Understanding the Importance of Recent Decisions by the Higher Courts regarding Native American Religious Freedom.

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Introduction

This essay reviews the decisions of the Supreme Courts of the State of Utah and of the United States of America, as well as, briefly, the action of the U.S. Department of the Interior, regarding the religious freedoms of Native American Churches and their Members and Ministers in the United States. All members of the Nemenhah Band should have a working understanding of the issues which surround the practice of their religion and the nature of the protection to do so that these court decisions provides them.

The Cases

- In State of Utah, Plaintiff and Appellee, v. James W. Mooney, aka James W.B.E. Mooney, Linda T. Mooney, and Oklevueha Earthwalks Native American Church of Utah, Inc., Justice Parish writes the following as the cogent complaints of the defendants (Complete Text in Appendix A):

¶1 James and Linda Mooney, along with their church, the Oklevueha Earthwalks Native American Church (collectively, the "Mooneys"), have been charged by the State with multiple felony counts of "engag[ing] in a continuing criminal enterprise" and of engaging in a "pattern of unlawful activity" by possessing and distributing peyote, a controlled substance, to members and visitors in their religious services. The State also seeks forfeiture of the church's property in connection with this alleged criminal activity. The Mooneys moved to dismiss the charges, arguing that a federal regulatory exemption incorporated into Utah law permits them to use and distribute peyote in "bona fide religious ceremonies" because they are members of the Native American Church. The Mooneys also argued that if state law is not interpreted to permit their possession and use of peyote for religious purposes, their prosecution violates their constitutional right to freely exercise their religion, as well as their constitutional rights to due process and equal protection of the law.

The Mooneys, recognized Medicine Man and Woman, but not having "Tribal Enrollment," used a plant substance that is controlled and regulated by Acts of Congress and by regulatory agencies such as the FDA and the DEA. Peyote is a "controlled substance" and is considered an illicit drug. Notwithstanding, the Native American Church considers it a Sacramental Food and utilizes it in bona fide ceremony.

¶2 The trial court rejected the Mooneys' arguments, holding that the Mooneys are not entitled to the protection of any exemption for the religious use of peyote because they are not members of a federally recognized Native American tribe. We reverse the trial court's decision, holding that Utah law incorporates a federal regulation exempting from prosecution members of the Native American Church who use peyote in bona fide religious ceremonies. On its face, the federal regulation does not restrict the exemption to members of federally recognized tribes. We therefore rule that the exemption is available to all members of the Native American Church. Any other interpretation is not only inconsistent with the plain language of the exemption, but would fail to provide members of the Native American Church with constitutionally adequate notice that their religious use of peyote could expose them to criminal liability.

The Trial Court used the offense that the Mooneys were not members of any recognized Tribe and, therefore, had no claim upon exemption to the drug enforcement laws because of their Native American Religion. This is essentially the same claim that can be made against the Members and Ministers of the Nemenhah Band, since it is not a BIA Recognized Tribe. However, notice that the High Court reversed the Trial Court's decision based upon the fact that the Federal Law does not restrict exemption to members of federally recognized tribes. The issue here is the freedom of religion, not the politics of tribal membership.

The Court defines just who might be exempted from such laws because of their practice of Native American Religious Practices in the following:

42 U.S.C. § 1996a(a) (2004). On the basis of these findings, Congress directed that [n]otwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.

It should be noted that, although 42 U.S.C. 1996a(a) (2004) is considered by most the "Peyote Law," so much so that it is referred to as such in other decisions by the High Courts. In the same manner in which AIRFA protects Peyote for Ceremony, it likewise protects the use of "animal parts" and "plants and other materials" in the ACT.

Id. § 1996a(b)(1). For the purposes of these provisions, Congress defined the term "Indian" to include members of "any tribe, band, nation, pueblo, or other organized group or community of Indians . . . which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." Id. § 1996a(c)(2).

Now, this is pivotal. It is by this explanation that the High Court goes on to consider the Mooneys "Indians" under the law. The Court interprets Id. 1996a(b)(1) and (2) to apply to the Mooneys because of the following:

¶7 The Native American Church was formally established in Oklahoma in 1918. Peyote Way, 922 F.2d at 1212. The formation of this entity was motivated, at least in part, to protect the

religious use of peyote from early attempts to suppress it. Boyll, 774 F. Supp. at 1336. The Native American Church has now grown to include many local branches or chapters, including, according to the Mooneys, the defendant Oklevueha Earthwalks Native American Church.

The Native American Church has long been recognized as one of the "other organized group or community" mentioned in the Law. It is a little known fact that the Native American Church was organized and recognized by Act of Congress in 1918. The Utah Supreme Court recognizes the Oklevueha Native American Church as a "branch" or "chapter" of the original. Thus, although James and Linda were not recognized specifically by any Tribe or Band, and were not enrolled members, nevertheless, the High Court defined them as "Indians" who were just as entitled to the Peyote Exemption as any enrolled member of such Tribes or Bands.

The Court continues:

¶8 James Mooney claims to be a descendant of Native Americans, but is not a member of any federally recognized tribe. The Mooneys practiced Native American religion before founding their church, and provided religious programs and services to inmates of Utah correctional facilities, both as volunteers and, in Mr. Mooney's case, as an employee. James and Linda Mooney founded their Oklevueha Earthwalks Native American Church in April of 1997 in Benjamin, Utah. Because Texas is the only state in the nation in which peyote is grown, the Mooneys obtained peyote for use in their church services by registering and complying with the requirements of the Texas Department of Public Safety Narcotics Services.

The State of Utah had previously recognized the Mooneys as Practitioners of Native American religion. Utah Correctional facilities had established Government-To-Agency commercial relationship with James, thereby "recognizing" him for all purposes under the law as an "Indian" regardless of lack of enrollment. The State of Utah recognized the Oklevueha Earthwalks Native American Church of Utah, Inc. by incorporation. Likewise, the State of Texas entered into a Government – To – Agency relationship with the Mooneys through the Texas Department of Public Safety Narcotics Services. By this reference, the Court is recognizing certain protections that AIRFA already provides for the ***manufacturing and distribution*** entities associated with Native American Religious Freedom. In fact, the Court uses the very fact that manufacturing and distribution is already protected as factual basis whereby it defines the Mooneys as "Indian," and therefore entitled to religious use exemptions under the law. The reference has especial and particular meaning in connection with the Nemenhah Sacrament Certification Program.

But one of the key issues here was that the Mooneys were using a controlled substance in a manner that would otherwise be contrary to the law. This is key to us because state agencies like Licensing Boards, as well as federal agencies such as the FDA and the USDA have enforcement power under the law and consistently restrict the use of healing substances and modalities. The newest FDA regulations would change all herbs and supplements into "controlled substances" just as it recently did when it changed the classification of Essential Oils from GRAS to New OTC Drug. The Utah case is important because of the use of "controlled substance" as basis for restricting the religious freedom of the Mooneys. Observe the following:

¶11 Our primary source of guidance in statutory interpretation is the plain and ordinary meaning of the statutory language. Dick Simon Trucking, Inc. v. State Tax Comm'n, 2004 UT 11, ¶ 17, 84 P.3d 1197. Unfortunately, the language of the Utah Controlled Substances Act fails to specify the source of the applicable exceptions. Although the Act explicitly provides that scheduled substances are controlled unless "specifically excepted," Utah Code Ann. § 58-37-4(2)(a)(iii) (2002), it does not address whether the contemplated exceptions are found in state statutes, state regulations, federal statutes, federal regulations, or some combination of these sources Similarly, although the Act states that scheduled substances are controlled "unless listed in another schedule," id. § 58-37-4(2)(a)(iii), it neither specifies the other contemplated schedules nor addresses the resolution of conflicts arising when a particular substance is listed as controlled on one schedule but listed as exempt under another schedule. In short, the statute does not address the situation presented here, where the substance in question is listed as a controlled substance under one of the state schedules but is listed as exempt under the federal schedules that have been incorporated by reference into the Utah Controlled Substances Act. See id. § 58-37-3. These omissions and inconsistencies render the statutory language ambiguous and require that we turn to other accepted principles of statutory construction.

