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How To Defend The Religious Use Of Psychedelics In Court

By **Sam Reisman**

Law360, Denver (June 23, 2023, 4:42 PM EDT) -- Attorneys who work with religious organizations that use controlled substances in their rites advised attendees at a psychedelics-focused conference on Thursday to have clear descriptions of their religion's practices and beliefs in the event that they ever need to defend their use of the substances in court.

"People in the world have been using plant medicines for thousands of years," said attorney and panelist Jack Silver. "And the idea that somehow you have to get permission from the government to do it is a little bit absurd."

The panel — titled "Do's and Don'ts of Filing a [Religious Freedom Restoration Act] Lawsuit - Religious Use Claims and Defenses" — took place on the second day of Psychedelic Science, a three-day gathering in downtown Denver hosted by the nonprofit Multidisciplinary Association for Psychedelic Studies, or MAPS.

The panelists, all of whom are attorneys that work with religious groups that use psychedelics in their ceremonies, said the work of building an RFRA defense can take several years and presented a detailed roadmap that includes establishing that the religious use is in earnest and non-commercial and that the substances are not being diverted to the illicit market.

Silver described enlisting a theologian as an expert to persuade the court that a psychedelic sacrament was legitimate. And co-panelist Allison Hoots observed that judges have been receptive to the argument that taking mind-altering substances in spiritual contexts was potentially intense and unpleasant enough that it did not qualify as "recreational" use.

"Courts have said ayahuasca was religious because it wasn't fun," Hoots said of the psychoactive tea.

However, the panelists agreed that the most advisable route for these organizations is to avoid going to the courtroom to vindicate religious rights altogether.

"If you're doing religious work with psychedelics, and you're having no problem with law enforcement, you don't need to do anything," said Silver. "You don't need to file a suit to get rights."

To open the courthouse doors, churches would need to show an injury in fact, such as law enforcement interdicting a supply of the sacrament. That was the case in the matter of [Church of the Eagle and the Condor v. Garland](#), a lawsuit brought in Arizona federal court last year, and which panelists Silver, Sean McAllister and Martha Hartney are litigating.

The facts of the Arizona case mirror a landmark 2006 U.S. Supreme Court decision, in which a New Mexican church practicing the Brazilian Santo Daime religion sued federal law enforcers over the seizure of a shipment of ayahuasca, a psychoactive tea containing the Schedule 1 substance DMT.

Schedule 1 drugs are those deemed to have no medical value and high potential for abuse as a matter of federal policy.

The court ruled unanimously in that case, [Gonzales v. O Centro Espírita Beneficente União do Vegetal](#), that the Controlled Substances Act is subject to RFRA. Following the Supreme Court's lead, a federal district judge in Oregon ruled three years later that another Santo Daime church also had a

right to use ayahuasca.

But those cases did not establish a blanket green light for churches to use controlled substances in their rites. Rather, since the court decisions, the U.S. Drug Enforcement Administration has set criteria for what a church has to provide if it wants to secure a religious exemption from the CSA.

That process includes giving the agency details about what the religion believes, its specific practices, and details about how it plans to handle the controlled substance.

McAllister, a Colorado attorney who practices psychedelics law, noted that the agency has never once granted an exemption through this process.

Panelists emphasized that organizations who find themselves in court making an RFRA defense will need to make an affirmative case for the legitimacy of the religion, the importance of the psychedelic sacrament, and the safety of participants, and that all of this should be baked in to the church's practices and protocols at the earliest stages.

"What language do you use when you incorporate [a church]? When you file for 501(c)3 status? When you share informed consent agreements?" said Hoots. "All that language will be used for you — or against you — in litigation. So you need to think carefully about every word."

--Editing by Michael Watanabe.

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