IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN, Petitioner, v. STATE OF IOWA, Respondent.	Case No. CVCV068508 ***BRIEF IN SUPPORT OF SECOND MOTION FOR SUMMARY JUDGMENT***

Petitioner Carl Olsen respectfully submits the following brief in support of summary judgment.

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INTRODUCTION

This is an action seeking to enjoin the enforcement of the Iowa Uniform Controlled Substances Act (IUCSA), 1971 Acts Chapter 148, Iowa Code Chapter 124, against the personal and private, religious use of cannabis by the Petitioner.

Iowa Code § 124.204(8) contains a religious exception for a controlled substance, peyote, in the same category, Schedule 1, as cannabis. Iowa Code § 124.401(5)(c) contains a secular exception for cannabis without removing it from Schedule 1. Chapter 124 has no process for requesting religious exceptions. The Iowa Religious Freedom Restoration Act (IRFRA), 2024 Acts Chapter 1003, provides a judicial process to redress this injury, Iowa Code Chapter 675.

The IUCSA omits the exception process recommended in § 302(d) of the Uniform Act and found in 21 U.S.C. § 822(d) of the Controlled Substances Act (CSA), Public law: 91-513, 84 Stat. 1236, 1242 (October 27, 1970) , codified at 21 U.S.C. §§ 801-97, contrary to the recommendation in § 302(4) of the Iowa Drug Abuse Study Committee in 1971, at page 26.[1]

Because the injury the Petitioner suffers involves not just the denial of First Amendment religious freedom, but also an unlawful religious establishment, and the denial of Fourteenth Amendment due process and equal protection, the Petitioner asks this Court to decide this case based on the Constitution of the United States rather than Iowa Constitution or the IRFRA.

[1] https://www.legis.iowa.gov/docs/publications/IP/255497.pdf#page=45

In *Mitchell County v. Zimmerman*, 810 N.W.2d 1, 18 (Iowa 2012), the Iowa Supreme Court decided a case similar to this one on the Constitution of the United States without reaching the Iowa Constitution. That same basic analytical framework should be applied to this claim and the IUCSA. The IUCSA is not facially neutral because it contains a statutory religious preference. *Zimmerman,* at 9. The IUCSA is not generally applicable because it contains a secular exception for cannabis. *Zimmerman,* at 11.

An outright ban on personal and private religious use of cannabis does not serve a compelling state interest and is not the least restrictive means of enforcing the IUCSA (preventing the abuse of drugs). *Zimmerman,* at 18.

A narrowly tailored exception exists for secular use of cannabis in the Iowa Medical Cannabidiol Act (IMCA), 2017 Acts Chapter 162, Iowa Medical Cannabidiol Changes (IMCC) , 2020 Acts Chapter 1116, Chapter 124E, authorizing commercial cultivation of cannabis and sale of highly concentrated Δ^9-THC vape devices for use without a prescription and without the medical supervision generally required by the IUCSA.

If Chapter 124E can exist safely without compromising the compelling interest of the State in preventing drug abuse, so can the non-commercial, personal and private, religious use of cannabis by the Petitioner.

ANALYTICAL FRAMEWORK

Employment Division v. Smith, 494 U.S. 872 (1990), held that federal courts do not have the power to enforce the First Amendment through the Fourteenth Amendment against a state uniform controlled substance act if that act is both: (1) neutral toward religious beliefs; and (2) generally applicable. The Fourteenth Amendment requires the States to provide Due Process and Equal Protection. In *Smith*, the Oregon Uniform Controlled Substances Act actually was

uniform and did not have any Due Process or Equal Protection violations embedded in it.[2] *Smith*, 494 U.S. at 876-877 ("The Free Exercise Clause of the First Amendment, … has been made applicable to the States by incorporation into the Fourteenth Amendment, …").

Congress responded to the decision in *Smith* by enacting two laws, the Religious Freedom Restoration Act of 1993 (RFRA),[3] and the American Indian Religious Freedom Act Amendments of 1994 (AIRFAA).[4]

The RFRA (1993) required States to provide First Amendment legal protection even in cases where no Fourteenth Amendment violations have occurred and where *Smith* explicitly said the First Amendment should not be applied. The RFRA was later held unconstitutional as applied to the States in *City of Boerne v. Archbishop Flores*, 521 U.S. 507, 534 (1997) ("considerable congressional intrusion into the States' traditional prerogatives and general authority to regulate for the health and welfare of their citizens"). One of the Justices went so far as to speculate the RFRA itself violates the Establishment Clause. *Id*. at 536 (Justice Stevens, concurring). The RFRA, as amended by the Religious Land Use and Institutionalized Persons Act of 2020 (RLUIPA), only applies to federal laws today.[5]

The AIRFAA requires the States to protect the religious use of peyote by Indians, but the AIRFAA has never been tested for constitutionality (for consistency with *Smith* and *Boerne*)). Unlike the RFRA which authorizes a civil action in a federal district court, the AIRFAA has no independent enforcement mechanism. In *Gonzales v. O Centro Espírita Beneficente União do*

[2] Oregon adopted the Uniform Act in 1977. Oregon Laws 1977, Chapter 745, Senate Bill 904, July 26, 1977, effective July 1, 1978. There were no exceptions in the Oregon schedules, and the process for making exceptions in § 302(d) of the Uniform Act was include in the Oregon act.
[3] Religious Freedom Restoration Act of 1993 (RFRA), Public Law: 103-141, 107 Stat. 1488 (November 16, 1993), codified as 42 U.S.C. Chapter 21B.
[4] American Indian Religious Freedom Act Amendments of 1994 (AIRFAA), Public Law: 103-344, 108 Stat. 3125 (October 6, 1994), codified as 42 U.S.C. § 1996a.
[5] Religious Land Use and Institutionalized Persons Act of 2020 (RLUIPA), Public Law: 106-274, 114 Stat. 803 (September 22, 2020), codified as 42 U.S.C. Chapter 21C.

Vegetal, 546 U.S. 418, 433 (2006), the government tried to argue the peyote exception was based on the unique relationship between the United States government and Indian Tribes, but the court rejected that argument because it is not related to the purpose of the CSA (preventing the abuse of drugs), and 21 U.S.C. § 822(d) ("consistent with the public health and safety").

The IRFRA is one of several state RFRA laws enacted in response to the decision in *Boerne*. The Becket Fund lists 29 states that have enacted RFRA laws.[6] Not all of the state RFRA laws are identical, but most are similar to the federal RFRA. The IRFRA is similar to the federal RFRA.

