December 27, 2021

Senator Charles Grassley
721 Federal Building
210 Walnut Street
Des Moines, IA 50309
Fax: (515) 288-5097

Senator Charles Grassley
135 Hart Senate Office Building
Washington, D.C. 20510
Fax: (202) 224-6020

Dear Senator Grassley,

As you know, the state of Iowa has set up a program for cultivation, distribution, and use of marijuana. Iowa Code Chapter 124E. This marijuana extract program has had no reported diversion and no reported adverse health impact.

Despite the authority of the Drug Enforcement Administration (DEA) to exempt this program from federal drug law, DEA has allowed significant damage to the state and federal relationship to fester.

https://www.supremecourt.gov/opinions/20pdf/20-645_9p6b.pdf

21 U.S.C. § 822(d) authorizes DEA to exempt manufacture and distribution, and 21 U.S.C. § 822(c)(3) makes the exemption applicable to end users.

An application for exemption can be found in 21 C.F.R. § 1307.03, and the state department of health agrees with me that DEA should authorize an exemption for Iowa Code Chapter 124E. I am attaching the declaration from the Iowa Department of Public Health on September 4, 2020, stating that 21 C.F.R. § 1307.03 is the only clear path forward.

DEA currently maintains an exemption in 21 C.F.R. § 1307.31 for the religious use of peyote. Is a state government entitled to as much respect as a church? I'm asking, because that certainly isn't apparent. As it currently stands, it appears churches have more rights than state governments do. How can that be?

When the U.S. Supreme Court last considered the exemption for the religious use of peyote in 2006, it found that the exemption exists because there is a low risk of diversion and a low risk to public health. *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418, 434 (2006) (emphasis added):

> "In other words, if any Schedule I substance is in fact always highly dangerous in any amount no matter how used, what about the unique relationship with the Tribes justifies allowing their use of peyote? Nothing about the unique political status of the Tribes makes their members immune from the ***health risks*** the Government asserts accompany any use of a Schedule I substance, nor insulates the Schedule I substance the Tribes use in religious exercise from the alleged ***risk of diversion***."

In your last letter to me, you said you would follow up with the DEA for me. What did the DEA tell you?

Thank you!

Sincerely,

Carl Olsen
[redacted]
Des Moines, IA 50313-3654
[redacted]

cc: Sarah G. Reisetter, Deputy Director, Iowa Department of Public Health
Colin C. Murphy, GOURLEY REHKEMPER LINDHOLM, P.L.C.

Medical Cannabidiol Program Update:

Status of HF2589 Implementation &
Data Update

Owen Parker, MPH
Program Manager
September 4, 2020

IDPH Strategy: Seeking DEA Exemption

- In their 2019 Annual Report, the Board recommended that IDPH seek protections for schools and facilities participating in our program and acting in compliance with Chapter 124E.
- The General Assembly prescribed in HF2589 that IDPH "seek guarantees" that Federal funding to institutions and facilities acting in compliance with Chapter 124E not have their funding withheld due to participation in Iowa's program.
- The Department has determined that it will move forward with seeking an exception for cannabis as a schedule I substance in Iowa from the DEA, in attempt to minimize conflict between State and Federal Law.
- The Department will seek this exception using Title 21 Code of Federal Regulations 1307.03.

Sec. 31. PROTECTION OF FEDERAL FUNDING. The department of public health shall request guarantees from the agencies of the federal government providing funding to educational and long-term care facilities that facilities with policies allowing patients to possess medical cannabidiol on the grounds of the facilities consistent with chapter 124E or allowing facility staff to administer medical cannabidiol to a patient shall not lose eligibility for any federal funding due to such policies.

§1307.03 Exceptions to regulations.

Any person may apply for an exception to the application of any provision of this chapter by filing a written request with the Office of Diversion Control, Drug Enforcement Administration, stating the reasons for such exception. See the Table of DEA Mailing Addresses in **Sec. 1321.01** of this chapter for the current mailing address. The Administrator may grant an exception in his discretion, but in no case shall he/she be required to grant an exception to any person which is otherwise required by law or the regulations cited in this section.

[75 FR 10678, Mar. 9, 2010]