

CARL OLSEN,
Petitioner,
vs.
STATE OF IOWA,
Respondent.

)
)
) CASE No. CVCV068508
)
) MOTION TO DISMISS
)
) May 8, 2025
)
)

CARL OLSEN, Pro Se, Petitioner
130 NE Aurora Avenue
Des Moines, IA 50313

JEFFREY PETERZALEK, Assistant County Attorney, Respondent
1305 E. Walnut Street
Des Moines, IA 50319

Jessica Fredregill,
Certified Shorthand Reporter
110 Sixth Avenue
Des Moines, IA 50309

1 P R O C E E D I N G S

2 (The following matter came before the Court via zoom
3 on May 8, 2025, at 8:31 AM.)

4 THE COURT: We are here in CVCV068508. This is a
5 hearing via zoom. This is the case of Carl Olsen versus
6 State of Iowa. Mr. Olsen appears without counsel, the State
7 appears by Jeffrey Peterzalek. This is the date and time
8 set for the respondent's Motion to Dismiss that was filed on
9 February 19, 2025.

10 Just so the parties are aware, I have another
11 matter at 9:00, so I do need to keep this within a half hour
12 it's scheduled for. With that, is there anything on behalf
13 of the respondent we wish to highlight or address regarding
14 your Motion?

15 MR. PETERZALEK: On behalf of the respondent or
16 the -- okay. I'm so used to being the petitioner, I was
17 confused where I was, I apologize.

18 THE COURT: That's all right.

19 MR. PETERZALEK: Just a couple of things, Your
20 Honor, especially since we have a time crunch, I'm going to
21 maybe work my way a little bit backwards --

22 THE COURT: You faded out, Sir.

23 MR. PETERZALEK: Alright. Let's try that. As I
24 mentioned, I think I'll just work backwards a little bit
25 from what I put in my Motion to Dismiss, because the

1 overarching issue here is on the merits of the case.

2 As we set forth in our briefing on this issue,
3 there is no question that the State has a compelling
4 interest in enforcing its controlled substances laws, and
5 then the question really becomes, and I think this is what
6 Mr. Olsen was focusing on, whether there is a less
7 restrictive means of accomplishing those goals.

8 As the case as we cited in our brief indicate,
9 there is not. In fact, our controlled substances laws
10 become meaningless if people are allowed to possess and
11 traffic marijuana as part of a religious service, or for
12 that matter, other things, other reasons that Mr. Olsen has
13 raised in the past.

14 So, based on the cases we've cited in there, in
15 fact, one of the cases we cited, it might have been from the
16 DC Circuit, even involves the same religion that Mr. Olsen
17 adheres to, and again, the decision was that the State has
18 both the compelling interest in enforcing its laws, and that
19 the mechanism that we're currently using is the least
20 restrictive means. That goes to the merits.

21 The other issues that I raise, the next issue I
22 want to just briefly touch on, is the res judicata claim,
23 preclusion issue. Mr. Olsen has been challenging,
24 particularly, Iowa's controlled substances laws,
25 particularly as they relate to marijuana, since early

1 1980's. And as the Eighth Circuit determined, when he did
2 the same thing he is doing here with respect to the federal
3 Religious Restoration Freedom Act, if I got that acronym
4 correct. They said the same thing you should say here,
5 Judge, which is, you've raised the same issues in the
6 context of the constitution. It is the same standard.
7 You've done this over and over again, you're precluded from
8 continuing to do this. That should be the same decision
9 with respect to this challenge to the state law in this
10 particular case.

11 Another thing I'll mention, is standing, Mr. Olsen
12 doesn't sit in any position, any different than any other
13 citizen in the State. He has no particularized injury, he
14 has no interest in this matter, different than any other
15 person in the State, which leads me to a couple of my final
16 comments, so that relates to standing.

17 It is unclear, and I pointed this out in my Motion
18 exactly with Mr. Olson, is requiring or requesting of this
19 Court, his petition is entitled, a Petition for Injunction
20 Relief. The relief he asked for is for an injunction.

21 He hasn't done any of the things, has set forth
22 any of the issues, and as a matter of law, his ability to
23 get an injunction would not be available to him. He's not
24 shown any reasonable likelihood of success on the merits.
25 He's not shown that the public interest would favor him in

1 joining the State from enforcing its laws. If the Court
2 were to weigh the equities as far as whether it is better to
3 enforce the State's controlled substances laws versus
4 Mr. Olsen's right to possess marijuana for his religion, he
5 loses on that issue as well. So there isn't any ability for
6 the Court to enjoin the enforcement of Iowa's controlled
7 substances law at this point.