PREVIOUS CASES

Between 1983 and 1985, the Petitioner sought a religious exception from the United States Department of Justice (DOJ), Drug Enforcement Administration (DEA), for the use of cannabis by the Ethiopian Zion Coptic Church, like the exception for the religious use of peyote by the Native American Church, 21 C.F.R. § 1307.31. *Olsen v. DEA*, 878 F.2d 1458, 1459 (D.C. Cir. 1989), *cert. denied*, 495 U.S. 906 (1990). It appeared to the Petitioner at the time that because the IUCSA adopted a religious exception from a federal regulation, 21 C.F.R. § 1307.31, another regulation like that for the Ethiopian Zion Coptic Church would be a step toward obtaining a similar exception like Iowa Code § 124.204(8) (copied from a federal regulation).

There is no direct path from a federal regulation into Chapter 124, but the Petitioner would have been able to ask the Iowa Board of Pharmacy to recommend an exception to the legislature under its authority in Iowa Code § 124.201(1) to recommend changes in the schedules. Under § 302(d) of the Uniform Act and 21 U.S.C. § 822(d) of the CSA, the pharmacy board would have had the authority to make exceptions without further action by the legislature.

[6] https://becketfund.org/research-central/rfra-info-central/map/

The court held the DEA violated Due Process by denying it had the authority to make religious exceptions, but rejected the Equal Protection claim for religious use of cannabis by members of the Ethiopian Zion Coptic Church based on "the immensity of the marijuana control problem in the United States." *Id*., 878 F.2d at 1464.

Olsen v. DEA was cited in *Smith*, 494 U.S. at 889, a case that denied First Amendment protection for religious use of peyote by the Native American Church, but for different reasons. *Smith* held that because there were no exceptions to Oregon's Uniform Controlled Substance Act, and because there were no Fourteenth Amendment Due Process or Equal Protection violations, the First Amendment claim did not require strict scrutiny.

In contrast to *Smith*, *Olsen v. DEA* held that First Amendment strict scrutiny was required because both the Iowa and federal law, unlike the Oregon law in *Smith*, had religious exceptions for the religious use of peyote by the Native American Church and appeared to be in violation of Due Process and Equal Protection. The DEA claimed it had no authority to create religious exceptions (a Due Process violation), but the exception for the Native American Church, created by an administrative process under the authority of 21 U.S.C. § 822(d), proves otherwise. The court held the DEA had the authority to make exceptions. *Olsen v. DEA*), 878 F.2d at 1461 ("to turn away all churches save one opens a grave constitutional question").

In the previous cases involving the Petitioner the courts applied an Equal Protection strict scrutiny analysis and found a "difference" in how the two substances, peyote and cannabis, were used justified denying the First Amendment and Equal Protection claims for religious use of cannabis, but only "after" strict scrutiny had been applied. The courts evaluated the First Amendment and Equal Protection claims in the context of the demand for each of the two substances. *Olsen v. DEA*, 878 F.2d at 1464.

In 1984 the Iowa Supreme Court also applied an Equal Protection strict scrutiny analysis to distribution of cannabis by members of the Ethiopian Zion Coptic Church. *State v. Olsen*, No. 171-69079 (Iowa, July 18, 1984) (attached as "Exhibit A"). The court compared the religious use of peyote in a California case, *People v. Woody*, 394 P.2d 813 (Cal. 1964), to the religious use of cannabis by members of the Ethiopian Zion Coptic Church. And see *Olsen v. DEA*, 878 F.2d at 1464 (comparing the same case, *People v. Woody*).

In *Olsen v. DEA*, the court noted the same claim had already been litigated before in *Olsen v. Iowa*, 808 F.2d 652 (8th Cir. 1986). The court noted the DEA failed to raise collateral estoppel as an affirmative defense. *Olsen v. DEA*, 878 F.2d at 1463. The DEA did not raise collateral estoppel as an affirmative defense because the DEA claimed it had no authority to make religious exceptions. But the religious exception for the use of peyote by the Native American Church is located in a DEA regulation, 21 C.F.R. § 1307.31, and is authorized under 21 U.S.C. § 822(d) ("consistent with the public health and safety"). 21 C.F.R. Part 1307 is authorized by 21 U.S.C. § 822(d) . And see *O Centro* 546 U.S. at 432, citing 21 U.S.C. § 822(d) as the authority for making exceptions.

The State is raising collateral estoppel as an affirmative defense against strict scrutiny in this case, citing *Olsen v. Mukasey*, 541 F.3d 827 (8th Cir. 2008), *cert. denied sub nom, Olsen v. Holder*, 556 U.S. 1221 (2009). In *Olsen v. Mukasey*, the court found the same First Amendment and Equal Protection claims had been litigated before in *Olsen v. DEA*, and in *Olsen v. Iowa*.

The IUCSA has no process for making religious exceptions, unlike the Uniform Act or the Controlled Substances Act (CSA), Public law: 91-513, 84 Stat. 1236, 1242 (October 27, 1970) , codified at 21 U.S.C. §§ 801-971. Unlike both the Uniform Act and the CSA, the IUCSA has a statutory religious exception for the Native American Church embedded in Schedule 1,

Iowa Code § 124.204(8), in direct violation of the Establishment Clause under the First Amendment.

The DEA claimed it had no authority to make religious exceptions, a violation of Due Process at the federal level because the DEA has the authority to make exceptions in 21 U.S.C. § 822(d). The Uniform Act, based on the federal CSA, also has that same authority to make exceptions in § 302(d). The Iowa Drug Abuse Study Committee recommended that same process in § 302(4) of its report in 1971, but the IUCSA omitted it.[7]

Removing that process from § 302 of the IUCSA would be constitutional if no other exceptions existed. But two exceptions do exist. Making it impossible to add another religious exception to Schedule 1 of the IUCSA without amending the statute violates both Due Process and Equal Protection under the Fourteenth Amendment.

CHAOTIC CHANGES

Since *Olsen v. Mukasey* was decided in 2008, the State has changed its posture not just on cannabis, but the State has also developed a preference for federal racketeering as the preferred method of implementing its change in posture. The State has authorized federal racketeering organizations to cultivate cannabis and supply cannabis extracts to persons forced to violate federal drug law as a condition of receiving medical treatment.

The posture of the Petitioner has changed as well. The Petitioner has not been violating any state or federal laws while the State has been embracing organized crime.

The context in cases up to and including *Olsen v. Mukasey* was always the same. The postures of the parties remained the same (the State accused the Petitioner of violating the law).

[7] See footnote #1.

The legal status of the two substances, peyote (an exception for religious use) and cannabis (no exceptions), remained static.[8]

The classification of peyote and the religious exception for peyote are still the same today. However, since *Olsen v. Mukasey* was decided, an exception for cannabis has been added in both state and federal law, and federal administrative rescheduling of cannabis to Schedule 3, authorized by 21 U.S.C. § 811, in response to those exceptions is in the final stages of rulemaking.[9] Schedule 3 will not make Iowa Code Chapter 124E compliant with the federal CSA without an exception under 21 U.S.C. § 822(d). If peyote was rescheduled to Schedule 3, the non-drug, non-prescription use of peyote would still need a federal exception under 21 U.S.C. § 822(d) to be consistent with the federal CSA. Exceptions under 21 U.S.C. § 822(d) are applicable to any schedule, not just Schedule 1.

