

No. 08-74457

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

Marc Perkel / Church of Reality,
Petitioners,

v.

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

Petition for Review
From the Drug Enforcement Administration

REPLY BRIEF FOR THE PETITIONER

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I. TABLE OF AUTHORITIES

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II. Argumentative Style of this Brief

In their denial of our request for exemption DEA stated the legal reason for their denial. In our Opening Brief the Church of Reality gave its legal reasons why it is entitled to an exemption. The DEA in its Respondent's Brief largely repeated over and over the same arguments it made in its original denial. In this Reply Brief the Church of Reality will try to present the big picture issues of this case and try to correct mistaken facts and false light assertions made by the DEA in its arguments and try to give this court a big picture of our religious views since our standing as a religion is at issue.

III. Overview of the Issues

It's interesting to note that much of the DEA's argument in their Respondent's Brief looks like an argument for the Church of Reality's position rather than against it. DEA describes the Church of Reality's religious views with few mistakes and with some false light and perhaps some misunderstanding. DEA's misunderstanding are due in part to the fact that they have yet to call me on the phone and have a discussion about the Church of Reality or to do any sort of reality based evaluation to determine if we are or are not a religion.

Notably, the DEA states the Church of Reality members don't meet based on my statements that we don't meet regularly. Although we don't have scheduled

meeting we do meet. We meet on an unscheduled basis in person, by telephone, in online discussion, and through our mailing lists. DEA refers to our brainstorming sessions. That IS our religious meetings.

Furthermore, the Humanists in Palo Alto meet every Sunday morning at a Palo Alto Community Center. Most of the members of this group also identify themselves as Realists and Church of Reality members coexisting with Humanism which has a lot of overlap with the Church of Reality. Humanism isn't formally a religion however many Humanists, especially the Palo Alto group see their group as a religion. But due to the compatibility of Humanism and Realism, Church of Reality members use the Humanist's meetings as an opportunity to get together.

The Church of Reality is a religion in the development phase. Because we are a reality based religion we want to get it right. It would be nice if a deity showed up to hand us some stone tablets but as of yet no deity has showed up to embrace us. One of our religious tests we have for deities is that they have to be observable by non-believers. If such deities exist then they are part of reality and if they are part of reality the Church of Reality will eventually find them.

Alternatively perhaps God exists and God is deliberately concealing himself from us in which case we are still fulfilling God's will by being atheists because God wants us to be atheists. This leaves us with the burden of having to do it ourselves and we want to start out on the right foot.

DEA again fails to accept that “good judgment” in the Church of Reality has a higher meaning than that of the secular world. We take good judgment seriously. Everything we do becomes part of our “life story” and if we fail to use good judgment then our life story will reflect that.

We in the Church of Reality have no evidence that there is any “next world” or “afterlife” and we accept that it is most likely that this is the only existence we have. We therefore choose to focus on making this world the one that is religiously important to use and we have created a values system around the idea that this is all we have and that without good judgment our brief existence would be wasted.

DEA goes on to say that we don’t have the threat of punishment for the exercise of bad judgment because “reality is the only enforcer”. All it shows is that the DEA neither understands nor respects reality because reality is the ultimate enforcer of good judgment. One need only look at the untimely death of Michael Jackson to see that. When one has bad judgment reality might terminate your existence and put an end to your life story. Bad judgment may be the final chapter in his life story because it appears that he died of drug abuse related causes. The Church of Reality takes drug use and abuse seriously and our religion is against abusing any drug whether it is legal or not legal, and that includes the abuse of marijuana.

DEA also complains that the church doesn't suggest dosages or schedules for using marijuana and because of this DEA falsely assumes that we endorse unlimited use of marijuana. This is not the case. The Church of Reality has religious guidelines against drug abuse and using too much marijuana would be drug abuse. That's is why in part our exemption request is for small quantities of marijuana for personal use and why we are not asking DEA for an exemption to import or distribute marijuana. We are not in the drug handling business not do we intend to be. We have made it clear in our request and have narrowly tailored our exemption so that any leaking of marijuana into society will be minimal. The scope of our request is similar to that of marijuana patients in California.