This outlines the difficulty the High Court had in determining whether or not the Mooneys could actually claim immunity from the State Law or not. To overcome the difficulty, the High Court went to their greater mandate – the issue of Constitutional Infirmity.

¶12 In construing statutes, we are obligated to "avoid interpretations that conflict with relevant constitutional mandates." State v. Mohi, 901 P.2d 991, 1009 (Utah 1995). This canon of interpretation has sometimes been couched as a recognition that "[w]e have a duty to construe statutes to avoid constitutional conflicts." Provo City Corp. v. State, 795 P.2d 1120, 1125 (Utah 1990); see also State v. Lindquist, 674 P.2d 1234, 1237 (Utah 1983) ("[I]t is the duty of this Court to construe a statute to avoid constitutional infirmities whenever possible. We must adopt that construction which will save the statute from constitutional infirmity."

¶13 The Supremacy Clause of the United States Constitution authorizes Congress to preempt state law in areas covered by federal legislation, rendering invalid any state statute that conflicts with a federal act of preemption. U.S. Const. art. VI, cl. 2; Ray v. Atl. Richfield Co., 435 U.S. 151, 158 (1978). We therefore avoid interpreting an ambiguous state statute in a way that would render the statute invalid under an explicitly preemptive federal law. See Martin v. City of Rochester, 642 N.W.2d 1, 18 (Minn. 2002) (interpreting a state statute to avoid conflicting with a preemptive federal law).

¶14 The AIRFA Amendments' prohibition on criminalizing the religious use of peyote constitutes a clear congressional act of preemption against the laws of any state that might otherwise prohibit the use of peyote for religious purposes by Native Americans, as the AIRFA Amendments define them. The AIRFA Amendments provide that "[n]otwithstanding any other . . . law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion . . . shall not be prohibited by . . . any State." 42 U.S.C. § 1996a(b)(1) (2004). Were we to hold that the Utah Controlled Substances Act does not incorporate the federal Religious Peyote Exemption, the Act would prohibit peyote use in all circumstances, thereby running afoul of the AIRFA

Amendments. We therefore are persuaded to interpret the Utah Controlled Substances Act to have incorporated the exemption for the religious use of peyote found at 21 C.F.R. § 1307.31.

This is a very important statement made by the High Court in this connection. State Law may not run afoul of Federal Law. The statements and arguments used here by the High Court in justifying the reversal of the Trial Court decision must also apply for every other provision in AIRFRA, even those which have to do with "animal parts" and "other plant materials." The free exercise of Native American Religion must also be protected from restriction, as also every "bona fide ceremony."

The following is also instructive:

¶21 The State argues that the Religious Peyote Exemption is available only to members of federally recognized Native American tribes. The Mooneys contend that the exemption is not so limited. The exemption states that it applies to "members of the Native American Church," provided such members are using peyote in bona fide religious ceremonies. James Mooney asserts that his church is one of many chapters or churches that make up the Native American Church, that the peyote was used in bona fide religious ceremonies and that, in acquiring peyote from Texas, his church has registered and otherwise followed the applicable regulations of the Texas Department of Public Safety and the United States DEA. These assertions remain unchallenged on appeal.

¶22 Because the text of the exemption is devoid of any reference to tribal status, we find no support for an interpretation limiting the exemption to tribal members. See Boyll, 774 F. Supp. at 1338 (holding that under the plain language of the federal Religious Peyote Exemption, the exemption applies to all members of the Native American Church, regardless of any tribal affiliation). The term "members" in the exemption clearly refers to members of the "Native American Church"--not to members of federally recognized tribes. Therefore, so long as their church is part of "[t]he Native American Church," the Mooneys may not be prosecuted for using peyote in bona fide religious ceremonies.

Prior to this decision, it was plausible to expect States to argue that AIRFA (NAFERA) and all its protections for the practice of Native American Religion, is available only to members of the federally recognized Native American Tribes. "So long as the church (member or minister) is part of the "the Native American Church," the Mooneys (Medicine Men and Women) may not be prosecuted for using peyote (animal parts, plants, or other materials) in bona fide religious ceremonies." The language is clear and it's applicability to all Nemenhah Medicine Men and Women is defined by the Court's context.

In this case, the State attempted to use the US Constitution against the Mooneys.

¶26 Finally, the State argues that an interpretation extending the federal exemption to members of the Native American Church who are not members of federally recognized tribes would violate the United States Constitution's Equal Protection Clause, because the exemption would be a religion-based preference permitting members of a particular church, and not others, to use peyote in religious ceremonies. The State maintains that an exemption for members of federally recognized tribes can survive constitutional scrutiny because it is a

political preference designed to preserve tribal culture, rather than a constitutionally suspect racial preference.

¶27 The State relies on <u>Peyote Way</u>, 922 F.2d at 1212, where the Fifth Circuit Court of Appeals held that the federal Equal Protection Clause permits the Religious Peyote Exemption's preference for Native American Church members because of the federal government's unique political relationship with Native American tribes, and that the Equal Protection Clause does not require that the exemption be extended to religious peyote users who are neither Native American Church members nor members of federally recognized tribes. <u>See also</u> U.S. Const. art. VIII, § 8, cl. 3 (giving Congress the power to regulate commerce with the "Indian Tribes"); <u>Morton v. Mancari</u>, 417 U.S. 535, 551 (1974) (recognizing the "unique legal status" of Native American tribes with respect to the federal government). The State therefore urges a regulatory interpretation that would limit the peyote exemption to members of federally recognized tribes, because a preference for such tribe members receives deference under the Supreme Court's equal protection jurisprudence.

¶28 These arguments do not persuade us to interpret the Religious Peyote Exemption in a way that contravenes the plain meaning of its terms. It is particularly important, as a safeguard for our citizens' due process rights, for us to remain faithful to the plain language of a statute when it would impose criminal penalties on those who violate it. While the constitutional arguments advanced by the State may be relevant to our statutory analysis, they are speculative and remote when compared with the tangible due process claims that the Mooneys would have were they to be prosecuted in violation of the plain language of the exemption.

The Court rejects the idea that applying to the plain language of the exemption provided by AIRFA constitutes a favoritism that is precluded by the US Constitution.