The State has authorized an exception for cannabis, Iowa Code § 124.401(5)(c), Chapter 124E, operated as a federal racketeering scheme which commercially exploits the sacrament of the Ethiopian Zion Coptic Church.

Because the State relies on federal drug law for collateral estoppel, the State should be disqualified from relying on federal drug law to the extent the State now authorizes violation of that same law. The State no longer considers compliance with federal drug law a compelling State interest.

The State also relies on State drug law for collateral estoppel, but collateral estoppel no longer exists there, either. The State no longer enforces Schedule 1, Iowa Code § 124.204,

[8] Iowa enacted a therapeutic research program in 1979, but it required federal authorization and no records were kept. 1979 Acts Chapter 9 § 3. The federal government created a compassionate use program in 1978, which may explain why the program was never used. See *Conant v. Walters*, 309 F.3d 629, 648-649 (9th Cir. 2002) ("From 1978 to 1992, the federal government conducted its own medical marijuana program").
[9] https://www.regulations.gov/docket/DEA-2024-0059

uniformly against all users of cannabis, Iowa Code § 124.401(5)(c), in violation of the Equal Protection Clause of the Fourteenth Amendment.

The State has not sought federal authorization for Chapter 124E under 21 U.S.C. § 822(d) for the use of cannabis as a medical treatment in Iowa to give it the same legitimacy as the religious use of peyote has under 21 U.S.C. § 822(d) in 21 C.F.R. § 1307.31. Chapter 124E needs federal authorization under 21 U.S.C. § 822(d) just like a peyote church has in 21 C.F.R. § 1307.31. Persons supplying peyote to the church can register under Iowa Code § 124.302. It makes no sense that persons growing and supplying cannabis to patients in Iowa are not treated the same way. Consumers of cannabis extracts should be protected the same way as members of a peyote church are currently protected. The State is putting the public health and safety needlessly in jeopardy by refusing to apply for federal authorization for Chapter 124E.

The board overseeing the program has repeatedly asked the legislature to apply for waiver under 21 U.S.C. § 822(d) each year in its annual reports to the legislature.

> **8. Seek a Federal Exemption for Iowa's program**
>
> The Board recommends that a task force of legal experts be authorized, similar to the current board of medical experts, to assist the department in navigating the legal issues involved with requesting an exemption for Iowa's program from necessary Federal agencies. This is related to a recommendation in the Board's 2019 Annual Report and the passage of HF2589 in June, 2020.

Recommendations to the Iowa General Assembly, January 2026, at page 10.[10]

Even if the State eventually gets authorization under 21 U.S.C. § 822(d), Iowa Code § 124.401(5)(c) (referring to Chapter 124E) would still not be generally applicable and the State would still be in a different posture than it was when previous cases were decided. Iowa Code § 124.401(5)(c) (referring to Chapter 124E) unlawfully excludes the religious use of cannabis by

[10] https://www.legis.iowa.gov/docs/publications/DF/1594762.pdf

the Petitioner without any Due Process or Equal Protection, in violation of the Fourteenth Amendment.

The term "medical" in the context of Chapter 124E is an "exception" because it has a different meaning (non-drug, non-prescription), than it has in the context of Chapter 124 (prescription drugs). Cannabis would be reclassified if the word "medical" used in Chapter 124E had the same meaning as the word "medical" used in Schedule 1 has. And simply moving cannabis to Schedule 3 will not make cannabis a prescription drug under the Food, Drug, and Cosmetic Act (FDCA), so even that use of the word "medical" has a different context.

Non-drug, non-prescription, use of cannabis under Chapter 124E does not merit any greater protection than religious freedom. Running Chapter 124E as a federal racketeering scheme makes the injury to religious freedom even more egregious than it would be with just the Due Process and Equal Protection violations. Religious freedom is in the Bill of Rights. *West Virginia State Board of Education et al. v. Barnette et al.*, 319 U.S. 624, 638 (1943):

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Chapter 124E is undoubtedly a worthy cause, but a worthy cause needs an exception under 21 U.S.C. § 822(d), just like the peyote church has. The peyote church would be a federal racketeering organization if it didn't have an exception under 21 U.S.C. § 822(d) . Religious freedom is a worthy cause.

PEYOTE EXCEPTION

Congress created a process for making exceptions in 21 U.S.C. § 822(d) and the exception for the religious use of peyote by the Native American Church was created under that process.

Congress considered adding a statutory religious exception for the religious use of peyote in 1965 and rejected that idea. 111 Cong. Rec. H15977 (daily ed. July 8, 1965) (statement of Rep. Harris).[11] Instead of a statutory exception, a federal regulation for religious use peyote was created in 1966. 31 Fed. Reg. 4679 (1966).[12] That federal regulation was copied into the Iowa Code in 1967. 1967 Acts Chapter 189 § 2(12).

At the committee hearing in 1965, the Commissioner of Food and Drugs recommended that Congress leave the interpretation of the U.S. Constitution to the judicial branch, rather than codifying a religious exception. *Id.*, 111 Cong. Rec. at H15978. A codified regulation was added by the Department of Health, Education, and Welfare, contrary to the advice of the Commissioner.

The Final Report of the Drug Abuse Study Committee to the Sixty-Fourth General Assembly of the State of Iowa (January 1971) recommended keeping the exception for religious use of peyote in Schedule 1 of the IUSCA § 204.[13] "Section 204 is identical with the corresponding section of the Uniform Act, except for the authorization for use of peyote in religious ceremonies of the Native American Church carried over from present section 204A.2(12) of the Code." *Id.*, comment at page 16. Section 204A.2(12) was added in 1967, 1967 Acts Chapter 189 § 2(12) (July 1, 1967).[14] The 1967 act refers to a regulation promulgated

[11] https://carl-olsen.com/pdfs/olsen-iowa-rfra/111CongRec15977.pdf
[12] https://carl-olsen.com/pdfs/olsen-iowa-rfra/31FedReg4679.pdf
[13] https://www.legis.iowa.gov/docs/publications/IP/255497.pdf
[14] Iowa Code § 204.2(12) (1971).

under the Federal Food, Drug, and Cosmetic Act (1938) (FDCA). 1967 Acts Chapter 189 § 1(6)(c).[15]

The federal CSA does not have religious exceptions in any of the schedules, not in the act itself and not in the regulatory schedules. The five federal schedules are administrative regulations under 21 C.F.R. Part 1308 and authorized by 21 U.S.C. § 811. Exceptions to the Federal CSA are administrative regulations under 21 C.F.R. Part 1307 authorized by 21 U.S.C. § 822(d). The exception for the religious use of peyote is found in 21 CR. § 1307.31. which is authorized by 21 U.S.C. § 822(d).

