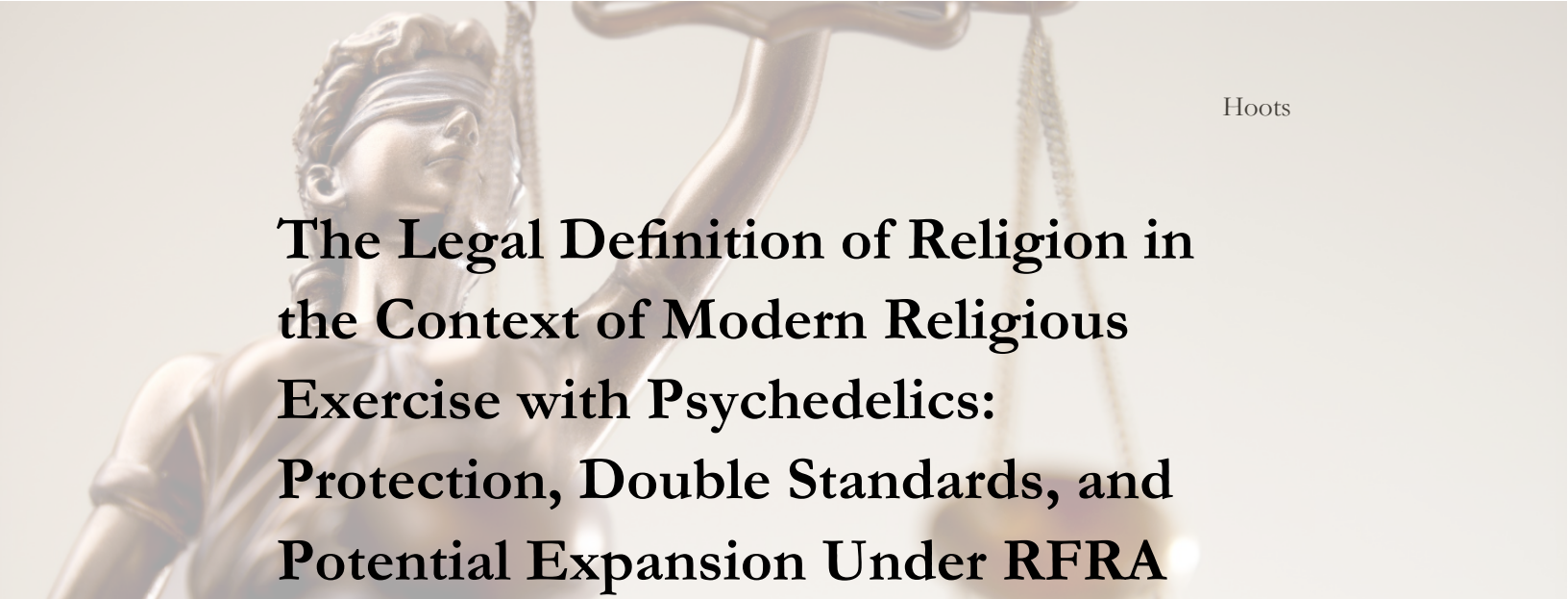




The Legal Definition of Religion in the Context of Modern Religious Exercise with Psychedelics: Protection, Double Standards, and Potential Expansion Under RFRA

Allison Hoots

ABSTRACT:

In the United States, the convergence of religious freedom and the prohibition of controlled substances is legally complex, increasing, and evolving. As interest in psychedelic religious practices expands, legal protection of religious exercise pursuant to the First Amendment and the Religious Freedom Restoration Act (RFRA) enables certain religious communities to use controlled substances in rituals through exemptions from the Controlled Substances Act (CSA). RFRA was enacted in response to a Supreme Court case that failed to safeguard sacramental drug use as a legitimate religious exercise and requires application of stricter analysis of federal government activities that infringe religious freedom. Key to this protection is defining what constitutes a legitimate religious belief when it involves illegal substances. By analyzing court precedents, this essay explores how the legal definition of religion has preferred Judeo-Christian concepts and determined, with a bias, that psychedelic religious practices are not recognizable enough as religious. It argues that the evolving nature of society and religious practice necessitates a reevaluation of legal standards to ensure that the legal right to religious exercise, as applied and intended, protects the minority and remains consistent with modern expressions of faith and ritual.