- In GONZALES, ATTORNEY GENERAL, ET AL. v. O CENTRO ESPIRITA BENEFICENTE UNIAO DO VEGETAL ET AL., the U.S. Attorney General, himself, responding to a decision for the Defendants in the Lower Court, took the matter up to the U.S. Supreme Court. The issues were largely the same. Here was a group of religious practitioners who were using a Traditional Plant Sacrament, in the form of a tea known as Ayahuasca, in bona fide religious ceremony. The plant substances from which the tea is made are controlled substances. The Attorney General uses many of the same devices as the State of Utah. (Complete text available in Appendix B)

Justice Roberts began by stating:

Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA) in response to Employment Div., Dept. of Human Resources of Ore. v. Smith, 494 U. S. 872, where, in upholding a generally applicable law that burdened the sacramental use of peyote, this Court held that the First Amendment's Free Exercise Clause does not require judges to engage in a case-by-case assessment of the religious burdens imposed by facially constitutional laws, id., at

883–890. Among other things, RFRA prohibits the Federal Government from substantially burdening a person's exercise of religion, "even if the burden results from a rule of general applicability," 42 U. S. C. §2000bb–1(a), except when the Government can "demonstrat[e] that application of the burden to the person (1) [furthers] a compelling government interest; and (2) is the least restrictive means of furthering that . . . interest," §2000bb–1(b).

Now, bear in mind that RFRA and AIRFA are "companions." They were enacted at the same time, for the same purposes. Understanding that they were not a "Native American Church," O Centro Espiritu defended itself under the Religious Freedom Restoration Act and won decidedly in the Lower Courts. Justice Roberts rightly invokes RFRA here and delineates the prohibitions that the law invokes. Bear in mind, prior to this decision, it was believed generally that the Supreme Court had declared RFRA unconstitutional in a previous decision. It invokes RFRA here, indicating that the legal profession's characterization of its previous decision was inaccurate. The High Court had decided that a portion of RFRA was being unconstitutionally applied. There is a difference.

Gonzales approached the Court on the idea that government could restrict religious practice if it could demonstrate a clear and compelling national security interest. He cited that the tea contained a drug that was identified as a dangerous controlled substance and that the public needed to be protected from abuse of it – compelling interest #1. He also insisted that because of the "War on Drugs" and the treaties with other nations related to it, control of "huasca" was necessary to satisfy the U.S. security concerns with its allies – compelling interest #2. He also tried to assert that Congress just couldn't make exceptions to drug enforcement laws without compromising the DEA's ability to prosecute the war on drugs – compelling interest #3. To which Justice Roberts retorts:

1. This Court rejects the Government's argument that evidentiary equipoise as to potential harm and diversion is an insufficient basis for a preliminary injunction against enforcement of the Controlled Substances Act. Given that the Government conceded the UDV's prima facie RFRA case in the District Court and that the evidence found to be in equipoise related to an affirmative defense as to which the Government bore the burden of proof, the UDV effectively demonstrated a likelihood of success on the merits. The Government's argument that, although it would bear the burden of demonstrating a compelling interest at trial on the merits, the UDV should have borne the burden of disproving such interests at the preliminary injunction hearing is foreclosed by Ashcroft v. American Civil Liberties Union, 542 U. S. 656, 666. There, in affirming the grant of a preliminary injunction against the Government, this Court reasoned that the burdens with respect to the compelling interest test at the preliminary injunction stage track the burdens at trial. The Government's attempt to limit the Ashcroft rule to content-based restrictions on speech is unavailing. The fact that Ashcroft involved such a restriction in no way affected the Court's assessment of the consequences of having the burden at trial for preliminary injunction purposes. Congress' express decision to legislate the compelling interest test indicates that RFRA challenges should be adjudicated in the same way as the test's constitutionally mandated applications, including at the preliminary injunction stage. Pp. 6–8.

In other words, the State could not convince the Lower Court that there was any danger of potential harm or diversion. Compelling interest #1 rejected.

2. Also rejected is the Government's central submission that, because it has a compelling interest in the uniform application of the Controlled Substances Act, no exception to the DMT ban can be made to accommodate the UDV. The Government argues, inter alia, that the Act's description of Schedule I substances as having "a high potential for abuse," "no currently accepted medical use," and "a lack of 3 Cite as: 546 U. S. ____ (2006) Syllabus accepted safety for use . . . under medical supervision," 21 U. S. C. §812(b)(1), by itself precludes any consideration of individualized exceptions, and that the Act's "closed" regulatory system, which prohibits all use of controlled substances except as the Act itself authorizes, see Gonzales v. Raich, 545 U. S. ___, ___, cannot function properly if subjected to judicial exemptions. Pp. 8–16.

(a) RFRA and its strict scrutiny test 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 per- son"—the particular claimant whose sincere exercise of religion is being substantially burdened. 42 U. S. C. §2000bb–1(b). Section 2000bb(b)(1) expressly adopted the compelling interest test of Sherbert v. Verner, 374 U. S. 398, and Wisconsin v. Yoder, 406 U. S. 205. There, the Court looked beyond broadly formulated interests justifying the general applicability of government mandates, scrutinized the asserted harms, and granted specific exemptions to particular religious claimants. Id., at 213, 221, 236; Sherbert, supra, at 410. Outside the Free Exercise area as well, the Court has noted that "[c]ontext matters" in applying the compelling interest test, Grutter v. Bollinger, 539 U. S. 306, 327, and has emphasized that strict scrutiny's fundamental purpose is to take "relevant differences" into account, Adarand Constructors, Inc. v. Peña, 515 U. S. 200, 228. Pp. 9–10.

Justice Roberts introduces the "Compelling Interest Test" here. RFRA requires that the compelling interest test by satisfied through application of the challenged law "to the person." 42 U. S. C. §2000bb–1(b). Section 2000bb(b)(1) expressly adopted the compelling interest test of Sherbert v. Verner, 374 U. S. 398, and Wisconsin v. Yoder, 406 U. S. 205. There, the Court looked beyond broadly formulated interests justifying the general applicability of government mandates, scrutinized the asserted harms, and granted specific exemptions to particular religious claimants. The government had already settled the issue of how "compelling interest" must be tested and the lower court had ruled rightly that the test had not been satisfied.

(b) Under RFRA's more focused inquiry, the Government's mere invocation of the general characteristics of Schedule I substances cannot carry the day. Although Schedule I substances such as DMT are exceptionally dangerous, see, e.g., Touby v. United States, 500 U. S. 160, 162, there is no indication that Congress, in classifying DMT, considered the harms posed by the particular use at issue. That question was litigated below. Before the District Court found that the Government had not carried its burden of showing a compelling interest in preventing such harm, the court noted that it could not ignore the congressional classification and findings. But Congress' determination that DMT should be listed under Schedule I simply does

not provide a categorical answer that relieves the Government of the obligation to shoulder its RFRA burden.

Just because some agency has classified a substance does not mean that such classification can be used to satisfy the compelling interest test.

The Controlled Substances Act's authorization to the Attorney General to "waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety," 21 U. S. C. §822(d), reinforces that Congress' findings with respect to Schedule I substances should not carry the determinative weight, for RFRA purposes, that the Government would ascribe to them. Indeed, despite the fact that everything the Government says about the DMT in hoasca applies in equal measure to the

mescaline in peyote, another Schedule I substance, both the Executive and Congress have decreed an exception from the Controlled Substances Act for Native American religious use of peyote, see 21 CFR §1307.31; 42 U. S. C. §1996a(b)(1). If such use is permitted in the face of the general congressional findings for hundreds of thousands of Native Americans practicing their faith, those same findings alone cannot preclude consideration of a similar exception for the 130 or so American members of the UDV who want to practice theirs.

Very important statement by Justice Roberts! That he uses the "Peyote Exemption" as precedential here is very, very important. Here is the Peyote Exemption being used to justify the religious use of a plant substance which has been determined to be "dangerous." This is the interpretation that gives teeth to the Ceremonial Sacrament.

See Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 U. S. 520, 547. The Government's argument that the existence of a congressional exemption for peyote does not indicate that the Controlled Substances Act is amenable to judicially crafted exceptions fails because RFRA plainly contemplates court-recognized exceptions, see §2000bb–1(c). Pp. 11–13.

He uses the Peyote Exemption again in the following:

(c) The peyote exception also fatally undermines the Government's broader contention that the Controlled Substances Act establishes a closed regulatory system that admits of no exceptions under RFRA. The peyote exception has been in place since the Controlled Substances Act's outset, and there is no evidence that it has undercut the Government's ability to enforce the ban on peyote use by non-Indians. The Government's reliance on pre-Smith cases asserting a need for uniformity in rejecting claims for religious exemptions under the Free Exercise Clause is unavailing. Those cases did not embrace the notion that a general interest in uniformity justified a substantial burden on religious exercise, but instead scrutinized the asserted need and explained why the denied exemptions could not be accommodated. See, e.g., United States v. Lee, 455 U. S. 252, 258, 260. They show that the Government can demonstrate a compelling interest in uniform application of a particular program by offering evidence that granting the requested religious accommodations would seriously compromise its ability to administer the program. Here the Government's uniformity argument rests not so much on the particular statutory program at issue as on slippery slope concerns that could be invoked in response to any RFRA claim for an exception to a generally applicable law, i.e., "if I make an

exception for you, I'll have to make one for everybody, so no exceptions." But RFRA operates by mandating consideration, under the compelling interest test, of exceptions to "rule[s] of general applicability." §2000bb–1(a). Congress' determination that the legislated test is "workable . . . for striking sensible balances between religious liberty and competing prior governmental interests," §200bb(a)(5), finds support in Sherbert, supra, at 407, and Cutter v. Wilkinson, 544 U. S. ___, ___. While there may be instances where a need for uniformity precludes the recognition of exceptions to generally applicable laws under RFRA, it would be surprising to find that this was such a case, given the longstanding Cite as: 546 U. S. ____ (2006) 5 peyote exemption 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.

RFRA and AIRFA were enacted to respond to a decision denying a claimed right to a sacramental use of controlled substance. Justice Roberts characterization of the Attorney General's contention as "slippery slope" is instructive. It precludes any attempt by the FDA, USDA, or other agency to complain that religious freedom compromises their ability to administer the program, thus, setting at rest a whole gamut of possible legal devices that could have been brought against Medicine Men and Women which might arise out of conflict between religious liberty (Nemenhah Bona Fide Healing Ceremony) and competing prior governmental interests (FDA, USDA, CODEX, and so forth).

- Chimney Rock and the Maca Oyate

When the Department of the Interior desired to reclassify a section of national forest on the border between Oregon and California as a National Monument, part of the criteria used to justify the change was that the area had been used for Sacred Ceremony by Native Americans for time immemorial. Having obtained the re-classification, however, the BLM demanded that such Native Americans Groups pay a fee to use their traditional sacred sites, such as Chimney Rock. The Department of the Interior redefined their Sacred Ceremonies as a matter of commerce. They sought to use their power base to regulate and restrict Native American religious freedom so that the area could be successfully leased to their friends in the cattle industry.

The Maca Oyate Sundance Society had met on an 80 acre site under the shadow of Chimney Rock for over thirty years to make the annual Sundance. The Society represents some four hundred or more Holy People and Participants from Tribes, Bands, and Traditional Organizations from all over the Americas. They were threatened with arrest should they attempt to make ceremony on the mountain.

The Nemenhah Band and Native American Traditional Organization officially recognized the Maca Oyate Sundance Society a Lodge of the Nemenhah Band in 2006. As Principle Medicine Chief, I composed a letter to be delivered to the BLM local office just prior to the proposed Sundance date. On the strength of that letter, the BLM issued a permit to the Maca Oyate, not for the use of the proposed 80 acres, but for the 500 acres surrounding Chimney Rock. No mention of arrests was ever repeated.

Obviously, the mood of the High Court is becoming apparent to the agencies within the Federal Government as well. This issue did not go to court. It didn't even leave the office. Although we are not part of any federally recognized Native American Tribe, nevertheless, the BLM has recognized us as a Native American Traditional Organization with all the protection of AIRFA, RFRA and other pertinent public laws.

Appendix A

IN THE SUPREME COURT OF THE STATE OF UTAH

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State of Utah,

Plaintiff and Appellee,

v.

James W. Mooney, aka James W.B.E. Mooney, Linda T. Mooney,

and Oklevueha Earthwalks Native American Church of Utah, Inc.,

Defendants and Appellants.

No. 20010787

F I L E D
June 22, 2004

2004 UT 49

Fourth District, Provo Dep't

The Honorable Gary D. Stott

Attorneys: Mark L. Shurtleff, Att'y Gen., Kris C. Leonard,

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Wayment, Provo, for plaintiff

Kathryn Collard, Salt Lake City, for defendants

PARRISH, Justice:

¶1 James and Linda Mooney, along with their church, the Oklevueha Earthwalks Native American Church (collectively, the "Mooneys"), have been charged by the State with multiple felony counts of "engag[ing] in a continuing criminal enterprise" and of engaging in a "pattern of unlawful activity" by possessing and distributing peyote, a controlled substance, to members and visitors in their religious services. The State also seeks forfeiture of the church's property in connection with this alleged criminal activity. The Mooneys moved to dismiss the charges, arguing that a federal regulatory exemption incorporated into Utah law permits them to use and distribute peyote in "bona fide religious ceremonies" because they are members of the Native American Church. The Mooneys also argued that if state law is not interpreted to permit their possession and use of peyote for religious purposes, their prosecution violates their constitutional right to freely exercise their religion, as well as their constitutional rights to due process and equal protection of the law.

¶2 The trial court rejected the Mooneys' arguments, holding that the Mooneys are not entitled to the protection of any exemption for the religious use of peyote because they are not members of a federally recognized Native American tribe. We reverse the trial court's decision, holding that Utah law incorporates a federal regulation exempting from prosecution members of the Native American Church who use peyote in bona fide religious ceremonies. On its face, the federal regulation does not restrict the exemption to members of federally recognized tribes. We therefore rule that the exemption is available to all members of the Native American Church. Any other interpretation is not only inconsistent with the plain language of the exemption, but would fail to provide members of the Native American Church with constitutionally adequate notice that their religious use of peyote could expose them to criminal liability.

BACKGROUND

Regulation of Peyote

¶3 A cactus indigenous to the Rio Grande valley of southern Texas and northern Mexico, peyote contains mescaline, which can induce hallucinations and other psychedelic effects in those who consume it. There is a long tradition among some Native American groups of worshiping peyote and of consuming the cactus and experiencing its effects in religious ceremonies. See Peyote Way Church of God, Inc. v. Thornburgh, 922 F.2d 1210, 1212 (5th Cir. 1991); United States v. Boyll, 774 F. Supp. 1333, 1335 (D.N.M. 1991); Native Am. Church v. United States, 468 F. Supp. 1247,

1248 (S.D.N.Y. 1979); see also Christopher Parker, Note and Comment, A Constitutional Examination of the Federal Exemptions for Native American Religious Peyote Use, 16 BYU J. Pub. L. 89, 89-94 (2001).