8 Then he has also made some reference, even though
9 it isn't anywhere that I can see in his petition, that he
10 wanted some sort over declaratory relief. If he wanted to
11 declare the rights of Mr. Olsen, his rights are the same as
12 every other person in the State of Iowa. You don't get to
13 possess marijuana, whether it is for religious purposes,
14 recreational purposes, whatever the case would be, that's
15 the law, as he sits in the same position as anybody else.
16 And if you are going to declare the rights of anybody, it
17 would be a declaration that he has to follow our criminal
18 laws.

19 That's really it in a nutshell, Judge. I think
20 that this is something that has happened, and whether it's
21 been in the administrative context, whether it's been in
22 federal court, whether it's been in state court, whether
23 it's been in a criminal proceeding, whether it's been in a
24 civil proceeding, administrative proceeding, these issues
25 have been raised by Mr. Olsen dozens of times. It is the

1 same issue over and over and over again, and based on the
2 rules of res judicata, particularly issue preclusion, he's
3 out.

4 And even if you get to the merits, the State has a
5 compelling interest in enforcing its controlled substances
6 laws, substance laws, and the method and the mechanism for
7 doing so, even with respect to Mr. Olsen's religious
8 beliefs, is the least restrictive means of accomplishing
9 that goal. If you have any questions, Judge, I'd be happy
10 to answer them, but that's really where we're coming from.

11 THE COURT: Thank you, Sir. Mr. Olsen, anything
12 you want to argue or highlight from your briefs?

13 MR. OLSEN: Absolutely. So the State cited a case
14 called *LS Power*, Iowa Supreme Court, 2023, so I'm going to
15 address that. In that case, the standing was based on
16 *LS Power* having a claim that was different than the general
17 public, so that's the issue that the State just brought up.

18 Then they said that because *LS Power* was ready,
19 willing, and able to complete, they had standing to
20 challenge this law that excluded them from completing. So,
21 Mr. Olsen, unlike members of the general public, has been
22 found to have a qualified religious claim by the Iowa
23 Supreme Court in 1984. I'm not aware of any other person in
24 Iowa that has ever made a religious claim or had the Iowa
25 Supreme Court validated, so that makes me different than

1 anybody else in Iowa, not that there couldn't be anybody
2 else like me, but I don't think the State is aware of anyone
3 else that's in this situation that I'm in.

4 I lost on the merits of that claim, because the
5 Court found that my use of cannabis in 1978 was different
6 than the use of peyote by a member of the Native American
7 Church in California in 1964. The compelling interest test
8 is extremely contextual, so Mr. Woody was arrested
9 and accused of simple possession after being observed using
10 peyote at a religious ceremony. I was arrested and accused
11 of intent to deliver in a traffic stop on the highway in
12 Muscatine County.

13 So, he was charged with simple possession, and I
14 was charged with intent to distribute. I'm not currently
15 receiving cannabis from anyone, and I'm not currently
16 distributing cannabis to anyone, so the context of my RFRA
17 claim here is distinguishable from my previous claims,
18 because the law clearly makes that distinction between
19 simple possession and distribution.

20 The same day *Woody* was decided, another case was
21 decided by the California Supreme Court whether a
22 defendant's religious use of peyote was sincere, and that
23 was *In Re Grady*, in that case, the supreme court remanded to
24 the district court to find, to determine sincerity. The
25 *Woody* case was assumed to be sincere, anyway.

1 So, I've already had that consideration by the
2 Iowa Supreme Court that my claim is sincere, so I don't need
3 to get remanded like *Grady* did to determine sincerity,
4 although the State is welcome to file discovery, whatever.

5 It is theoretically possible that anyone can make
6 a claim for religious use of cannabis, just like *LS Power*
7 was not the only power company qualified to provide electric
8 transmission in Iowa, however, I'm not aware of anyone else
9 that has made such a claim in Iowa.

10 So now I'm going to shift to the compelling
11 interest and the least restrictive means that was standing,
12 so now I'm going to go to -- this is to collateral estoppel.

13 The State's interest in enforcement or religious
14 use of cannabis is greatly diminished, or even cease to
15 exist, religious use of cannabis, in the context of my
16 claim, personal use, simple possession.

17 In 2017, the State legalized cannabis in highly
18 concentrated extracts for medical use, contrary to the
19 classification of cannabis, as a substance with no accepted
20 medical use, and unsafe for use under medical supervision.
21 The use of cannabis is a federal crime, the production and
22 distribution of cannabis is a federal crime.