The U.S. Drug Enforcement Administration (DEA) did not exist when the peyote exception was added by codified regulation and the DEA had to ask the Office of Legal Counsel to explain it. The rationale for including a religious preference in a published regulation is hard to decipher. See U.S. Department of Justice, Office of Legal Counsel (OLC), *Peyote Exemption for Native American Church*, 5 Op. O.L.C. 403 (1981).[16] The exception was added by the Department of Health, Education, and Welfare in 1966 before the CSA was enacted in 1970, and before the DEA was created in 1973, and against the advice of the Commissioner of the FDA in 1965 who recommended leaving interpretation of the U.S. Constitution to the judicial branch. 31 Fed. Reg. 4679, Vol. 31, No. 54, Saturday, March 19, 1966.

The RFRAs, both state and federal, rely on judicial interpretation, which is the same thing the Commissioner of the FDA recommended Congress do in 1965, leave constitutional interpretation to the judiciary. *Boerne v. Flores*, 521 U.S. 507, 516 (1997):

> The judicial authority to determine the constitutionality of laws, in cases and controversies, is based on the premise that the "powers of the legislature are

[15] Iowa Code § 204.1(6)(c) (1971).
[16] https://www.justice.gov/file/149736/dl?inline

> defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." *Marbury v. Madison*, 1 Cranch 137, 176 (1803).

O Centro, 546 U.S. at 436-437 ("Congress enacted RFRA … to respond to a decision denying a claimed right to sacramental use of a controlled substance"). *O Centro* held the DEA has the authority to make exceptions under 21 U.S.C. § 822(d), but did not require the DEA to use that authority. *O Centro* simply granted a preliminary injunction.

The RFRA does not require or prohibit asking the DEA for an exception. See *Arizona Yage Assembly v. Garland*, 671 F.Supp.3d 1013, 1020 (D. Arizona 2023).

CANNABIS EXCEPTION

Over the past decade an exception for the non-drug, non-prescription use of cannabis has been added to the IUCSA, Iowa Code § 124.401(5)(c) (referring to Chapter 124E), but not as the result of a federal scheduling change or Iowa Code § 124.201. Chapter 124E coincides with congressional suspending restriction on federal criminal enforcement against the implementation of state medical marijuana laws in 2014. Iowa is one of the states explicitly listed by Congress in that provision in 2014, so the timing seems relevant. Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235 § 538, 128 Stat. 2130, 2217 (December 16, 2014). Congressional intent clearly changed in 2014.[17]

The State began experimenting with the therapeutic use of cannabis in 1979, but not without federal authorization. 1979 Acts Chapter 9 § 3(3) (June 1, 1979) ("The board shall be responsible for complying with all federal regulations necessary for the establishment and continuation of the program and the monitoring of all program participants."). After that therapeutic cannabis program was discontinued, cannabis was classified in both Schedule 1 and 2

[17] https://www.congress.gov/crs-product/LSB10694

in Chapter 124 and the pharmacy board was given the authority to authorize cannabis for medical use. 1986 Acts Chapter 1037 § 4 ("Marijuana is deemed to be a schedule II substance when used for medicinal purposes pursuant to rules of the board of pharmacy examiners.") *State v. Bonjour*, 694 N.W.2d 511, 514 (Iowa 2005) ("That procedure is to defer to the Board of Pharmacy Examiners, which is far better equipped than this court — and the legislature, for that matter — to make critical decisions regarding the medical effectiveness of marijuana use and the conditions, if any, it may be used to treat").

The pharmacy board, however, did not want the authority to reclassify only one of the controlled substances and only into Schedule 1 or Schedule 2. Without the authority to create a medical cannabis program, the board saw Schedule 2 as a meaningless option. And this was exactly the same kind of administrative decision making the Iowa Legislature very intentionally removed in 1971 from § 201 of the IUCSA.

In 2010, the pharmacy board recommended the legislature remove cannabis from Schedule 1, remove the authority of the pharmacy board to authorize it, and create a medical cannabis program in Iowa. The legislature rejected the board's recommendation and cannabis remained in two different schedules in the IUCSA until 2020 when the Iowa legislature removed cannabis from Schedule 2 instead of removing it from Schedule 1, and removed the authority of the pharmacy board to authorize it for medical use. At the same time, in 2020, the legislature authorized highly concentrated Δ^9-THC vape devices under Chapter 124E as an alternative to conventional medications normally authorized under Chapter 124. 2020 Acts Chapter 1023 §§ 3, 4, and 8.

Iowa Code Chapter 124E, authorizes the sale and possession of up to 4.5 grams of Δ^9-THC every 90 days, which is approximately 50 mg of Δ^9-THC per day. An individual can

purchase the entire 4.5 grams of Δ⁹-THC all at once, every 90 days. Δ⁹-THC is not toxic and using too much is unpleasant, which explains why adverse events have not been reported. For most people, 50 mg of Δ⁹-THC per day is sufficient, but over 27% of users have waivers for higher amounts of Δ⁹-THC.

To approximate how much Δ⁹-THC 50 mg is, a pharmaceutical drug, Marinol® (a brand-name prescription drug containing dronabinol, a synthetic form of Δ⁹-THC), comes in 2.5, 5, and 10 mg doses. Iowa Code Chapter 204 sets a limit of 4 mg of Δ⁹-THC per serving on recreational products. Most people will feel a psychoactive effect at 4 mg of Δ⁹-THC.

Products with concentrations of up to 80% pharmaceutically pure Δ⁹-THC in vaporizable form are used more frequently (over 90%) in Iowa according to annual reports. Over 27% of users have waivers allowing greater amounts of Δ⁹-THC in a 90-day period. See Iowa Department of Health and Human Services, Medical Cannabidiol Board, Annual Report to the Iowa General Assembly, January 2026, at pages 22-25.[18]

The legislature left open the option of authorizing raw cannabis. A detailed explanation regarding why raw cannabis has not been approved can be found in the most recent report from the Medical Cannabidiol Board, specifically regarding combustion (smoking) at page 27 ("raw cannabis provided for vaporization can readily be diverted for combustion (smoked)").[19] Combustion is not an approved form of delivery for any medication.

Persons registered under Chapter 124E use their own discretion in determining quantity, frequency, and location for use of highly concentrated Δ⁹-THC vape devices. The only restriction is that the cannabis extracts can't be used in public or where a property owner objects. See 641 Iowa Admin. Code § 154.12 (consumption of medical cannabidiol). The use of

[18] https://www.legis.iowa.gov/docs/publications/DF/1594762.pdf
[19] https://www.legis.iowa.gov/docs/publications/DF/1594762.pdf

pharmaceutical grade Δ⁹-THC must be for personal and private use only, the exact same thing the Petitioner is seeking in this action for religious use of cannabis.