¶4 Congress first restricted the possession and sale of peyote in the Drug Abuse Control Amendments of 1965, and classified it as a Schedule I controlled substance in 1970. 21 U.S.C. § 812(c) Schedule I(c)(12) (2004); Boyll, 774 F. Supp. at 1338; Native Am. Church, 468 F. Supp. at 1249. In 1965 and again in 1970, there were efforts in Congress to enact an explicit statutory exception for the use of peyote in bona fide religious ceremonies. Id. These efforts did not succeed, but they led the Bureau of Narcotics and Dangerous Drugs, the predecessor to the agency now known as the Drug Enforcement Agency (the "DEA"), to promulgate a regulatory exemption for the religious use of peyote. Id. That exemption provides as follows:

The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to a Native American Church is required to register annually and to comply with all other requirements of law.

21 C.F.R. § 1307.31 (2004). Throughout this opinion, we will refer to this regulatory exemption as the Religious Peyote Exemption, or simply as the federal exemption.

¶5 The religious use of peyote in Native American religious ceremonies became a frequent topic of debate after the United States Supreme Court decided the case of Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990). In Smith, the Court held that the state of Oregon did not violate the Free Exercise Clause of the First Amendment to the United States Constitution when it refused unemployment benefits to certain practitioners of Native American peyote religion who had been fired for illegally using peyote. Id. at 890. The Court announced that a neutral law of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. Id. at 878-80.

¶6 The Smith decision generated a great deal of controversy and motivated Congress to legislate in response. See generally

Michael W. McConnell, Religious Freedom, Separation of Powers, and the Reversal of Roles, 2001 BYU L. Rev. 611, 613-14. One of these responses was the adoption of the American Indian Religious Freedom Act Amendments (the "AIRFA Amendments") in 1994. These amendments were based on the following congressional findings:

The Congress finds and declares that--

(1) for many Indian people, the traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been integral to a way of life, and significant in perpetuating Indian tribes and cultures;

(2) since 1965, this ceremonial use of peyote by Indians has been protected by Federal regulation;

(3) while at least 28 States have enacted laws which are similar to, or are in conformance with, the Federal regulation which protects the ceremonial use of peyote by Indian religious practitioners, 22 States have not done so, and this lack of uniformity has created hardship for Indian people who participate in such religious ceremonies;

(4) the Supreme Court of the United States, in the case of Employment Division v. Smith, 494 U.S. 872 (1990), held that the First Amendment does not protect Indian practitioners who use peyote in Indian religious ceremonies, and also raised uncertainty whether this religious practice would be protected under the compelling State interest standard; and

(5) the lack of adequate and clear legal protection for the religious use of peyote by Indians may serve to stigmatize and marginalize Indian tribes and cultures, and increase the risk that they will be exposed to discriminatory treatment.

42 U.S.C. § 1996a(a) (2004). On the basis of these findings, Congress directed that

[n]otwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.

Id. § 1996a(b)(1). For the purposes of these provisions, Congress defined the term "Indian" to include members of "any tribe, band, nation, pueblo, or other organized group or community of Indians . . . which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." Id. § 1996a(c)(2).

The Mooneys and the Native American Church

¶7 The Native American Church was formally established in Oklahoma in 1918. Peyote Way, 922 F.2d at 1212. The formation of this entity was motivated, at least in part, to protect the religious use of peyote from early attempts to suppress it. Boyll, 774 F. Supp. at 1336. The Native American Church has now grown to include many local branches or chapters, including, according to the Mooneys, the defendant Oklevueha Earthwalks Native American Church.

¶8 James Mooney claims to be a descendant of Native Americans, but is not a member of any federally recognized tribe. The Mooneys practiced Native American religion before founding their church, and provided religious programs and services to inmates of Utah correctional facilities, both as volunteers and, in Mr. Mooney's case, as an employee. James and Linda Mooney founded their Oklevueha Earthwalks Native American Church in April of 1997 in Benjamin, Utah. Because Texas is the only state in the nation in which peyote is grown, the Mooneys obtained peyote for use in their church services by registering and complying with the requirements of the Texas Department of Public Safety Narcotics Services.

ANALYSIS

I. INCORPORATION OF THE RELIGIOUS PEYOTE EXEMPTION INTO THE UTAH CONTROLLED SUBSTANCES ACT

¶9 The first issue we address is whether the federal Religious Peyote Exemption has been incorporated into Utah law. The Utah Controlled Substances Act (the "Act") provides:

"Controlled Substance" means a drug or substance included in Schedules I, II, III, IV or V of [Utah Code] Section 58-37-4, and also includes a drug or substance included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any controlled substances analog.

Utah Code Ann. § 58-37-2(1)(e)(i) (2002). While peyote is among the controlled substances listed in Schedule I of section 58-37-4

of the Utah Code, the preamble to Schedule I provides an exception for substances that are "specifically excepted" or "listed in another schedule." Id. § 58-37-4(2)(a)(iii) (2002). We must decide whether this qualifying language incorporates the federal Religious Peyote Exemption of 21 C.F.R. § 1307.31 into state law. This is a question of statutory interpretation that we review for correctness without deference to the conclusions of the trial court. See Ward v. Richfield City, 798 P.2d 757, 759 (Utah 1990).[(1)]

¶10 We hold that the federal exemption for the religious use of peyote in bona fide ceremonies of the Native American Church constitutes a "specific exception" to the listing of peyote as a controlled substance within the meaning of Utah Code section 58-37-4(2)(a)(iii). To interpret the statute otherwise would create a direct conflict with a preemptive federal law, and would raise substantial constitutional impediments to the State's prosecution of the Mooneys.

¶11 Our primary source of guidance in statutory interpretation is the plain and ordinary meaning of the statutory language. Dick Simon Trucking, Inc. v. State Tax Comm'n, 2004 UT 11, ¶ 17, 84 P.3d 1197. Unfortunately, the language of the Utah Controlled Substances Act fails to specify the source of the applicable exceptions. Although the Act explicitly provides that scheduled substances are controlled unless "specifically excepted," Utah Code Ann. § 58-37-4(2)(a)(iii) (2002), it does not address whether the contemplated exceptions are found in state statutes, state regulations, federal statutes, federal regulations, or some combination of these sources.[(2)] Similarly, although the Act states that scheduled substances are controlled "unless listed in another schedule," id. § 58-37-4(2)(a)(iii), it neither specifies the other contemplated schedules nor addresses the resolution of conflicts arising when a particular substance is listed as controlled on one schedule but listed as exempt under another schedule. In short, the statute does not address the situation presented here, where the substance in question is listed as a controlled substance under one of the state schedules but is listed as exempt under the federal schedules that have been incorporated by reference into the Utah Controlled Substances Act. See id. § 58-37-3. These omissions and inconsistencies render the statutory language ambiguous and require that we turn to other accepted principles of statutory construction.

A. Preemption by the American Indian Religious Freedom Act Amendments

¶12 In construing statutes, we are obligated to "avoid interpretations that conflict with relevant constitutional mandates." State v. Mohi, 901 P.2d 991, 1009 (Utah 1995). This canon of interpretation has sometimes been couched as a recognition that "[w]e have a duty to construe statutes to avoid constitutional conflicts." Provo City Corp. v. State, 795 P.2d 1120, 1125 (Utah 1990); see also State v. Lindquist, 674 P.2d 1234, 1237 (Utah 1983) ("[I]t is the duty of this Court to construe a statute to avoid constitutional infirmities whenever possible. We must adopt that construction which will save the statute from constitutional infirmity." (quotation and citations omitted)).