Introduction

In the United States, psychedelic substances are prohibited by the Controlled Substances Act (CSA) but are also uniquely safeguarded when used in sincere religious exercise...¹ The legal right to use an illegal substance in a religious ritual requires a judicial determination that beliefs constitute sincere religion and that practices diminish certain government interests. The right to religious exercise is established by the First Amendment to the U.S. Constitution and

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¹ See 21 U.S. Code Section 812, where substances like DMT, psilocybin (magic mushrooms), mescaline (peyote and huachuma), and mdma (MDMA or ecstasy) and, by mechanism of the Analog Act, all other psychedelics that are not explicitly identified but are hallucinogenic in effect are on Schedule I of the CSA.

protected by the Religious Freedom Restoration Act (RFRA) and state analogs. The government, through court decisions and Drug Enforcement Agency (DEA) determinations, has developed a threshold analysis of religious beliefs and practices to grant individualized religious-based exemptions and allow for the use of controlled substances that would otherwise be prohibited. This essay explores how precedents set by case law and government agencies use Judeo-Christian concepts to define religion. As a consequence, they have improperly concluded that psychedelic religious practices are not sufficiently “religious.” I argue that the evolving nature of society and religious practice necessitates reevaluating legal standards to ensure that the right to religious exercise, as applied and intended, protects the minority and remains consistent with modern expressions of faith and ritual.

Legal Definition of Religion

There is a long line of cases granting exemptions from laws that infringe religious beliefs, leaving a meandering and contradictory path of legal definitions of religion.² In acknowledging the constitutional guarantee that one religion cannot be preferred over another, there is the ostensive conflict in the court applying criteria from a “traditional” religion,³ by which the court typically means Judeo-Christian religion, to the religious beliefs of the minority. Ultimately, certain presumptions of what is required to constitute religiosity by the court undermine the protection that the law portends.

In the early case law, protectable religion was contingent upon belief in a supreme being that directed moral and ethical conduct. In 1890, the U.S. Supreme Court observed that religion “has reference to one’s views of his relations to his Creator, and to the obligations they impose on reverence for his being and character, and of obedience to his will.”⁴ In 1944, the U.S. Supreme Court in *Ballard* seemed to expand the protection of religion to the unfamiliar beliefs of the minority by concluding, “religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law.”⁵

Similarly, in 1965, a surprisingly inclusive holding in *Seeger* by the U.S. Supreme Court expanded the legal definition of religion:

[T]he expression ‘Supreme Being’ rather than the designation ‘G-d,’ was merely clarifying... so as **to embrace all religions** and to exclude essentially political, sociological, or philosophical views or a merely personal moral code... the test of belief ‘in a relation to a Supreme Being’ is **whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in G-d of one who clearly qualifies for the exemption.** Where such

² “The ethereal and personal nature of religion has posed problems for most courts that have attempted to define it.” *United States v. Meyers*, 95 F.3d 1475, 1489 (10th Cir. 1996) citing *Wiggins v. Sargent*, 753 F.2d 663, 666 (8th Cir.1985) (“The determination of whether a belief is religious or not is an extremely delicate task which must be approached with caution.”); *Africa v. Pennsylvania*, 662 F.2d 1025, 1031 (3rd Cir.1981) (“[j]udges are ill-equipped to examine the breadth and content of an avowed religion”), *cert. denied*, 456 U.S. 908, 102 S.Ct. 1756, 72 L.Ed.2d 165 (1982); *United States v. Kanten*, 133 F.2d 703, 708 (2d Cir.1943) (recognizing that the definition of religion “is found in the history of the human race and is incapable of compression into a few words”); *see also Brown v. Dade Christian Schools, Inc.*, 556 F.2d 310 (5th Cir.1977) (judges filed two concurrences and two dissenting opinions in a case attempting to define religion in order to determine whether a religious school’s policy of racial discrimination was religious or social or political in nature), *cert. denied*, 434 U.S. 1063, 98 S.Ct. 1235, 55 L.Ed.2d 763 (1978).

³ See, for example, *Afr. v. Com. of Pa.*, 662 F.2d 1025, 1032 (3d Cir. 1981).

⁴ *Davis v. Beason*, 133 U.S. 333, 342 (1890).