A. DEA evaluation of our Religion

DEA unilaterally declares the Church of Reality is not a religion. DEA can't do that. DEA is charge of drugs, not religions. They have no clergy or philosophers on staff nor have they created any set of guidelines as to how religions are to be evaluated. Therefore DEA's assessment is just a subjective opinion based on nothing at all. DEA concluded that religions are required to worship deities, have scheduled meetings, wear weird clothing, eat strange food, and perform strange rituals in order to meet DEA's unpublished religious test standards. This is in direct violation of the First Amendment which creates a bright line that the

government can't cross in specifying what religions have to believe in order to qualify.

DEA goes on to say, The Church's purported mission of understanding the real world "is extraordinarily vague and does not appear to differentiate the Church's pursuits from that of science or philosophy." Of course we don't differentiate reality from science. Why would we? We are after all the Church of Reality.

What the DEA fails to understand is that the Church of Reality isn't about the doing of science. The Church of Reality is about making science part of our value system. Our religious values and what qualifies us as Realists is that we put science first before faith. Some other religions put faith before science. We have made our religious choice and they have made their religious choice. So does DEA get to say that one can not establish a religion if it is based on putting science ahead of faith. DEA can't do that because the Establishment Clause prohibits government from deciding what religions must believe in.

DEA also creates a false light in describing the 501(c)3 application process. We didn't just make up principles to get tax exempt status. We were inspired by the IRS's questions. The Church of Reality was a far younger religion at the time and the IRS asked questions that were thought provoking. What we believed in was of no consequence to the IRS other than that we should be able to articulate

principles and standards for moral values. Although at the time I had a pretty good idea what our values were I had not yet had to enumerate them and as a religion it's something that I felt we should be able to do. The process of doing so was a very significant event in our development because in writing it down that's when it all really started to connect and that created a logical infrastructure for us not only to have a set of values, but to be able to explain in objective terms the reasoning behind those values.

Granted that filling out an IRS form isn't as religiously sexy as coming down a mountain with stone tablets or talking to a burning bush but sometimes reality works in mysterious ways, and this is one of them. The IRS oddly enough created an inspirational opportunity at a critical stage of our development. It caused a lot of important ideas to come together in a very structured way and helped create a solid intellectual infrastructure that forms the basis for the Kernel.

DEA is presenting our IRS application in a false light saying that we are opportunists who just made up a religion to fill out a form, and similarly we are now making up a religion because we're a bunch of druggies who are now using a loophole to become legal drug dealers. But the Church of Reality has its own life story and we have no history of drug abuse not have any of our members ever been caught dealing drugs. Our story speaks for itself.

Furthermore DEA has not called me on the phone nor interviewed a single member of the Church of Reality. One would think that if the DEA were sincere in their evaluation that if they had an opportunity to pick up the phone and call the founder that they would do so. They could have asked me all the tough questions they wanted to but they chose not to even though they were invited to call several times. This indicates that their evaluation is nothing more than a fabrication for the purpose of denying the Church of Reality an exemption. DEA is representing to this court that our religion is just a fraud for the purpose of getting a federal license to abuse drugs. However the reality is that it is the DEA's evaluation is a fraud and in spite of the will of Congress and the decision of the United States Supreme Court DEA refuses to comply with the law and do a real evaluation of our religion. It borders on fraud upon the court for DEA to deny our religious rights in a First Amendment case where the strict scrutiny standard applies by representing to this court that we failed their evaluation when no evaluation was ever done. DEA's standard for evaluating a religion appears to be if they are asking for marijuana, they are not a religion.

The Church of Reality therefore moves DEA's religious evaluation of the Church of Reality be stricken and that this court make its own evaluation of the Church of Reality. We also recommend that this court establish a process where

religious claims for exemption can be processed in a manner that is consistent with the law and the constitution.

1. Religious Rights are Individual

Religious rights are individual rights. These rights are not dependent on being a member of an organized religion. Even if this court rules that DEA doesn't have to allow the Church of Reality to get an exemption doesn't mean that members of the Church of Reality don't have an individual right to use marijuana. All it means is that we aren't pre-qualified as being exempt. It means that we have to assert our rights individually on a case by case basis. The DEA exemption is more like a group pass, but one does not have to be part of a group to assert an individual religious right, see *Welsh v. United States*, 398 U.S. 333 (1970), and *United States V. Seeger*, 380 U.S. 163 (1965).