Cannabis has a lower concentration of Δ⁹-THC than a highly concentrated Δ⁹-THC vape device, presenting a lower abuse potential. Cannabis would not be in Schedule 1 if it did not contain Δ⁹-THC. *United States v. Walton*, 514 F.2d 201, 203–204 (D.C. Cir. 1975) ("The legislative history is absolutely clear that Congress meant to outlaw all plants popularly known as marijuana to the extent those plants possessed THC").

Chapter 124E allows participants to get Δ⁹-THC from out-of-state, which means the state cannot track those additional amounts of Δ⁹-THC purchased in a 90-day period. Iowa Code § 124E.13. Chapter 204 allows persons registered under Chapter 124E to purchase additional amounts of Δ⁹-THC over the counter for adults, and the state has no means of tracking those additional amounts of Δ⁹-THC. The Δ⁹-THC purchase limit is impossible to accurately track with these additional sources of Δ⁹-THC available without tracking.

Chapter 124E uses the term "medical," but Chapter 124E does not contemplate any particular formulations like those required for prescription medications. When California enacted the first state medical marijuana law, it used the term "compassionate" to describe the medical use of cannabis. In 2020 the international treaty (Single Convention) was amended to recognize cannabis as a "therapeutic" plant.[20]

PUBLIC HEALTH AND SAFETY

The personal and private religious use of cannabis by the Petitioner cannot pose any greater harm than the State currently allows for pharmaceutically pure Δ⁹-THC vape devices as

[20] https://www.who.int/news/item/04-12-2020-un-commission-on-narcotic-drugs-reclassifies-cannabis-to-recognize-its-therapeutic-uses

an alternative to prescription drugs, without medical supervision, and without federal authorization. The only condition is that these vape devices must be for personal and private use.

The State no longer finds compliance with federal law a compelling interest. The Petitioner, on the other hand, has a compelling interest in obeying federal law. The Petitioner has applied with the U.S. Department of Justice (DOJ), Drug Enforcement Administration (DEA), for an exception under 21 U.S.C. § 822(d) for the religious use of cannabis (see the letter from the DEA acknowledging receipt of an application from the Petitioner attached as "Exhibit D").

IOWA RELIGIOUS FREEDOM RESTORATION ACT

The Iowa Religious Freedom Restoration Act (IRFRA), 2024 Acts Chapter 1003 (IRFRA), codified in Iowa Code Chapter 675, authorizes this action.

Section 8 of the IRFRA is not codified and states: "This Act applies to all state and local laws and the implementation of state and local laws, whether statutory or otherwise, and whether adopted before, on, or after the effective date of this Act."

Section 8 of the IRFRA allows the Petitioner to bring this action against a State statute (a law enacted by the legislative branch), rather than against a state official, or officials, acting under the color of State law (implementation of a law by the executive branch).

"A person whose exercise of religion has been substantially burdened in violation of this chapter may assert such violation as a claim or defense in a judicial or administrative proceeding and obtain appropriate relief, including damages, injunctive relief, or other appropriate redress." Iowa Code § 675.4(2).

The Iowa Uniform Controlled Substances Act (IUCSA), 1971 Acts Chapter 148, codified in Iowa Code Chapter 124, unlawfully burdens the religious freedom of the Petitioner because: (1) it allows a secular exception to the otherwise forbidden use of cannabis plants; (2) it allows a

religious exception to the otherwise forbidden use of peyote plants; (3) it has no process for making exceptions; and (4) it creates a totally unnecessary conflict in 21 U.S.C. § 903 between state and federal law simply because the State is not seeking federal authorization for Chapter 124E under 21 U.S.C. § 822(d).

The exclusion of the religious freedom of the Petitioner violates the Free Exercise and Establishment clauses of the First Amendment to the Constitution of the United States and the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution of the United States. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) ("There is no question that the challenged restrictions, if enforced, will cause irreparable harm").

The IRFRA allows a claim "whether or not the exercise is compulsory or central to a larger system of religious belief." Iowa Code § 675.3(2). Accordingly, unlike in previous cases involving the Petitioner, this action is not about the Ethiopian Zion Coptic Church or Rastafari.

Religious users of peyote were involved when the drug laws were being written because they were indigenous to the United States. They secured both state and federal authorization for the religious use of peyote, first through state court and legislative decisions and then by federal regulation. The religious affiliation of the Petitioner is not indigenous to the United States. Rastafari is Christianity indigenous to Jamaica where the Ethiopian Zion Coptic Church incorporated in 1976.

DUE PROCESS

In previous cases involving the Petitioner lack of facial neutrality triggered strict scrutiny in the context of criminal prosecution. Due Process was not applied until after the Petitioner had been arrested and prosecuted. The IRFRA provides strict scrutiny in the context of a civil action, Due Process missing in the IUCSA.

The Drug Abuse Study Committee recommended Due Process in § 302(4) of its report in 1971[21], which comes from § 302(d) of the Uniform Act, which comes from 21 U.S.C. § 822(d) of the federal act. For some unknown reason, the legislature omitted Due Process in the IUCSA. The comments on § 201 in the Drug Abuse Study Committee recommendations reveal a likely explanation (the legislature did not want an administrative agency to have authority over the schedules of controlled substances). But the reason does not matter. The omission of Due Process is what matters. The inclusion of Due Process in the IRFRA resolves that omission, and it resolves it in way that is consistent with the recommendation of the FDA Commissioner in 1965, and the "judicial authority to determine the constitutionality of laws." *Boerne*, 521 U.S. at 516.

COLLATERAL ESTOPPEL

The exception that has been added to the IUCSA for cannabis, Iowa Code § 124.401(5)(c) (referencing Iowa Code Chapter 124E), is a change in State law and material to the issue of preclusion (collateral estoppel). And there have been changes in federal law as well. Congress has explicitly included Chapter 124E (and Chapter 124D before that) in annual appropriations spending restrictions for the DOJ beginning in 2015 and continuing to the present.[22] A spending restriction does not make Chapter 124E compliant with federal drug law, but it would make a compelling argument for federal authorization under 21 U.S.C. § 822(d).

Congress has suspended federal enforcement for home grown cannabis in 25 states that authorize it for medical use and for some form of cannabis for medical use authorized by 47 state

[21] https://www.legis.iowa.gov/docs/publications/IP/255497.pdf
[22] Public Law 119-74, § 531, 140 Stat. 5, H.R.6938 - Commerce, Justice, Science; Energy and Water Development; and Interior and Environment Appropriations Act, 2026, 01/23/2026

laws. Iowa does not authorize home grown, but if the State wants to rely on Congressional intent in this action, then it is relevant and material.

Another change in federal law has occurred under 21 U.S.C. § 811. The Secretary of Health and Human Services (HHS), 21 U.S.C. § 811(b), and the Attorney General (DOJ), 21 U.S.C. § 811(a), have now both determined that cannabis is safer than the controlled substances in Schedule 2.[23] This would make another compelling argument for federal authorization under 21 U.S.C. § 822(d).

