at <http://www.churchofreality.org>.

1. The Sacred Principles
2. Principle of Compassion
3. Future of Humanity
4. The Sacred Contemplations
5. Why we are different
6. Self Ownership
7. Religion of Reality
8. Realist Culture and Values

9. Getting Started as a Realist

10. Basis of Church doctrine

## **XVI. CONCLUSION**

WHEREFORE, Marc Perkel and the Church of Reality respectfully move this court overturn the final decision of the DEA and to instruct the DEA to immediately issue a religious exemption for the religious use of marijuana as required by the Religious Freedom Restoration Act and to make whatever orders this court deems necessary to implement the exemption.

Since marijuana is currently illegal, and RFRA is an exemption to the laws, and this is the first application for an exemption that the DEA has decided since UDV, the Church of Reality does not know exactly what to ask for. So we ask the court to provide both parties with guidance.

Respectfully submitted,

Marc Perkel  
754 Glenview Dr. #201  
San Bruno CA 94066  
415-987-6272  
marc@churchofreality.org

## **XVII. CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rules of Appellate Procedure 29(d) and 32(a)(7)(C), I certify that this brief is proportionately space with one inch margins on all four corners with a total of 12,660 words.

Marc Perkel  
754 Glenview Dr. #201  
San Bruno CA 94066  
415-987-6272  
marc@churchofreality.org