Second, DEA asserts that the motive for the formation of the Church of Reality had nothing to do with a sincere desire to create a moral and ethical system using reality based values. DEA makes a bare allegation that we did it all just to get pot based solely on the fact that I, the founder of the Church of Reality, was stoned before the Church of Reality was created. While it is true that the Church of Reality didn't exist before I came up with the idea, all it means is if I have been caught using marijuana before the Church of Reality existed I would have been

breaking the law. It doesn't mean I made up the Church of Reality to skirt the law because, using the DEA's argument, the precedent of *Smith v. Oregon* was still in effect. It wasn't until 2006 in of *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006) (The UDV case) that the Courts upheld a religious exemption for Schedule I drugs. That happened 8 years after the Church of Reality was founded.

2. What is Secular

DEA goes on to declare the moral and ethical systems of the Church of Reality as secular, using our beliefs in science and reason, implying that if the religion makes sense it must be secular. If the Church of Reality is about secular values then these values would have had to be in the secular world before the Church of Reality was created. But yet they weren't. What I find amazing is that I am the first person in the history of the world to come up with these concepts. No other religion or philosophy has done what we have done with regards to a reality based standard for moral and ethical behavior. If our values don't exist in the secular world then how can they be called secular values?

One of the key issues is what does the word "secular" mean in the context of determining religious rights? Many people believe that secular means that religion is excluded. But in the context of law secular means that everyone is equal

regardless of what they believe or don't believe. The Establishment and Free Exercise clauses in the Bill of Rights creates America with a secular society where law is based on universal values common to all believers and non-believers alike. Prohibitions against murder, stealing, and violence, for example, are secular values common to all believers and non-believers alike where the government has a compelling interest to enforce the law.

If a law however crosses the line and establishes a religious preference towards one group at the expense of another then the laws can be challenged in courts as being discriminatory and such laws are struck down. But even this process lacks the precision that the Constitution mandates. Thus Congress passed RFRA to allow exemptions from law to specific religions so as to accommodate unusual religious practices where the government does not have a compelling government interest in enforcing a particular law against a particular group *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

In a legal sense secular means that the government is neutral towards all beliefs and non-beliefs and is accommodating to everyone allowing every individual to believe or disbelieve as they choose. It is a common mistake that the word secular means the exclusion of religion, and that atheism is secular. Secular doesn't mean that religion is excluded. It means that we are neutral towards religion. If atheism were secular then that would mean that atheists would be

avored in society over believers, which is not the case. When it comes to religious rights in court, atheism is given equal standing as a religious view in order for atheists to assert their religious rights to contest religious discrimination. Atheism is not secular in that it takes a position that would be discriminatory towards the believing world.

Similarly the Church of Reality is not a secular religion. We are not belief neutral as the secular world is. We take a religious position of putting reality first as opposed to religions that put faith first. If our views were considered to be secular then America would be hostile towards believers. The fact that we put science and logic ahead of faith doesn't make us secular. It makes us a small religious minority. Most of the secular world is made up of believers.

We in the Church of Reality also distinguish ourselves from Atheism in that Atheism, while given some religious standing is not a religion. Atheism is about what people don't believe in. It is a fiction negative position. The Church of Reality, on the other hand, is a reality positive point of view that affirmatively believes in things and is based on the assertion that the pursuit of the understanding of reality by humans has value. Based on this assertion we have crafted an extensive moral and ethical system that we describe as the operating system for the human race. We are a unique religion that sees the world differently from all other religions and our contribution to the religious world is just beginning to be

realized. But we are hardly neutral and we are hardly secular in that if our values were imposed as secular values all the other religions wouldn't exist.

a) The Parade Test

To illustrate this point, suppose the government sponsored a parade and had to decide what groups could have a float in the parade. The government has to be secular in their decision as to who to allow and who to exclude. They couldn't for example allow the Catholics and disallow the Mormons. The government could choose to allow everyone to participate (all inclusive) or they could disallow all groups who not secular to participate. Let's say for the purpose of this discussion they chose to disallow groups not secular.