Both State and federal law now recognize cannabis as a medicine created outdoors in a garden, or indoors in a greenhouse, and not in a pharmaceutical laboratory. At the federal level, both Congress and the Executive Branch now say cannabis grown at home in someone's garden is an accepted use of cannabis as long as they are doing it because they have a health condition certified by a health care professional.

The State denies persons participating in its federal racketeering scheme created under Chapter 124E the benefit of federalism, the relationship between 21 U.S.C. § 822(d) (federal exemption) and 21 U.S.C. § 903 (state law), which is foundational to the structure of our government. *Bond v. United States*, 564 U.S. 211, 221 (2011) ("federalism secures to citizens the liberties that derive from the diffusion of sovereign power"). The State has a constitutional obligation to protect the people it represents by applying for federal authorization for Chapter 124E under 21 U.S.C. § 822(d) .

Collateral estoppel does not apply if "controlling facts or legal principles have changed significantly since the state-court judgment." *Montana v. United States*, 440 U.S. 147, 155 (1979). *Commissioner v. Sunnen*, 333 U.S. 591, 599 (1948) ("a subsequent modification of the

[23] https://www.regulations.gov/docket/DEA-2024-0059

significant facts or a change or development in the controlling legal principles may make that determination obsolete or erroneous, at least for future purposes").

STATE LAW

Since *State v. Olsen* (1984) was decided, peyote hasn't gotten any more useful. There haven't been any states that have legalized peyote for medical use without a prescription, or without medical supervision, or for recreational use. Cannabis, on the other hand, has been widely accepted as useful for all these things. The Schedule 1 status of cannabis in Iowa now includes an exception for therapeutic use without a prescription and without medical supervision, including predominantly highly concentrated, pharmaceutical grade Δ^9-THC vape devices. Both federal and state law allow Δ^9-THC for recreational use under Iowa Code Chapter 204.

Just to demonstrate how broad that use is, compare highly concentrated, pharmaceutical grade Δ^9-THC vape devices being used under Iowa Code Chapter 124E with the proposed use of psilocybin in Iowa House File 978 § 2(15), currently pending in the Iowa Senate after passing by a vote of 84-6 in the Iowa House last year:

> "*Psilocybin administration session*" means the time period from when a qualified medical provider administers psilocybin to a patient to the time the patient leaves the qualified therapy provider location.

Psilocybin is another hallucinogen in Schedule 1 like cannabis and peyote. The use of psilocybin proposed in that bill contemplates infrequent, allowed only at one specific location, and highly supervised, use. HF 978 has controls similar to those described in the 1964 California case, *People v. Woody*, cited by the Iowa Supreme Court in *State v. Olsen* (1984) and in *Olsen v. DEA*. In contrast, the vape devices under Chapter 124E can be used at home, 50 mg of Δ^9-THC or more per day on average, used several times per day, used every day, and used without any supervision.

Any adult can buy pharmaceutical grade Δ^9-THC in a can of seltzer in Iowa, with no limit on the amount that can be purchased at once, under Chapter 204.

Adults over 21 years of age can now cultivate cannabis at home in the bordering states of Minnesota and Missouri for any reason. Medical patients can now cultivate cannabis at home in the bordering states of Illinois and South Dakota. Congress has been suspending enforcement against states that authorize home grown for medical use continuously for more than ten years.

Compare this with *Gonzales v. Raich*, 545 U.S. 1, 5 (2005) (Congress has "the power to prohibit the local cultivation and use of marijuana in compliance with California law"), just ten years earlier. Ten years later, Congress is explicitly protecting local cultivation and use of cannabis in compliance with state medical marijuana laws, including the one in California.

Unlike the peyote exception, the exception for cannabis in Chapter 124E uses the term "medical" which already has exactly the opposite meaning under Chapter 124. But exceptions can have different meanings as long as they are for some secular purpose that is consistent with the public health and safety. Chapter 124E is not accepted "medical" use as that term is used in Schedule 1 of Chapter 124, but cannabis has therapeutic use under Chapter 124E.

Chapter 124E gives another important word, "cannabidiol" (CBD), a different meaning by defining the phrase "medical cannabidiol" as "any pharmaceutical grade cannabinoid … or any other preparation thereof." Iowa Code § 124E.2(10). Unlike the word "medical," the word "cannabidiol" can only have one valid meaning. The legislature should not give CBD a different meaning, because that makes it difficult to understand. Iowa is the only state that defines "cannabidiol" (CBD) as any cannabinoid, and nobody with any common sense is going to agree that word can have more than one meaning.

The name of Chapter 124E is so inaccurate and deceptive that both the Board overseeing the program and the Department have been asking that it be changed to "Medical Cannabis Act" every year in annual reports to the legislature. The Department simply refers to it as "medical cannabis."

> **2. Renaming Chapter 124E as the "Iowa Medical Cannabis Act"**
>
> The Board recommends amending the title of Chapter 124E to "The Iowa Medical Cannabis Act." This change more accurately reflects the scope of the program, which authorizes the manufacture and sale of products containing tetrahydrocannabinol (THC) in addition to cannabidiol (CBD) and other cannabinoids. Updating the terminology will improve scientific accuracy, align Iowa's program with national norms, reduce stakeholder confusion, and support more effective public and professional education.
>
> The term "medical cannabidiol" was historically relevant when Iowa permitted only products with no more than 3% THC; however, Iowa is now the only state in the country that continues to use this nomenclature. Since the passage of HF 2589 (2020), Iowa's product formulations have become consistent with those available in other state medical cannabis programs, making the existing title outdated and increasingly misleading. Moreover, the rapid growth of intoxicating cannabinoids in the consumable hemp marketplace has further blurred public understanding and contributed to ongoing confusion among law enforcement, healthcare professionals, and other stakeholders. Modernizing the statutory title will help ensure clarity, reinforce program intent, and enhance stakeholder comprehension across regulatory, clinical, and public settings.

Recommendations to the Iowa General Assembly, January 2026, at pages 8-9.[24]

CBD was removed from the CSA and the IUCSA in 2020 because it now falls under the definition of hemp in Chapter 204. Chapter 124E is deceptively named. Both the Iowa Medical Cannabidiol Board and the Iowa Department of Health and Human Services have been asking the State to change the name of Chapter 124E to "medical cannabis" for the past several years. See Iowa Department of Health and Human Services, Medical Cannabidiol Board, Annual Report to the Iowa General Assembly, January 2026, at pages 8-9.[25]

[24] https://www.legis.iowa.gov/docs/publications/DF/1594762.pdf
[25] https://www.legis.iowa.gov/docs/publications/DF/1594762.pdf

FEDERAL LAW

Congress calls medical cannabis "medical marijuana" in annual appropriations acts withholding enforcement funding from the DOJ without defining what "medical marijuana" means. Obviously, Congress can't define what "medical marijuana" means because there are 47 different and distinct meanings, whatever each state law says it means. What a perfect argument for an exception under 21 U.S.C. § 822(d) an explicit acknowledgement of congressional intent like this would make!