⁵ *United States v. Ballard*, 322 U.S. 78, 86-87 (1944).

beliefs have parallel positions in the lives of their respective holders we cannot say that one is ‘in a relation to a Supreme Being’ and the other is not...⁶

The Court here acknowledges the ease of granting exemptions to traditional religious adherents—an “orthodox belief in G-d” “clearly qualifies for the exemption.”⁷ Yet, it also embraces a variety of religious beliefs that are recognizable by analogy.⁸ *Seeger* excludes that which is solely “personal” but sweepingly protects any religious beliefs that are in the believer’s “own scheme of things, religious.”⁹

However, by 1972, the U.S. Supreme Court in *Yoder* walks back from *Seeger*. It finds exemption appropriate only where, like the Amish, religious beliefs are “not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living.”¹⁰ Similarly conservative, in 1981, the Third Circuit in *Africa* denied an exemption because the belief system in question was deemed political. The Court provided the following test for recognizable religion:

First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs...¹¹

While claiming to be aligned with *Seeger*’s protection of the individual, *Africa* appears to instead bring back limitations based on traditional religions, preferring the “familiar,” “unquestioned,” and “accepted:” “In considering a first amendment claim arising from a non-traditional ‘religious’ belief or practice, the courts have ‘look(ed) to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted ‘religions.’”¹²

Ultimately, the majority of religious exercise cases lean towards traditional religious concepts of G-d, morality, ritual practice, and the comprehensiveness of beliefs. These conclusions prejudice emerging religions that may, as a result of modern practices, not yet (nor ever) meet these criteria. Nevertheless, they, too, deserve equal protection under the law.

⁶ Emphasis added. *United States v. Seeger*, 380 U.S. 163, 156-166, 85 S. Ct. 850, 854, 13 L. Ed. 2d 733 (1965).

⁷ *Ibid.*

⁸ See *Afr. v. Com. of Pa.*, 662 F.2d 1025, 1032 (3d Cir. 1981) (“In considering a first amendment claim arising from a non-traditional “religious” belief or practice, the courts have “look(ed) to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted ‘religions.’” *Malnak v. Yogi*, 592 F.2d 197, 207 (3d Cir. 1979) (concurring opinion). In essence, the modern analysis consists of a “definition by analogy” approach. It is at once a refinement and an extension of the “parallel”-belief course first charged by the Supreme Court in *Seeger*.”)

⁹ *United States v. Seeger*, 380 U.S. 163, 174-75 (1965).

¹⁰ The Court cited highlighted both the organized community aspect of Amish life and the way in which Amish religious practices permeate all aspects of an adherent’s life as indicative of religion. *Wisconsin v. Yoder*, 406 U.S. 205, 216, 92 S. Ct. 1526, 1533, 32 L. Ed. 2d 15 (1972).

¹¹ *Africa v. Comm. of Pa.*, 662 F.2d 1025, 1032 (3d Cir. 1981). See also *United States v. Safehouse*, No. 19-519, 2024 BL 114383 (E.D. Pa. Apr. 03, 2024).

¹² “In considering a first amendment claim arising from a non-traditional ‘religious’ belief or practice, the courts have ‘look(ed) to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted ‘religions.’” *Ibid.*

RFRA and the Importance of Scrutiny for the Religious Minority

The First Amendment provides, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” and State constitutions provide similar or more expansive protections of religion.¹³ Despite the statutory text that intends to prevent government infringement of religious exercise, the protection of this fundamental right relies on judicial analysis of religion, infringement, and the appropriate balancing of rights and restraint.¹⁴

The U.S. Supreme Court in *Employment Division v. Smith* in 1990 failed to safeguard sacramental use of a controlled substance as religious exercise.¹⁵ Because the law was generally applicable in that it did not specifically target religion, the Court did not apply the strictest scrutiny test to the government’s infringement. It held that law could burden the claimants’ freedom to religious exercise to achieve the government’s interest in applying the law.

In direct response to the *Smith* decision, Congress passed RFRA in 1993. The law asserts that if the federal government imposes a substantial burden on a person’s religious exercise, then that person is entitled to the court’s application of strict scrutiny. It permits infringement of the “exercise of religion ... [only when it] (1) is in furtherance of a compelling governmental interest, and (2) is the least restrictive means of furthering that compelling governmental interest.”¹⁶ The balancing test of strict scrutiny creates a presumption in favor of the religious adherent once religiosity and sincerity are demonstrated, making the way in which ‘religion’ and sincerity are defined and applied a crucial component of the analysis.