¶13 The Supremacy Clause of the United States Constitution authorizes Congress to preempt state law in areas covered by federal legislation, rendering invalid any state statute that conflicts with a federal act of preemption. U.S. Const. art. VI, cl. 2; Ray v. Atl. Richfield Co., 435 U.S. 151, 158 (1978). We therefore avoid interpreting an ambiguous state statute in a way that would render the statute invalid under an explicitly preemptive federal law. See Martin v. City of Rochester, 642 N.W.2d 1, 18 (Minn. 2002) (interpreting a state statute to avoid conflicting with a preemptive federal law).

¶14 The AIRFA Amendments' prohibition on criminalizing the religious use of peyote constitutes a clear congressional act of preemption against the laws of any state that might otherwise prohibit the use of peyote for religious purposes by Native Americans, as the AIRFA Amendments define them. The AIRFA Amendments provide that "[n]otwithstanding any other . . . law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion . . . shall not be prohibited by . . . any State." 42 U.S.C. § 1996a(b)(1) (2004). Were we to hold that the Utah Controlled Substances Act does not incorporate the federal Religious Peyote Exemption, the Act would prohibit peyote use in all circumstances, thereby running afoul of the AIRFA Amendments. We therefore are persuaded to interpret the Utah Controlled Substances Act to have incorporated the exemption for the religious use of peyote found at 21 C.F.R. § 1307.31.

¶15 The State urges us to hold that the Utah Controlled Substances Act does not incorporate the federal exemption and suggests that we resolve the resulting preemption problem by holding that the AIRFA Amendments preempt Utah law only to the extent that Utah law criminalizes peyote use by members of

federally recognized Native American tribes. This interpretation would leave Utah law available for prosecution of those religious peyote users, such as the Mooneys, who are not members of a federally recognized tribe. While the interpretation advocated by the State would facilitate the result it desires, such an interpretation nevertheless would require that we find the Utah Controlled Substances Act in conflict with federal law. We decline to do so in the face of an equally plausible interpretation that avoids any such conflict.

B. Constitutional Guarantees of Due Process

¶16 The statutory interpretation urged by the State is also untenable because it raises a serious question as to whether the Mooneys' constitutional due process rights would be violated by a conviction. In this regard, we are again constrained by the principle of statutory construction counseling us to avoid interpretations that are inconsistent with constitutional guarantees.[(3)] Mohi, 901 P.2d at 1009; Provo City Corp., 795 P.2d at 1125; Lindquist, 674 P.2d at 1237.

¶17 Both the United States and Utah Constitutions protect citizens from deprivation of liberty or property absent due process of law. U.S. Const. amends. V & XIV, § 1; Utah Const. art. I, § 7. The Utah Controlled Substances Act imposes substantial criminal penalties on those found guilty of violating its provisions. Our constitutional guarantees of due process require that penal statutes define criminal offenses "with sufficient definiteness that ordinary people can understand what conduct is prohibited." Kolender v. Lawson, 461 U.S. 352, 357 (1983); State v. MacGuire, 2004 UT 4, ¶¶ 13-14, 84 P.3d 1171; see also In re Discipline of Sonnenreich, 2004 UT 3, ¶ 37, 86 P.3d 712 ("Utah's constitutional guarantee of due process is substantially the same as the due process guarantees contained in the . . . United States Constitution." (quotations and citations omitted)). These guarantees do not permit enforcement of a statute that forbids an act "in terms so vague that [persons] of common intelligence must necessarily guess at [the statute's] meaning and differ as to its application." United States v. Lanier, 520 U.S. 259, 266 (1997) (quotations and citations omitted); see also MacGuire, 2004 UT 4 at ¶ 14.

¶18 Because the Utah Controlled Substances Act does not clearly specify whether it incorporates the Religious Peyote Exemption, a holding that the exemption does not apply would give rise to serious constitutional claims under the due process clauses of the federal and state constitutions. The ambiguity in

the statute is such that the scope of its peyote prohibition cannot be decisively interpreted by lawyers, to say nothing of citizens untrained in the law. This weighs strongly against any interpretation that would enable the State to initiate criminal prosecution based on arguably legitimate conduct.

¶19 In summary, we interpret the Utah Controlled Substances Act to have incorporated the Religious Peyote Exemption found at 21 C.F.R. § 1307.31. This interpretation avoids a conflict with the preemptive AIRFA Amendments. It also avoids the constitutional due process claims that would be created by allowing the State to prosecute the Mooneys under a statute that may reasonably be read to have permitted their religious activities.

II. INTERPRETING THE PEYOTE EXEMPTION IN UTAH LAW

¶20 Having held that the federal exemption for religious peyote use is incorporated into Utah law, we must decide whether the terms of the exemption protect the Mooneys from prosecution. This task requires that we look first at the plain meaning of the regulatory language, and give effect to that meaning unless the language is ambiguous. Thomas v. Color Country Mgmt., 2004 UT 12 ¶ 9, 84 P.3d 1201.

A. The Plain Meaning of the Religious Peyote Exemption

¶21 The State argues that the Religious Peyote Exemption is available only to members of federally recognized Native American tribes. The Mooneys contend that the exemption is not so limited. The exemption states that it applies to "members of the Native American Church," provided such members are using peyote in bona fide religious ceremonies. James Mooney asserts that his church is one of many chapters or churches that make up the Native American Church, that the peyote was used in bona fide religious ceremonies and that, in acquiring peyote from Texas, his church has registered and otherwise followed the applicable regulations of the Texas Department of Public Safety and the United States DEA. These assertions remain unchallenged on appeal.

¶22 Because the text of the exemption is devoid of any reference to tribal status, we find no support for an interpretation limiting the exemption to tribal members. See Boyll, 774 F. Supp. at 1338 (holding that under the plain language of the federal Religious Peyote Exemption, the exemption applies to all members of the Native American Church, regardless of any tribal affiliation). The term "members" in the exemption

clearly refers to members of the "Native American Church"--not to members of federally recognized tribes. Therefore, so long as their church is part of "[t]he Native American Church," the Mooneys may not be prosecuted for using peyote in bona fide religious ceremonies.

B. Deference to the Federal Agency's Interpretation

¶23 In arguing that we should limit the applicability of the Religious Peyote Exemption to members of federally recognized tribes, the State maintains that we should defer to the interpretation of the DEA, the successor to the federal agency that promulgated the exemption. The State argues that the DEA applies the federal exemption only to members of federally recognized tribes.

¶24 We will defer to an agency's interpretation of its own regulation only if it is a reasonable interpretation of the regulatory language. Indeed, the United States Supreme Court has required that federal courts defer to the regulatory interpretation of a federal agency only if the language of the regulation "is not free from doubt" and if the interpretation is "reasonable" and "sensibly conforms to the wording and purpose" of the regulation. Martin v. Occupational Safety & Health Review Comm'n, 499 U.S. 144, 150-51 (1991) (citations and quotations omitted). No deference is otherwise required.

¶25 Whether a federal court must defer to the regulatory interpretation of a federal agency presents a different question from whether a state court is required to defer to a federal agency's interpretation of a federal regulation incorporated into state law. In the latter case, although we are free to consider the interpretation of a federal agency, we have no obligation to defer to that interpretation. In this case, in view of the plain language of the federal exemption and the due process concerns raised by the prosecution of Native American Church members whose activities fall within its plain language, we will not defer to any agency interpretation that would limit the federal exemption to members of federally recognized tribes.