In this scenario the Catholics, Mormons, Muslims, Buddhists, and Hindus would clearly be excluded. But suppose the Atheists wanted to have a float? They too would be excluded as well because Atheism isn't secular. Atheism asserts a religious point of view that excludes theists.

Included in the parade would be the local police and fire departments. You could have high school bands. You can have local businesses in the parade. You could have an organization of scientists in the parade. People of all religions participate in science. You could have gun rights advocates and gun rights opponents in the parade. All of these groups are secular.

So could the Church of Reality be in the parade? Clearly the Church of Reality could not. The Church of Reality proposes a particular religious view that is not neutral. We have a unique and detailed value system that is very different than that of the secular world.

Our point is that if the Church of Reality couldn't participate in a secular parade that would exclude religions then we are not secular as the DEA suggests. If we couldn't have a float in a secular parade then we fail the parade test and we are not secular.

B. What is a Religion?

At issue, what is a religion? Case law is vague on the subject. In some ways it's like port. You know it when you see it. So rather than reargue case law I'll just show you what we believe and I think it will be obvious that we are in fact a religion.

Realists contemplate together. Contemplation is our form of communion. It is one of our forms of religious experience, to share knowledge, to understand together. So to make my case I hereby asked the court to experience contemplation and then you can ask yourselves if you would call it a religious experience. Read my thoughts here and contemplate through these next paragraphs. Today's contemplation will be the second of the Sacred Contemplations.

The second sacred contemplation is “Contemplating the Universe”. From what we know the universe was created in what we best understand as a “big bang”. A quantum singularity somehow created time and space and everything within what we call the universe. 13.7 billion years later here we are, part of reality, yet contemplating what is this place that we exist in?

Most religions belief in some sort of universal conciseness where reality itself is some sort of universal intelligence guiding us based on some grand scheme. But we are part of what reality evolved into and we are aware of the existence of reality. Therefore it is accurate to say that reality becomes self aware through us. When we contemplate reality then reality experiences its self awareness.

If we continue to evolve forward our understanding of the universe will continue to increase. We are on the verge of serious genetic engineering. Our computing power continues to double every 18 months. We could clone people with today’s technology if anyone had the political will to do so. We are merging biology and technology. We are beginning to build microscopic robots. Some day these robots will be in our blood stream, working inside us, killing cancer cells, cleaning our arteries, enhancing our minds by having our computer as part of our brains and instant communication with anyone in the world.

What will life be like in the next few hundred years? Will we still be individuals or part of a single great mind? What will we evolve into? What will we know about the universe then? If we continue to evolve forward at what point do we become the mind of the universe?

In the Bible they talk of great miracles. The prophet Elijah rode into the heavens on a flaming chariot. But in our time we have taken a flaming chariot to the Moon. We can create life. We can raise the dead. At the pace we're going in 10,000 years of positive evolution we could probably build a planet like this in 6 days. (But why would we?)

On the other hand 99.9% of all species are extinct. We, as humans, might be a fluke in the universe and if we screw it up, we're gone. In order for us to evolve we have to get it right. We can control our evolution. We can take charge of what we will become. We can choose to get it right and not become extinct. But how do we get it right? We believe that our best hope of surviving and flourishing is to embrace reality, understand reality the way it really is.

Religion has always been a quest for the understanding of ethics and values. People have created various deities and sacred books to set standards for societies. These belief systems have evolved. Religion is the root of law, science, and governments. But it is still there to try to answer the question "why" and what our role is in existence. Thus through RFRA Congress intended to provide a level of

autonomy to religions so that we can experiment with different social values so that moral and ethical system can evolve free from specific federal laws that would impede such development. What we in the Church of Reality are doing is exactly what Congress intended when they passed RFRA.

As our technology grows we'll be able to more fully understand the stories behind the holy books and people will become aware that these are stories to make a moral point and that this stuff really didn't happen. However the need to have some basis for moral and ethical values still exist in society and the Church of Reality creates an objective logical basis for these values based on what we know is real.

The Church of Reality has created an objective standard for moral and ethical values and a purpose for the human race to exist for. We have accepted that our continued existence as a species has value and that our continued positive evolution is more desirable than extinction. We have also taken the position that what we evolve into matters and that we want not just to survive, but to survive well. To that end we have taken on a sacred responsibility to dedicate our lives to ensuring the positive evolution of the human race. The first step in doing this is the writing of the Kernel. Humanity needs an operating system and we need a technical support crew. That is what the Church of Reality is about. And we have

in fact developed the most sophisticated reality based moral and ethical system that has ever been produced in the history of the world.