Notably, RFRA was enacted in direct response to the failure of *Smith* to protect religious exercise involving a controlled substance and “to protect the ability of the religious minorities to practice their faiths.”¹⁷ The U.S. Supreme Court in *O Centro* emphasizes that RFRA’s legislative intent is the protection of religious exercise using psychedelics: “the very

¹³ U.S. Constitution. Amend. I, cl. 1. See also, “[S]tate courts are absolutely free to interpret state constitutional provisions to accord greater protection” than federal-court interpretations of “similar provisions of the United States Constitution.” *Arizona v. Evans*, 514 U.S. 1, 8, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995). See also *Vlaming v. W. Point Sch. Bd.*, 302 Va. 504, 530 and 535, 895 S.E.2d 705, 717 and 720 (2023) (where court held “Because of the marked textual differences between the religion clauses of the First Amendment of the United States Constitution and the free-exercise provisions of the Constitution of Virginia, interpretations of the former inform but do not necessarily govern the construction of the latter”, concluding a test that is more protective of strict scrutiny where “civil government could interfere with an individual’s sincerely held religious principles only when these ‘principles break out into overt acts against peace and good order.’”).

¹⁴ The “rational basis” test is least scrutinizing and applies when there is an age-based or economic regulation issue affected by a law rationally related to a legitimate government interest; the “intermediate scrutiny” test requires there be an important government interest in applying the law and relates to gender discrimination and quasi-suspect classifications, like legitimacy; and the “strict scrutiny” test applies when a law affects fundamental rights, like race, national origin, or religion, and is the most stringent level of judicial review requiring the government to prove it is narrowly tailored to a compelling interest.

¹⁵ *Employment Division v. Smith* 494 U.S. 872, 879 (1990) (holding that “the right of free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)’”).

¹⁶ 42 U.S.C. § 2000bb-1(c). A majority of the states have analogs of RFRA that require strict scrutiny.

¹⁷ S. Rep. No. 103-111, at 8 (1993); see also, e.g., H.R. Rep. No. 102-137, pt. 16, at 23375 (1991)

reason Congress enacted RFRA was to respond to a decision denying a claimed right to sacramental use of a controlled substance.”¹⁸

Religious Freedom and Psychedelic Sacraments

Communities engaging in religious psychedelic ceremonies remained largely “underground,” operating in secret and unregulated spaces, until two courts’ decisions in the aughts: *O Centro*¹⁹ by the U.S. Supreme Court and *Church of the Holy Light of the Queen*²⁰ by the Ninth Circuit. Both cases concluded that exemptions from the CSA for sacramental ceremonies with ayahuasca were required to protect the religious exercise of the church claimants. Notably, these two cases were brought and won by long-existing religious communities, recognized and legal in Brazil, and with clear lineages containing Judeo-Christian elements.²¹

The defendant in the *O Centro* case was the O Centro Espírita Beneficente União do Vegetal (UDV) church, which is a Christian Spiritist religion that practices with ayahuasca. During the case, the government did not question the religiosity of the church, instead focusing on health risks and diversion.²² In *Holy Light of the Queen*, the church was a branch of the Santo Daime, a syncretic religion that blends elements of Catholicism with Indigenous Amazonian and African beliefs. Again, the government spent no effort in discrediting the religious beliefs of the church except to suggest there was evidence of a lack of sincerity due to secrecy, which was quickly dismissed by the court.²³ In response to the church’s RFRA claim,²⁴ the U.S. District Court found that the government failed to show that its interests justified prohibiting the religious use of Daime tea (ayahuasca) outright.²⁵ The Holy Light of

¹⁸ They state, “the very reason Congress enacted RFRA was to respond to a decision denying a claimed right to sacramental use of a controlled substance.” *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 421, 126 S. Ct. 1211, 1215, 163 L. Ed. 2d 1017 (2006).

¹⁹ *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 430–31 (2006).

²⁰ *Church of Holy Light of Queen v. Mukasey*, 615 F. Supp. 2d 1210 (D. Or. 2009).

²¹ Both religions have churches in Brazil, where the use of ayahuasca (a brew that contains the controlled substance of DMT) is legal. The *O Centro* case was brought by a branch of the União do Vegetal (UDV), which is a Christian Spiritist religion, the *Holy Light of the Queen* case was brought by a congregation of the Santo Daime, a syncretic religion incorporating elements of Catholicism.