Accepted "medical" use does not have a precise meaning in the federal CSA. The task of defining what it means was assigned to two federal administrative agencies, HHS and DOJ. See *Alliance for Cannabis Therapeutics v. DEA*, 930 F.2d 936, 939 (D.C. Cir. 1991) ("neither the statute nor its legislative history precisely defines the term 'currently accepted medical use' "); *Grinspoon v . DEA*, 828 F.2d 881, 886 (1st Cir. 1987) ("Congress did not intend 'accepted medical use in treatment in the United States' to require a finding of recognized medical use in every state"); U.S. Department of Justice, Office of Legal Counsel, *Questions Related to the Potential Rescheduling of Marijuana*, April 11, 2024, Slip Opinion, at 1 ("The approach that the Drug Enforcement Administration currently uses to determine whether a drug has a 'currently accepted medical use in treatment in the United States' under the Controlled Substances Act is impermissibly narrow").[26]

> Moreover, an understanding of what the medical community accepts would also naturally require consideration of the views of the principal regulators of the medical profession: state entities that license and police healthcare practitioners. As the Supreme Court has noted, the CSA "presume[s] and rel[ies] upon a functioning medical profession regulated under the States' police powers." *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006).

[26] https://www.justice.gov/olc/media/1352141/dl?inline

Id. at page 13. If the State wants to rely on federal drug law, then it has to accept that federal drug law never intended the classification of cannabis or peyote to remain static over time, although the classification of peyote has remained static over time, and the classification of cannabis has undergone seismic changes.

Reducing the confusing definitions of words and phrases and replacing them with simple terms like "secular purpose" or "worthy cause" greatly simplifies Equal Protection analysis. The only test for an exception, 21 U.S.C. § 822(d), is "consistent with the public health and safety." Whatever Chapter 124E actually is, it easily passes the "worthy cause" test because it is "consistent with the public health and safety." But the State refuses to take that test, and the people the State is supposed to be representing are being shortchanged by the lack of Due Process (federalism).

Unlike the IUCSA, federal drug law does not require amending the statute every time a substance is scheduled, re-scheduled, removed from the schedules, or when exceptions are made. The federal CSA has an administrative process for scheduling, 21 U.S.C. § 811, and an administrative process for exceptions, 21 U.S.C. 822(d) . These are the same two processes recommended in the Uniform Act, in §§ 201 and 302(d), the same two processes omitted from the IUCSA. The Uniform Act, § 201, from 21 U.S.C. § 811, was modified by the IUCSA to make that administrative process advisory only in Iowa Code § 124.201. The Uniform Act, § 302(d), from 21 U.S.C. § 822(d), was omitted from the IUCSA entirely. The federal CSA is regulatory scheme, the Uniform Act is a regulatory scheme, and the IUCSA is an inflexible monolith. Due Process is ordinary under the federal CSA and under the Uniform Act, but not under the IUCSA.

The IUCSA could have omitted that Due Process if it had no exceptions, particularly an exception copied from a federal regulation. *O Centro*, 546 U.S. 418, 432-433 (2006) ("... the Act itself contemplates that exempting certain people from its requirements would be 'consistent with the public health and safety' ...").

In 1988 the Chief Administrative Law Judge (ALJ) for the DEA, under the authority of 21 U.S.C. § 811(a), reached the conclusion: "Nearly all medicines have toxic, potentially lethal effects. But marijuana is not such a substance. There is no record in the extensive medical literature describing a proven, documented cannabis-induced fatality." Francis L. Young, Administrative Law Judge, In The Matter Of Marijuana Rescheduling Petition, Docket No. 86–22, Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of Administrative Law Judge (ALJ), September 6, 1988, at 56 (attached as "Exhibit B").[27] After reciting a list of commonly used substances that are toxic, the judge concluded: "Marijuana, in its natural form, is one of the safest therapeutically active substances known to man." *Id.*, at 58–59. If the State is going to rely on federal drug law in this action, then it has to include 21 U.S.C. § 811(a).

The name of the petitioner appears on the cover of Judge Young's decision, because the petitioner submitted a cognitive functioning study in which the petitioner participated. Cognition and Long-Term Use of Ganja (Cannabis), Science, Vol. 213, 24 July 1981, pp. 465–466 (attached as "Exhibit C").[28] Judge Young's decision followed after the Hearing on Petition To Reschedule Marijuana and Its Components, 51 Fed. Reg. 22946, Vol. 51, No. 121, Tuesday, June 24, 1986. The DEA Administrator rejected Judge Young's scheduling recommendation because cannabis

[27] https://carl-olsen.com/pdfs/olsen-iowa-rfra/CV68508-Exhibit-B.pdf
[28] https:// carl-olsen.com/pdfs/olsen-iowa-rfra/CV68508-Exhibit-C.pdf

was not widely used in medical treatment, but did not reject Judge Young's findings on toxicity and safety. See 54 Fed. Reg. 53767 (December 29, 1989): Denial of Petition.

The U.S. Department of Health and Human Services (HHS) recently announced under the authority given to HHS in 21 U.S.C. § 811(b) that cannabis should not be in Schedule 1 because it is safer than substances in Schedule 2. Rescheduling of Marijuana, Docket ID: DEA-2024-0059. See Letter for Anne Milgram, Administrator, DEA, from Rachel L. Levine, M.D., Assistant Secretary for Health, HHS (Aug. 29, 2023) (2016-17954-HHS).[29] The HHS recommendation is based on widespread use of cannabis by medical professionals in the United States, all completely outside the usual context of Schedule 1. If the State wants to rely on federal drug law, then it has to include HHS, 21 U.S.C. § 811(b) .

When the CSA was enacted in 1970 Congress made an "initial" decision to include cannabis in Schedule 1, along with an annual process of review. Public Law 91-513, Oct. 27, 1970, § 202(a), 84 Stat. 1236, 1247:[30]

> There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section.
>
> The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after the date of enactment of this title and shall be updated and republished on an annual basis thereafter.

In *United States v. Middleton*, 690 F.2d 820, 825 (11th Cir. 1982) the court cited an older case, *Leary v. United States*, 383 F.2d 851, 860-61 (5th Cir. 1967), frequently cited, that says cannabis is "evil." *State v. Olsen*, No. 171-69079, Iowa Supreme Court, July 18, 1984 (attached to the Petitioner's Second Motion for Summary Judgment as "Exhibit A"), citing *Leary v. United*

[29] https://www.regulations.gov/document/DEA-2024-0059-0006
[30] https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg1236.pdf

States, 383 F.2d 851, 860-61 (5th Cir. 1967); *Olsen v. DEA*, 878 F.2d 1458, 1467, citing *Leary v. United States*, 383 F.2d 851 (5th Cir. 1967). Following that logic today, Chapter 124E would be "evil."