C. Federal Policy Toward Native Americans

¶26 Finally, the State argues that an interpretation extending the federal exemption to members of the Native American Church who are not members of federally recognized tribes would violate the United States Constitution's Equal Protection Clause, because the exemption would be a religion-based preference permitting

members of a particular church, and not others, to use peyote in religious ceremonies. The State maintains that an exemption for members of federally recognized tribes can survive constitutional scrutiny because it is a political preference designed to preserve tribal culture, rather than a constitutionally suspect racial preference.[(4)]

¶27 The State relies on Peyote Way, 922 F.2d at 1212, where the Fifth Circuit Court of Appeals held that the federal Equal Protection Clause permits the Religious Peyote Exemption's preference for Native American Church members because of the federal government's unique political relationship with Native American tribes, and that the Equal Protection Clause does not require that the exemption be extended to religious peyote users who are neither Native American Church members nor members of federally recognized tribes. See also U.S. Const. art. VIII, § 8, cl. 3 (giving Congress the power to regulate commerce with the "Indian Tribes"); Morton v. Mancari, 417 U.S. 535, 551 (1974) (recognizing the "unique legal status" of Native American tribes with respect to the federal government). The State therefore urges a regulatory interpretation that would limit the peyote exemption to members of federally recognized tribes, because a preference for such tribe members receives deference under the Supreme Court's equal protection jurisprudence.

¶28 These arguments do not persuade us to interpret the Religious Peyote Exemption in a way that contravenes the plain meaning of its terms. It is particularly important, as a safeguard for our citizens' due process rights, for us to remain faithful to the plain language of a statute when it would impose criminal penalties on those who violate it. While the constitutional arguments advanced by the State may be relevant to our statutory analysis, they are speculative and remote when compared with the tangible due process claims that the Mooneys would have were they to be prosecuted in violation of the plain language of the exemption.[(5)]

¶29 We also recognize that this case involves a prosecution under state, rather than federal, law. It is by no means clear that the federal government's duties to Native Americans, see Mancari, 417 U.S. at 551, would legitimize state efforts to limit religious preferences to members of federally recognized Native American tribes. It is similarly unclear whether an interpretation that extended the religious peyote exemption to only some members of the Native American Church would survive scrutiny under article I, section 4 of the Utah Constitution, which provides that "the State shall make no law respecting an

establishment of religion or prohibiting the free exercise thereof." Accordingly, despite the State's argument that some hypothetical equal protection claims might be leveled against the plain language interpretation we adopt today, we are constrained to interpret the incorporated regulation according to its plain meaning.

CONCLUSION

¶30 We reverse the decision of the district court. We hold that the federal Religious Peyote Exemption found at 21 C.F.R. § 1307.31 has been incorporated into the Utah Controlled Substances Act. Although the statutory language governing incorporation is ambiguous, we interpret the Act in a manner that avoids a conflict with federal law and does not risk depriving the Mooneys of their constitutional rights to due process.

¶31 In interpreting the reach of the federal exemption as incorporated into Utah law, we rely on its plain language, electing not to defer to a contrary interpretation that the State argues has been adopted by the federal DEA. On its face, the exemption applies to members of the Native American Church, without regard to tribal membership. The bona fide religious use of peyote cannot serve as the basis for prosecuting members of the Native American Church under state law. We remand for reconsideration of the Mooneys' motion to dismiss in light of this opinion.

¶32 Chief Justice Durham, Associate Chief Justice Wilkins, Justice Durrant, and Justice Nehring concur in Justice Parrish's opinion.

1. The trial court did not expressly rule on this issue because it held that even if the Religious Peyote Exemption were incorporated into Utah law, the Mooneys would not qualify for it. This holding was based on an interpretation of the regulation that limited its applicability to members of federally recognized tribes. Like issues of statutory interpretation, we review the trial court's interpretation of a regulation for correctness, giving no deference to the trial court's conclusions. See Brendle v. City of Draper, 937 P.2d 1044, 1046 (Utah Ct. App. 1997).

2. All of these are possible sources of exemptions in light of the fact that the definition of "Controlled Substance" under the Utah Controlled Substances Act includes substances scheduled

under the federal Controlled Substances Act. Utah Code Ann. § 58-37-2(1)(e) (2002).

3. All of the constitutional analysis in this opinion is in the context of our attempt to interpret the statute and its incorporated regulation. Because we interpret the statute and incorporated regulation in a manner that avoids the constitutional issues raised by the Mooneys, we need not and do not consider the merits of the Mooneys' constitutional claims.

4. See Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995) (holding that equal protection jurisprudence requires the application of "strict scrutiny" to all racial classifications).

5. Any equal protection claims arising from our plain language interpretation of the regulatory exemption would not belong to the State, but rather to religious peyote users who are not members of the Native American Church. Cf. Peyote Way, 922 F.2d at 1212-21 (considering the equal protection claim of religious peyote users who were neither Native American tribe members nor Native American Church members). Because none of the parties to this proceeding fall within this category, the State's reliance on this equal protection argument is speculative at best.

Appendix B:

(Slip Opinion) OCTOBER TERM, 2005

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GONZALES, ATTORNEY GENERAL, ET AL. v. O CENTRO ESPIRITA BENEFICENTE UNIAO DO VEGETAL ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
No. 04–1084. Argued November 1, 2005—Decided February 21, 2006

Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA) in response to Employment Div., Dept. of Human Resources of Ore. v. Smith, 494 U. S. 872, where, in upholding a generally applicable law that burdened the sacramental use of peyote, this Court held that the First Amendment's Free Exercise Clause does not require judges to engage in a case-by-case assessment of the religious burdens imposed by facially constitutional laws, id., at 883–890. Among other things, RFRA prohibits the Federal Government from substantially burdening a person's exercise of religion, "even if the burden results from a rule of general applicability," 42 U. S. C. §2000bb–1(a), except when the Government can "demonstrat[e] that application of the burden to the person (1) [furthers] a compelling government interest; and (2) is the least restrictive means of furthering that . . . interest," §2000bb–1(b).

Members of respondent church (UDV) receive communion by drinking hoasca, a tea brewed from plants unique to the Amazon Rainforest that contains DMT, a hallucinogen regulated under Schedule I of the Controlled Substances Act, see 21 U. S. C. §812(c), Schedule I(c). After U. S. Customs inspectors seized a hoasca shipment to the American UDV and threatened prosecution, the UDV filed this suit for declaratory and injunctive relief, alleging, inter alia, that applying the Controlled Substances Act to the UDV's sacramental hoasca use violates RFRA. At a hearing on the UDV's preliminary injunction motion, the Government conceded that the challenged application would substantially burden a sincere exercise of religion, but argued that this burden did not violate RFRA because applying the Controlled Substances Act was the least restrictive means of advancing three compelling governmental interests: protecting UDV members' health and safety, preventing the diversion of hoasca from the church to recreational users, and complying with the 1971 United Nations Convention on Psychotropic Substances. The District Court granted relief, concluding that, because the parties' evidence on health risks and diversion was equally balanced, the Government had failed to demonstrate a compelling interest justifying the substantial burden on the UDV. The court also held that the 1971 Convention does not apply to hoasca. The Tenth Circuit affirmed.

Held: The courts below did not err in determining that the Government failed to demonstrate, at the preliminary injunction stage, a compelling interest in barring the UDV's sacramental use of hoasca. Pp. 6–19.