²² The UDV sought a preliminary injunction to bar enforcement of CSA with respect to their ceremonial use of ayahuasca. The injunction was granted by the district court, finding “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 Tenth Circuit affirmed and, later, so did the U.S. Supreme Court. *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 418, 126 S. Ct. 1211, 1213, 163 L. Ed. 2d 1017 (2006).

²³ In the UDV litigation, at least at the preliminary injunction hearing, the government conceded that the UDV plaintiffs had made a prima facie claim under RFRA. Here, however, defendants challenge plaintiffs’ sincerity, citing plaintiffs’ decision to conduct ceremonies in secret until the Supreme Court ruling in favor of the UDV plaintiffs. Plaintiffs’ secrecy does not show a lack of sincerity. Instead, it shows that plaintiffs remained committed to practicing their religion despite the threat of criminal prosecution and loss of professional status

Church of the Holy Light of the Queen v. Mukasey, 615 F. Supp. 2d 1210, 1219 (D. Or. 2009), vacated sub nom. *Church of Holy Light of Queen v. Holder*, 443 F. App’x 302 (9th Cir. 2011).

²⁴ The substantial burden arising from when there was a seizure of Daime tea and arrest of a leader of the church.

²⁵ The government presented studies regarding LSD, DMT (not as ayahuasca), and other hallucinogens as analogous evidence, but the court remained unpersuaded, stating that it was not “presented evidence that Daime tea is addictive or causes long-term health problems.” *Church of the Holy Light of the Queen v. Mukasey*, 615 F. Supp. 2d 1210, 1215 (D. Or. 2009), vacated sub nom. *Church of Holy Light of Queen v. Holder*, 443 F. App’x 302 (9th Cir. 2011). Conversely, the Santo Daime

the Queen prevailed in the strict scrutiny balancing test by demonstrating extensive religious beliefs and practices that diminished the government's compelling interests by (1) protecting the health and safety of the small church community and (2) maintaining only religious practices with ayahuasca to prevent diversion.²⁶

In 2024, the DEA entered a settlement pursuant to RFRA to give the Church of Eagle and Condor a religious-based exemption to allow ceremonies with ayahuasca.²⁷ This came after two years of litigation. The church, identifying as a mix of Shipibo Amazonian and U.S. Native American traditions, presented as credible believers with strong evidence demonstrating minimal risks to health and diversion. The settlement was the first DEA religious-based exemption from the CSA for a church without Christian elements.

Other than these three churches, no other religious practice with a controlled substance is made legal by individual exemption.²⁸

Double Standards Applied to Psychedelic Religions

When a court assesses an RFRA case, it must first determine whether the religious beliefs in question are recognizable as religion and, second, determine if there is evidence of sincerity.²⁹ Both determinations rely on a similar standard to the famous pornography test of “I know it when I see it.”³⁰ These legal ‘gut checks’ create an opening for a judge’s personal beliefs and prejudices to impact the ruling, intentionally or unintentionally. Particularly concerning is the biased judicial presumption that RFRA, despite its acknowledgment of the dire need to protect “sacramental use of a controlled substances,”³¹ is wielded by psychedelic churches as “refuge to canny operators who seek through subterfuge to avoid laws they'd prefer to ignore... [using] ‘churches’ as cover for illegal drug distribution operations.”³²

For example, in the *Meyers* case in 1996, the Tenth Circuit adopted a more conservative definition of religious beliefs drawing from *Yoder* and *Africa*. The *Meyers* test defines religion as “(1) ultimate ideas, (2) metaphysical beliefs, (3) moral or ethical system, (4) comprehensiveness

presented a commissioned study of their own church members to demonstrate there were no harmful effects from ceremonies with ayahuasca despite certain risks and they were healthy. Finally, the church engaged in rigorous screening of individuals interested in joining the congregation and attending ceremony, both for medical purposes and to ensure sincerity of interest in the religious beliefs of the church.

²⁶ *Church of the Holy Light of the Queen v. Mukasey*, 615 F. Supp. 2d 1210, 1220 (D. Or. 2009), vacated sub nom. *Church of Holy Light of Queen v. Holder*, 443 F. App'x 302 (9th Cir. 2011) (“The government has failed to show that outright prohibition of the Daime tea is the least restrictive means of furthering its interests.”)