23 In 2020, the legislature removed the 3% limit on
24 delta-9 THC concentration in these products, and the State
25 is too stubborn to apply for federal authorization under

1 21 U.S.C. 822(d), which is negligent.

2 In 2018, the federal government changed the
3 definition of cannabis by defining concentration of delta-9
4 THC by dry weight over .3% to be marijuana and .3% or less
5 to be hemp. This is an arbitrary formula, but it shows that
6 delta-9 is the only thing that the law cares about when it
7 comes to cannabis.

8 Similar to alcohol and fermented beverages, and
9 mescaline, and various species of cactus, like peyote. In
10 2109 the State adopted this new federal nomenclature and
11 legalized THC for recreational use, Iowa Code Chapter 204.

12 So, any adult in Iowa can go to the grocery store
13 and buy THC in a can of soda. So, Mr. Olsen and the State
14 are in a different posture than they were in 1984, the last
15 time the Iowa Supreme Court addressed this, Mr. Olsen simply
16 wants a declaration of his right to use cannabis in the
17 privacy of his home without interfering with the State's
18 interest in protecting public health and safety.

19 With the State registration under 124E, which is
20 that medical program, and Chapter 204 which is the
21 consumable hemp program, it is easy to see how Mr. Olsen's
22 claim could be resolved with a registration, if one were
23 available. Unfortunately, the only remedy provided to
24 Mr. Olsen is declaratory and injunctive relief under the
25 recently-added Chapter 675, which is the new Religious

1 Freedom Restoration Act.

2 All these previous things that the State refers to
3 were ruled, that I didn't have the right to petition for
4 religious exemption, I couldn't petition the pharmacy board,
5 I couldn't petition the Department of Public Health, I
6 couldn't petition the Department of Inspections and Appeals
7 to create rules.

8 Every time I was blocked, because there was no
9 administrative remedy, and so now comes a judicial remedy,
10 Chapter 675, so this is my first opportunity to make the
11 case where I actually have standing to make the claim, and
12 there is a remedy available.

13 Any further details about what I'm doing, what I
14 intend to do, can be flushed out with discovery. Mr. Olsen
15 would be happy to answer any questions the State has if this
16 case moves forward, and I'd be glad to answer any questions
17 that you have right now. Thank you.

18 THE COURT: Thank you, Mr. Olsen. It is the
19 State's Motion, so I guess I'll let you reply briefly, if
20 you wish to.

21 MR. PETERZALEK: Thank you, Judge. Mr. Olsen
22 makes a number of primarily policy arguments, policy
23 arguments that perhaps a number of Iowans even agree with,
24 but that's not the law. The law is the law. He has to
25 follow the Iowa's controlled substance act in the laws

1 relating to possession and trafficking of marijuana.

2 What two things I didn't hear in Mr. Olsen's
3 arguments were, that the State did not have a compelling
4 interest in enforcing its controlled substances laws,
5 substance laws, they do. The law is very clear on that.
6 And he didn't touch on and refute the fact that the current
7 situation is the least restrictive means of accomplishing
8 the goal of furthering Iowa's interest in its enforcement of
9 Iowa's controlled substance act.

10 So I will certainly commend Mr. Olsen for making
11 some good policy arguments. He has not made sufficient
12 legal arguments to overcome our Motion to Dismiss, and we
13 would ask that the Court dismiss this matter in its
14 entirety.

15 THE COURT: I thank you both for your arguments
16 and your filings. I'll take this matter under advisement,
17 and I'll get a ruling out as soon as I possibly can. Is
18 there anything else we need to address today, Mr. Olsen?

19 MR. OLSEN: No, but that whole argument I just
20 gave, you know, I said I didn't want to interfere with the
21 State's compelling interest in protecting public health and
22 safety, so I did address that, and then the entire rest of
23 my argument goes to least restrictive means, so just because
24 I didn't use those phrases doesn't mean I didn't cover that
25 topic.

1 THE COURT: Thank you, Mr. Olsen. Anything else
2 on behalf of the State?

3 MR. PETERZALEK: No, Your Honor.

4 THE COURT: Alright. I appreciate you logging in.
5 Like I said, I'll get a ruling out as soon as I can. Thank
6 you. You can log off.

7 MR. OLSEN: Thank you. Have a good day.

8 (The hearing concluded at 8:46 AM.)

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C E R T I F I C A T E

I, Jessica Fredregill, Certified Shorthand Reporter, hereby certify that the foregoing transcript is a complete, true, and accurate transcript of the testimony indicated.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

/s/ *Jessica Fredregill*__

Jessica Fredregill, CSR