Marijuana is a necessary part of the process because marijuana inspires this kind of thinking. Most of the Kernel was written while stoned. Not just by me, but with the help of other members who were stoned. Much of this brief and the opening brief were written while stoned. I am not a lawyer. I am a pro se stoner who barely graduated high school. And yet I managed to teach myself how to make legal arguments. We're not asking for marijuana because we're recreational drug users. I'm not someone who is out to damage my mind. I smoke marijuana because marijuana works.

So – that is our religion. You decide. Am I just some stoner who is babbling gibberish because I like to get high? If so then arrest me, put me in jail. Get me into a treatment program so I can be “normal” like the DEA guys are. Or – you might say to yourselves, hmmmmm, reality maybe he's onto something here. And if that's the case, I deserve to win.

C. Ad Hoc Laws

Although DEA accuses the Church of Reality of having an Ad Hoc doctrine it is actually the law that is ad hoc. On one hand it is claimed marijuana is a dangerous drug with no redeeming values and is a threat to orderly society.

However 13 states have passed various laws legalizing marijuana for various uses in spite of the DEA's findings and there are open battles between local and federal governments over the use of marijuana.

When our country was founded alcohol was legal. Then it became illegal, and now it's legal again. A black man was 3/5th of a white man. Women couldn't vote. Now women can. Sodomy used to be a felony. Now, same sex marriage is becoming a right. Some laws are consistent over time. Murder, stealing, assault, these are consistently crimes. States aren't legalizing methamphetamine, cocaine, and heroin. Neither are religions applying for exemption for these drugs. That's because these are laws based on reality.

Marijuana laws are based on politics. It depends on who is president and what party is in power. It varies with what state you are in or who gets elected sheriff.

Congress can pass a law declaring that $2+2=3$ and the courts can uphold that law, but it doesn't mean that $2+2=3$. All it means is that the government can put you in jail for declaring that $2+2=4$. Marijuana laws are like this. However in 1993 the Congress passed RFRA that allowed for a religious exemption from the law. Under RFRA the Church of Reality would be exempt from a law declaring $2+2=3$ because it violates our religious right to perceive and assert our religious values and to put reality first. The DEA declaring that marijuana is a dangerous drug with

no medical use is the same as declaring that $2+2=3$. They have the authority to do it, but that doesn't change the reality that they are just plain dead wrong.

We in the Church of Reality are not engaging the DEA in a diversionary argument about the dangers of marijuana because we find it a waste of time to argue with those who will not listen to reason. We agree with the 13 states that are openly rebelling against the DEA because the DEA will not accept the reality that marijuana is slightly more dangerous than coffee and less dangerous than beer.

DEA goes on to say that the exemption would apply to a large number of people because anyone who accepts our principles would be entitled to use marijuana under the exemption implying lawlessness would increase. However the opposite is true. If a large number of marijuana smokers who are currently breaking the law converted to being Realists then they would no longer break the law and crime would be reduced. This means that the compelling government interest should be to allow the exemption. The DEA could focus its resources on real drugs like methamphetamine.

The Sacred Principle of Compassion is based on the reality that marijuana actually does have medical value and that it is being denied on the basis of political politics. I would point out that our principle of compassion is not unlike that of other religions and that if the Pope issued an edict based on the story of the Good Samaritan that it was a holy act of compassion to give marijuana to those who

medically need it then the DEA is going to have an even bigger problem with quantity of people that we Realists would pose. And I don't think the DEA would be able to argue that the Catholic Church isn't a religion.

D. Membership Issues

DEA raises an important issue regarding membership. Who do these exemptions apply to? How do the courts determine if a person is exempt? To that end we in the Church of Reality turn to this court to answer that question.

It is our position that the religious right to use marijuana is an individual right where a DEA exemption is a pre-qualification to assert that individual right in an efficient manner so that Realist can practice their religion without fear of arrest and imprisonment. It is our position that even if someone is not pre-qualified that doesn't mean they don't have a right to use marijuana religiously based on their own assertion of religious beliefs. It is our position that ultimately if someone is arrested in violation of the law and they assert a religious right then they can go to court and have their case considered individually.