²⁷ Mary Carreon, “Church of the Eagle and the Condor Can Now Drink Ayahuasca Legally in the US,” *DoubleBlind Magazine*, May 7, 2024, <https://doubleblindmag.com/church-of-eagle-and-condor/>.

²⁸ In addition to the federal and state exemptions that permit legal practices with peyote by Native American individuals; for example, see the American Indian Religious Freedom Act. American Indian Religious Freedom Act, Pub. L. 95-341, 92 Stat. 469 (1978) (codified at 42 U.S.C. § 1996).

²⁹ See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014). (where the court concluded the need to avoid judicial evaluation of whether religious beliefs are “mistaken or insubstantial.”)

Unsurprisingly, the U.S. Supreme Court found no need to scrutinize religion and only confirm sincerity of beliefs in a case where the RFRA claimant was Hobby Lobby, a closely-held corporation owned by a Christian evangelical family. However, as courts attempt to move away from evaluating religion—where “[i]nstead, [the courts] ‘narrow function...is to determine’ whether the line drawn reflects ‘an honest conviction.’”

³⁰ *Jacobellis v. State of Ohio*, 378 U.S. 184, 197, 84 S. Ct. 1676, 1683, 12 L. Ed. 2d 793 (1964).

³¹ *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 421, 126 S. Ct. 1211, 1215, 163 L. Ed. 2d 1017 (2006).

³² *Yellowbear v. Lampert*, 741 F.3d 48, 54 (10th Cir. 2014).

of beliefs, and (5) accoutrements of religion.”³³ One emblematic failure of *Meyers* was defining religion with “religion,”³⁴ where “accoutrements of religion” is intertwined with traditional, mainstream, and well-known religious beliefs and practices.³⁵ The court noted, “no one of these factors is dispositive [and] factors should be seen as criteria that, *if minimally satisfied*, counsel the inclusion of beliefs within the term ‘religion.’”³⁶ Yet, ultimately, the court held that the use of marijuana by the defendant, Meyers, in his Church of Marijuana was based on beliefs that “were secular and, thus, did not constitute a ‘religion’ for RFRA purposes.”³⁷ *Meyers* looms dangerously over psychedelic religious practices.³⁸

In 2010, the Tenth Circuit (again) refused to recognize religious beliefs in a marijuana church in *Quaintance*. Here, five circumstances were identified as undermining the defendant church’s sincerity and, therefore, its right to religious exemption.³⁹ The *Quaintance* sincerity test allows for judicial prejudice, specifically with its ill-defined test that religious beliefs are insincere if they appear to be “*ad hoc* beliefs,” meaning they were solely adopted to justify illegal activity.⁴⁰ It also applies double standards to psychedelic churches, holding, for example, that such churches should not engage in commercial activities.⁴¹ Conversely, in the *Holy Light of the Queen*, where the religious beliefs being exercised were Judeo-Christian, the dicta was remarkably clear-headed and uninfluenced by the stigma of controlled substances even when marijuana was found in the church leader’s home.⁴²

³³ *United States v. Meyers*, 95 F.3d 1475 (10th Cir. 1996).

³⁴ Additionally confusing, *Meyers* conflictingly concludes that beliefs must be substantial and “prescribe a particular manner of acting or *way of life*” [(*United States v. Meyers*, 95 F.3d 1475, 1483 (10th Cir. 1996) (Emphasis added)] to be religious but cannot solely be “a philosophy or *way of life*.” *United States v. Meyers*, 95 F.3d 1475, 1482 (10th Cir. 1996); see also *Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 546 U.S. 418, 430–31 (2006).

³⁵ “Founder, prophet, teacher; Important writings; Gathering places; Keepers of knowledge; Ceremonies and rituals; Structure or organization; Holidays; Diet or fasting; Appearance and clothing; and Propagation, proselytizing.” *Ibid.*

³⁶ *United States v. Meyers*, 95 F.3d 1475 (10th Cir. 1996). Emphasis added.

³⁷ The court engaged in a troublesome analysis of the religious beliefs, validating the district court’s inability “to discern anything ultimate, profound, or imponderable about Meyers’ beliefs” and dismissal of a religion that solely “worships” the marijuana plant. *United States v. Meyers*, 95 F.3d 1475, 1484 (10th Cir. 1996); *United States v. Meyers*, 906 F. Supp. 1494, 1505–08 (D. Wyo. 1995), *aff’d*, 95 F.3d 1475 (10th Cir. 1996).