1. This Court rejects the Government's argument that evidentiary equipoise as to potential harm and diversion is an insufficient basis for a preliminary injunction against enforcement of the Controlled Substances Act. Given that the Government conceded the UDV's prima facie RFRA case in the District Court and that the evidence found to be in equipoise related to an affirmative defense as to which the Government bore the burden of proof, the UDV effectively demonstrated a likelihood of success on the merits. The Government's argument that, although it would bear the burden of demonstrating a compelling interest at trial on the merits, the UDV should have borne the burden of disproving such interests at the preliminary injunction hearing is foreclosed by Ashcroft v. American Civil Liberties Union, 542 U. S. 656, 666. There, in affirming the grant of a preliminary injunction against the Government, this Court reasoned that the burdens with respect to the compelling interest test at the preliminary injunction stage track the burdens at trial. The Government's attempt to limit the Ashcroft rule to content-based restrictions on speech is unavailing. The fact that Ashcroft involved such a

restriction in no way affected the Court's assessment of the consequences of having the burden at trial for preliminary injunction purposes. Congress' express decision to legislate the compelling interest test indicates that RFRA challenges should be adjudicated in the same way as the test's constitutionally mandated applications, including at the preliminary injunction stage. Pp. 6–8.

2. Also rejected is the Government's central submission that, because it has a compelling interest in the uniform application of the Controlled Substances Act, no exception to the DMT ban can be made to accommodate the UDV. The Government argues, inter alia, that the Act's description of Schedule I substances as having "a high potential for abuse," "no currently accepted medical use," and "a lack of Cite as: 546 U. S. ____ (2006) Syllabus accepted safety for use . . . under medical supervision," 21 U. S. C. §812(b)(1), by itself precludes any consideration of individualized exceptions, and that the Act's "closed" regulatory system, which prohibits all use of controlled substances except as the Act itself authorizes, see Gonzales v. Raich, 545 U. S. ___, ___, cannot function properly if subjected to judicial exemptions. Pp. 8–16.

(a) RFRA and its strict scrutiny test 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 per-son"—the particular claimant whose sincere exercise of religion is being substantially burdened. 42 U. S. C. §2000bb–1(b). Section 2000bb(b)(1) expressly adopted the compelling interest test of Sherbert v. Verner, 374 U. S. 398, and Wisconsin v. Yoder, 406 U. S. 205. There, the Court looked beyond broadly formulated interests justifying the general applicability of government mandates, scrutinized the asserted harms, and granted specific exemptions to particular religious claimants. Id., at 213, 221, 236; Sherbert, supra, at 410. Outside the Free Exercise area as well, the Court has noted that "[c]ontext matters" in applying the compelling interest test, Grutter v. Bollinger, 539 U. S. 306, 327, and has emphasized that strict scrutiny's fundamental purpose is to take "relevant differences" into account, Adarand Constructors, Inc. v. Peña, 515 U. S. 200, 228. Pp. 9–10.

(b) Under RFRA's more focused inquiry, the Government's mere invocation of the general characteristics of Schedule I substances cannot carry the day. Although Schedule I substances such as DMT are exceptionally dangerous, see, e.g., Touby v. United States, 500

U. S. 160, 162, there is no indication that Congress, in classifyingDMT, considered the harms posed by the particular use at issue. That question was litigated below. Before the District Court found that the Government had not carried its burden of showing a compelling interest in preventing such harm, the court noted that it could not ignore the congressional classification and findings. But Congress' determination that DMT should be listed under Schedule I simply does not provide a categorical answer that relieves the Government of the obligation to shoulder its RFRA burden. The Controlled Substances Act's authorization to the Attorney General to "waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety," 21 U. S. C. §822(d), reinforces that Congress' findings with respect to Schedule I substances should not carry the determinative weight, for RFRA purposes, that the Government would ascribe to them. Indeed, despite the fact that everything the Government says about the DMT in hoasca applies in equal measure to the mescaline in peyote, another Schedule I substance, both the Executive and Congress have decreed an exception from the Controlled Substances Act for Native American religious use of peyote, see 21 CFR §1307.31; 42 U. S. C. §1996a(b)(1). If such use is permitted in the face of the general congressional findings for hundreds of thousands of Native Americans practicing their faith, those same findings alone cannot preclude consideration of a similar exception for the 130 or so American members of the UDV who want to practice theirs. See Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 U. S. 520, 547. The Government's argument that the existence of a congressional exemption for peyote does not indicate that the Controlled Substances Act is amenable to judicially crafted exceptions fails because RFRA plainlycontemplates court-recognized exceptions, see §2000bb–1(c). Pp. 11–13.

(c) The peyote exception also fatally undermines the Govern-ment's broader contention that the Controlled Substances Act establishes a closed regulatory system that admits of no exceptions under RFRA. The peyote exception has been in place since the Controlled Substances Act's outset, and there is no evidence that it has undercut the Government's ability to enforce the ban on peyote use by non-Indians. The Government's reliance on pre-Smith cases asserting a need for uniformity in rejecting claims for religious exemptions under the Free Exercise Clause is unavailing. Those cases did not embrace the notion that a general interest in uniformity justified a substantial burden on religious exercise, but instead scrutinized the asserted need and explained why the denied exemptions could not be accommodated. See, e.g., United States v. Lee, 455 U. S. 252, 258, 260. They show that the Government can demonstrate a compelling interest in uniform application of a particular program by offering evidence that granting the requested religious accommodations would seriously compromise its

ability to administer the program. Here the Government's uniformity argument rests not so much on the particular statutory program at issue as on slippery slope concerns that could be invoked in response to any RFRA claim for an exception to a generally applicable law, i.e., "if I make an exception for you, I'll have to make one for everybody, so no exceptions." But RFRA operates by mandating consideration, under the compelling interest test, of exceptions to "rule[s] of general applicability." §2000bb–1(a). Congress' determination that the legislated test is "workable . . . for striking sensible balances between religious liberty and competing prior governmental interests," §200bb(a)(5), finds support in Sherbert, supra, at 407, and Cutter v. Wilkinson, 544 U. S. ___, ___. While there may be instances where a need for uniformity precludes the recognition of exceptions to generally applicable laws under RFRA, it would be surprising to find that this was such a case, given the longstanding Cite as: 546 U. S. ____ (2006) peyote exemption 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. The Government has not shown that granting the UDV an exemption would cause the kind of administrative harm recognized as a compelling interest in, e.g., Lee. It cannot now compensate for its failure to convince the District Court as to its health or diversion concerns with the bold argument that there can be no RFRA exceptions at all to the Controlled Substances Act. Pp. 13–16.
3. The Government argues unpersuasively that it has a compelling interest in complying with the 1971 U. N. Convention. While this Court does not agree with the District Court that the Convention does not cover hoasca, that does not automatically mean that the Government has demonstrated a compelling interest in applying the Controlled Substances Act, which implements the Convention, to the UDV's sacramental use. At this stage, it suffices that the Government did not submit any evidence addressing the international consequences of granting the UDV an exemption, but simply relied on two affidavits by State Department officials attesting to the general (and undoubted) importance of honoring international obligations and maintaining the United States' leadership in the international war on drugs. Under RFRA, invocation of such general interests, standing alone, is not enough. Pp. 16–18.
389 F. 3d 973, affirmed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which all other Members joined, except ALITO, J., who took no part in the consideration or decision of the case. ___________ ___________ 1 Cite as: 546 U. S. ____ (2006)