The purpose of an exemption is to allow members to gather and practice Realism without fear of prosecution. Because of the law we are not in a position to establish and publish rituals and guidelines for using marijuana and we need this protection in order for our religion to evolve. It is our intent to keep our practices

within our religion and not for the Church of Reality to become a mechanism for bypassing the law for general drug use. Just as DEA is concerned that people will create fake religions just to get drugs, the last thing the Church of Reality wants is for people to falsely claim to be Realists as a license to get stoned. So for people to get a prequalified pass for marijuana in the Church of Reality we're leaning towards something that would distinguish Realist from those who just want a way to get stoned. We certainly would welcome any advice this court has to offer and what we decide depends on what we have to work with and we don't yet know what that will be.

The Church of Reality intends to have some sort of membership status to establish pre-qualified members to use marijuana in limited amounts for specific purposes. But we are faced with conflicting laws in different states and conflicting federal laws and without an available national distribution system. Here in California we have the state medical marijuana system that could serve us nicely. But what do we do in Texas?

Once we know what we have to work with then we can establish policies consistent with our needs and the needs of the law. We are not looking to become distributors of marijuana as this is a controlled substance and we do not have the infrastructure to keep it safe from criminals. We are not interested in continuing to buy small quantities illegally if we have a legal alternative. It is our position that it

is the job of this court and the DEA to solve this issue and we are willing to cooperate, within the scope of constitutional principles, with the DEA to do what it takes to make it happen. We don't know what we have to work with and we want to be careful (using good judgment) to do it right. We ask this court for guidance in this manner.

E. Impact on Law Enforcement

One of the issues in this case is the issue of compelling government interest. What will happen if we let Realists smoke pot? How will it impact crime and drug enforcement? Our position is that it will actually benefit law enforcement.

We live in tough economic times. We are not in a position to waste federal resources, and enforcing marijuana laws is a waste of resources.

Hundreds of cities no longer enforce marijuana laws except for major drug trafficking. Cities and states are in open rebellion against the DEA's position on marijuana. If the DEA no longer enforced the marijuana laws then it could take those resources and focus on real drugs like methamphetamine, heroin, and cocaine. Although our exemption only applies to church members it is a small step in the right direction. Our position is that the exemption would have a net positive effect on society. If not for marijuana there would be no Church of Reality and therefore everything we do that is positive counts as a plus for marijuana. When

you read the doctrine of the Church of Reality you are reading marijuana inspired ideas.

Quite frankly I don't think the DEA wants to enforce marijuana laws either. I think that many of them are hoping that this case will liberate them from the marijuana illusion so they can go out and do their job of protecting the public from the misuse of real drugs. I contend that DEA has more of a marijuana problem than the Church of Reality has.

F. Our Case is like the UDV case

This case is very similar to the 2006 case of *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006) (The UDV case). In that case the issue of being a religion was already determined. The only significant difference between the cases is that marijuana is considered a street drug and marijuana isn't. Thus the potential for diversion is greater.

However, unlike the UDV case the Church of Reality does not seek to import or distribute the drug. Not only do we not want to do that, but we recognize that marijuana attracts drug dealing and we chose to isolate ourselves from that potential situation. We in the Church of Reality are users, not dealers. It was our hope that DEA would recognize that and would see that we are actively dealing

with a legitimate source of concern. Our religious use request is extremely specific to make sure we are within the scope of what the law allows.

In the case of *Raich v. Gonzales*, 500 F.3d 850, 866 (9th Cir. 2007) this court made the following conclusion.

The Lawrence Court noted that, when the Court had decided *Bowers v. Hardwick*, 478 U.S. 186 (1986), "[twentyfour] States and the District of Columbia had sodomy laws." *Lawrence*, 539 U.S. at 572. By the time a similar challenge to sodomy laws arose in *Lawrence* in 2004, only thirteen states had maintained their sodomy laws, and there was a noted "pattern of nonenforcement." *Id.* at 573. The Court observed 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." *Id.* at 579.