³⁸ Critically, “While Meyers may sincerely believe that his beliefs are religious, this Court cannot rely on his sincerity to conclude that his beliefs rise to the level of a “religion” and therefore trigger RFRA’s protections...his beliefs do not constitute a “religion” as that term is uneasily defined by law. Were the Court to recognize Meyers’ beliefs as religious, it might soon find itself on a slippery slope where anyone who was cured of an ailment by a “medicine” that had pleasant side-effects could claim that they had founded a constitutionally or statutorily protected religion based on the beneficial “medicine.” *United States v. Meyers*, 95 F.3d 1475, 1484 (10th Cir. 1996).

³⁹ The court’s sincerity test includes assessing for (A) *ad hoc* beliefs that are adopted to justify illegal activity; (B) quantity of controlled substances that exceeds needs for religious exercise; (C) evidence of commerce, including the pursuit of financial gain; (D) lack of ceremony and/or ritual, such that the alleged religious activity is a cover for the distribution of controlled substances; or (E) existence of other illegal substances. See *U.S. v. Quaintance*, 471 F. Supp. 2d 1153 (D.N.M. 2006)

⁴⁰ *Ibid.*

⁴¹ Other churches are not held to this standard, consider, for example, church billboards, megachurches, Christian churches selling holy water on late night infomercials or holding church retreats.

⁴² *Holy Light* acknowledged its decision to grant the injunction was related to the fact there was no “evidence of a viable market for Daime tea [ayahuasca]... [where] DMT itself is not a common drug

In 2009, in response to the *O Centro* decision, the DEA published guidance setting forth a process for religious groups to seek exemption from the CSA for the religious use of controlled substances.⁴³ To date, only two petitions have been denied, and none have been granted, despite dozens being filed.⁴⁴ The DEA's analysis for a religious-based exemption in this process imposes additional standards and makes unreasonable demands for proof of religiosity from psychedelic churches.

For example, the DEA denied a religious-based exemption petition by Soul Quest Church of Mother Earth,⁴⁵ a church that wanted to legally provide ayahuasca ceremonies. DEA asserted that the lack of sincerity of participants' religious beliefs, the commercial nature of the church's activities, and the lack of a clear distinction between religious and therapeutic purposes indicated religious beliefs insufficient to gain exemption, as well as inadequate prevention of diversion.⁴⁶ It's unclear if traditional religious communities would be subjected to similar scrutiny for, say, having congregations filled with nonbelievers, offering pastoral care and counseling, speaking to the healing power of religion, lacking religious texts, having transient participants in religious services, or receiving donations for ceremonies.⁴⁷ By applying standards derived from case law, the DEA disproportionately harms smaller, emerging religions without lineages, thereby suppressing religious freedom and criminalizing religious practice.

of abuse.” Certainly, knowledge and use of DMT has increased significantly since 2009, which could cause a future court to reach a different conclusion. However, it seems illogical and illegal to refuse to protect religious activity because of secular activity happening outside of or appropriated from a religion. *Church of the Holy Light of the Queen v. Mukasey*, 615 F. Supp. 2d 1210, 1214 (D. Or. 2009), vacated sub nom. *Church of Holy Light of Queen v. Holder*, 443 F. App'x 302 (9th Cir. 2011) (““Regardless of why marijuana was in Goldman's bedroom nearly ten years ago, a spiritual leader's possible personal failings should not discredit the entire church.””).

⁴³ As opposed to waiting for a substantial burden sufficient to give standing for a RFRA claim or defense. See 2009 DEA Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act. See, [https://www.deadiversion.usdoj.gov/GDP/\(DEA-DC-5\)\(EO-DEA-007\)\(Version2\)RFRA_Guidance_\(Final\)_11-20-2020.pdf](https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-5)(EO-DEA-007)(Version2)RFRA_Guidance_(Final)_11-20-2020.pdf)

⁴⁴ Since 2016, there have been two denials. See United States Government Accountability Office, “Drug Control: DEA Should Improve its Religious Exemptions Petition Process for Psilocybin (Mushrooms) and Other Controlled Substance,” GAO-24-106630, May 2024, <https://www.gao.gov/assets/gao-24-106630.pdf>

⁴⁵ See DEA Final Determination letter on Soul Quest's exemption petition (2021) at https://www.bialabate.net/wp-content/uploads/2021/06/DEA_Denial_Soul_Quest_Exemption_2021.pdf (where DEA concluded “Based upon a thorough review of the entire record, DEA therefore concludes that Soul Quest's practices, even assuming arguendo that those practices constitute a religious exercise, cannot be accommodated in a manner that would allow DEA to preserve its compelling interests in public health and safety and in preventing illegal diversion of ayahuasca. Indeed, to the extent Soul Quest and its customers use ayahuasca for purposes other than sincere religious exercise, their own use constitutes unlawful diversion.”)