Though the *Lawrence* framework might certainly apply to the instant case, the use of medical marijuana has not obtained the degree of recognition today that private sexual conduct had obtained by 2004 in *Lawrence*. Since 1996, ten states other than California have passed laws decriminalizing in varying degrees the use, possession, manufacture, and distribution of marijuana for the seriously ill. See Alaska Stat. § 11.71.090; Colo. Rev. Stat. § 18-18-406.3; Haw. Rev. Stat. § 329-125; Me. Rev. Stat. Ann. tit. 22, § 2383-B; Mont. Code Ann. § 50-46-201; Nev. Rev. Stat. § 453A.200; Or. Rev. Stat. § 475.319; R.I. Gen. Laws § 21-28.6-4; Vt. Stat. Ann. tit. 18, § 4474b; Wash. Rev. Code § 69.51A.040. Other states have passed resolutions recognizing that marijuana may have therapeutic value, and yet others have permitted limited use through closely monitored experimental treatment programs.

We agree with *Raich* that medical and conventional wisdom recognizes the use of marijuana for medical purposes is gaining traction in the law as well. But that legal recognition has not yet reached the point where a conclusion can be drawn that the right to use medical marijuana is "fundamental" and "implicit in the concept of ordered liberty." See *Glucksberg*, 521 U.S. at 720-21 (citations

omitted). For the time being, this issue remains in "the arena of public debate and legislative action." *Id.* at 720; see also *Gonzales v. Raich*, 125 S. Ct. at 2215.

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

The petitioner believes that *Raich* was wrongly decided by the Supreme Court. We are however stuck with it. However even though one doesn't have a constitutional right to medical marijuana, the *UDV* case decided that one does have a right to religious marijuana. As outlined in our Opening Brief our Sacred Principle of Compassion clearly makes the giving of medical marijuana a religious act that is protected under RFRA. The difference between this case and *Raich* is that this case agrees with a Supreme Court decision and the *Raich* case was overturned.

In regards to the Sacred Principle of Compassion the standard in the Church of Reality will be different than that for visionary use of marijuana. We describe our religion in technical metaphors. Our sacred text is called the Kernel and those

of us who write the Kernel are known as developers. We see the Kernel as the operating system of the human race. We see our monks as technical support staff to keep society stable and moving forward in a positive direction.

In the Unix operating system there is a privileged user known as Root. Root is called the “super user” and it has full permission to do anything without restriction. Root is the maintenance user. It is usually run by technical support people who make sure the system stays running.

In the Church of Reality we look at ourselves as the root religion. We therefore take responsibility of doing maintenance on humanity in order ensure the human systems keep on running and that we continue to evolve in a positive direction. (See the Principle of Positive Evolution)

Those of us who have chosen to take on this sacred responsibility are known as the “Monks of the order of Root”. We are given power and authority for the purpose of doing maintenance.

As part of the Order of Root is the Order of Angels. In the Church of Reality anyone who is a caregiver is considered to be an Angel. A Realist caregiver is automatically considered to be a Monk of the Order of Angles which makes them part of the Church of Reality clerical team.

Thus our policy will likely be that any care giver who asserts that they are a Realist will be permitted to both use marijuana and to give marijuana to people who medically need it based on their personal good judgment, and that they can articulate some reason why they believed this patient needed marijuana. This is a draft of what Church of Reality policy might look like.

IV. CONCLUSION

Clearly the Church of Reality is a religion. DEA crosses a bright line in the methods they used to determine the church is not a religion that is prohibited by the Establishment Clause.

As we humans evolve and are technology increases more and more people will turn to reality as their primary belief system. But the question as to what is right and wrong will still exist so reality based religion like the Church of Reality will still fill important needs to help guide humanity into the future. We will need a set of principles that are reality based to guide us as we gain control of our own evolution.

100 years from now the Church of Reality will be a major religion in the world and people of that generation will look back at the decision made here today about whether or not we are a religion. What does this court want to say to future

generations of Realists who will look back at the decision you make today? It is my hope that this court takes reality into consideration when deciding this case.

The Church of Reality is obviously a religion. Marijuana is a small but necessary part of this religion. Going to jail is a burden on the practice of our religion. And there is no compelling government interest in preventing us from using small quantities of marijuana for religious use.

Respectfully submitted,

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V. 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 6947 words.

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