⁴⁶ For more on the DEA's determination on Soul Quest's petition, see Janik in this volume.

⁴⁷ Payments for intangible religious benefits like “admission to a religious ceremony” or “de minimis tangible benefits, such as wine used in religious ceremony” are considered “not usually sold in commercial transactions outside of a donative (gift) context.” IRS Publication 1828 (Rev. 8-2015). Page 30. Catalog Number 21096G. Department of the Treasury. <https://www.irs.gov/pub/irs-pdf/p1828.pdf>.

Conclusion

The legal framework governing the religious use of controlled substances is fraught with challenges, including outdated definitions of religion and a bias against modern psychedelic religious structures. Considering the legislative intent of RFRA, these issues highlight the need for clearer, more inclusive legal standards that reflect the diversity of modern religious and spiritual practices while still balancing public health and safety concerns. However, the stigma against psychedelics may motivate a refusal to protect religious exercise, even where a religion's practices otherwise meet RFRA's fundamental standards. When religious rituals involve controlled substances, the government tends to be prejudiced against these beliefs and practices. The courts may be particularly biased against newer religions that are not as comprehensive as traditional religions or that include non-dogmatic, nonhierarchical, or emerging⁴⁸ beliefs. Further, conduct not typically held against traditional religious communities (such as advertising, proselytizing, commercial activities, holding church activities in nature,⁴⁹ or engaging in recreational use of substances) is held against psychedelic communities when they seek exemption.

The government must look beyond traditional religion that “clearly qualifies”⁵⁰ in order to ensure equal access to the freedom of religion for all religions. Alongside demonstrating practices of safety and maintenance of the organized spiritual purpose for psychedelic ceremonies, a religious-based exemption from the CSA must, critically, be based on an articulation of “sincere and meaningful [belief that is]... parallel to that filled by the orthodox belief”⁵¹ without imposition of traditional religious criteria. In following this requirement set by case law, the government will ensure that emerging psychedelic religions can exist without the perceived need to align themselves with traditional religious beliefs. Their practices can then be based on truly sincere beliefs, not crafted to legal definitions nor adopted through appropriating traditions or lineages. The expansion of the protection of religion through case precedent and the explicit legislative purpose of RFRA to protect the religious minority, including explicitly those who engage in psychedelic ceremonies, asserts a legal imperative for the government to safeguard the lawful sacramental use of controlled substances without stigma.

⁴⁸ See *Jones v. Slade*, 23 F.4th 1124, 1143 (9th Cir. 2022) (addressing conversion, “the timing of the adoption of a religious belief is “immaterial” to the determination of whether a person's religious exercise has been burdened.”) See also *Hobbie v. Unemployment Appeals Comm'n*, 480 U.S. 136, 144, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987) (refusing to “single out the religious convert for different, less favorable treatment than that given an individual whose adherence to his or her faith [is less recent]”); see also *Callahan v. Woods*, 658 F.2d 679, 687 (9th Cir. 1981) (“So long as one's faith is religiously based at the time it is asserted, it should not matter ... whether that faith derived from revelation, study, upbringing, gradual evolution, or some source that appears entirely incomprehensible.”)

⁴⁹ See *United States v. Barnes*, 677 F. App'x 271, 273 (6th Cir. 2017) (where the Court seemed to scoff that Barnes had not established a place of worship: “Barnes testified that he did not establish a physical place of worship for the local Michigan branch because ‘[w]ith [ONAC] spirituality, the place of worship is all of Mother Earth.... [O]ur church [is] everywhere we go.’”)

⁵⁰ *United States v. Seeger*, 380 U.S. 163, 166, 85 S. Ct. 850, 854, 13 L. Ed. 2d 733 (1965)

⁵¹ *Ibid.*