The problem with defining Congressional intent based on the Narcotic Drugs Import and Export Act, amended by 70 Stat. 570 on July 18, 1956, and the Marihuana Tax Act of 1937, Pub. L. 75–238, 50 Stat. 551, enacted August 2, 1937, is that those federal laws have been repealed. *Leary v. United States*, 395 U.S. 6 (1969). The CSA no longer decides that cannabis will be "evil." Any controlled substance can be reclassified, either more or less restrictively, based on abuse potential. See Iowa Code § 124.201 and 21 U.S.C. § 811.

Under the federal CSA, anyone can request a scheduling review at any time. At the Iowa level, nobody has a right to request a review. Although the IUCSA does not give the public the right to ask for a review, anyone can ask the Iowa Board of Pharmacy to review a classification.

The Petitioner asked the Iowa Board of Pharmacy to review the classification of cannabis in 2008. In response, the board recommended moving cannabis from Schedule 1 to Schedule 2. In 2009, the board held four public hearings in four major Iowa cities, 8 hours each, with a certified court reporter and transcripts of each one. See *McMahon et al. v. Iowa Board of Pharmacy* (Carl Olsen, Intervenor), No. 09-1789, Iowa Supreme Court, May 14, 2010 (attached as "Exhibit E"). The legislature did not accept the recommendation from the board, but it does prove that even under the IUCSA the classifications (schedules) were never meant to be static.

> The determination of whether new evidence regarding either the medical use of marijuana or the drug's potential for abuse should result in a reclassification of marijuana is a matter for legislative or administrative, not judicial, judgment.
>
> The Act contains a mechanism by which evidence such as that on which the defendant relies may be presented to the attorney general in order to determine whether a particular drug should be reclassified. See 21 U.S.C. § 811 (1976).

Middleton, 690 F.2d at 823. The *Middleton* court cited *Leary* to show Congressional intent in 1967, but the possibility that something "evil" could later be reclassified as "good" was not possible when *Leary* was decided. See 21 U.S.C. § 812(c) Initial schedules of controlled substances: ("Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 811 of this title, consist of the following drugs or other substances, ...").

> Congress contemplated that the classification set forth in the Act as originally passed would be subject to continuing review by the executive officials concerned, notably in the Department of Justice and the Department of Health, Education and Welfare.

NORML v. Ingersoll, 497 F.2d 654, 656 (D.C. Cir. 1974).

> Other provisions of the legislation provided for studies and research by HEW or contracting agencies, for coordination of ongoing studies and programs in the White House under the Special Action Office for Drug Abuse, and for establishment, see § 601, CSA, of a Presidential Commission on Marihuana and Drug Abuse. The House Report recommending that marihuana be listed in Schedule I notes that this was the recommendation of HEW "at least until the completion of certain studies now under way," and projects that the Presidential Commission's recommendations "will be of aid in determining the appropriate disposition of this question in the future." H.R. Rep. No. 91-1444 (Part 1), 91st Cong., 2d Sess. (1970) at p. 13.

NORML v. Ingersoll, 497 F.2d at 657.

> New studies have indicated that the dangers of marihuana use are not as great as once believed. A recent report of a federal panel representing, inter alia, HEW, DEA, the State Department, and the White House, concluded that marihuana use entails a "relatively low social cost," and suggested that decriminalization be considered. Washington Post, Dec. 12, 1976, at A1, col. 1; Washington Star, Dec. 12, 1976, at A7, col. 1. See *United States v. Randall*, supra note 61, at 2254 (characterizing marihuana as "a drug with no demonstrably harmful effects"). Indeed, in NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, SECOND REPORT, DRUG USE IN AMERICA: PROBLEM IN PERSPECTIVE, Vol. I, at 235 (1973), the Commission recommended that "the United States take the necessary steps to remove cannabis from the Single Convention on Narcotic Drugs (1961), since this drug does not pose the same social and public health problems associated with the opiates and coca leaf products."

NORML v. DEA, 559 F.2d 735, 751 n. 70 (D.C. Cir. 1977).

Just 6 years after the decision in *Middleton*, the Administrative Law Judge (ALJ), authorized by Congress under 21 U.S.C. § 811 found that cannabis is non-toxic and "one of the safest therapeutic substances known to man."[31]

Since 2015, Congress has suspended enforcement against cannabis grown at home for medical use in several states.

> In each fiscal year since FY2015, Congress has included provisions in appropriations acts that prohibit DOJ from using appropriated funds to prevent certain states and territories and the District of Columbia from "implementing their own laws that authorize the use, distribution, possession, or ***cultivation*** of medical marijuana." The FY2024 provision lists 52 jurisdictions, including every U.S. jurisdiction that had legalized medical cannabis use at the time it was enacted.

Congressional Research Service (CRS), *Funding Limits on Federal Prosecutions of State-Legal Medical Marijuana* (2025), https://www.congress.gov/crs-product/LSB10694 (emphasis added).

States, such as California, allow home cultivation for medical use. See *United States v. Raich*, 545 U.S. 1, 5 (2005). According to the Marijuana Policy Project, a total of 25 states allow home cultivation of cannabis for medical use.[32] Congress is the same "government" *Middleton* refers to, and Congress now accepts home cultivation of cannabis for personal medical use. Chapter 124E does not allow home cultivation of cannabis for personal medical use, but Congress does. Chapter 124E allows Δ^9-THC for personal medical use, which is the only thing that has ever been considered to be dangerous about cannabis.

On December 18, 2025, President Trump signed Executive Order 14370, Increasing Medical Marijuana and Cannabidiol Research, December 18, 2025[33] directing the Attorney

[31] See Exhibit B attached to the Petitioner's Motion for Summary Judgment.
[32] https://www.mpp.org/assets/pdf/issues/legalization/freedom-to-grow-map-of-states-allowing-home-cultivation-of-cannabis-in-us-25-07.pdf
[33] https://www.whitehouse.gov/presidential-actions/2025/12/increasing-medical-marijuana-and-cannabidiol-research/

General to transfer cannabis from Schedule 1 to Schedule 3.[34] Restrictions on therapeutic use of cannabis and Δ^9-THC, the psychoactive component in cannabis, from a federal perspective and from an IUCSA perspective, are minimal today compared to what they were in the early 1980s.

SECULAR PURPOSE

The U.S. Supreme Court cited 21 U.S.C. § 822(d) as the authority for exceptions when it applied the Federal RFRA to the Federal CSA. *O Centro*, 546 U.S. 418, 432-433 (2006) ("... the Act itself contemplates that exempting certain people from its requirements would be 'consistent with the public health and safety' ..."). The court rejected political favoritism as justification for an exception. *O Centro*, 546 U.S. at 434 ("Nothing about the unique political status of the Tribes makes their members immune from the health risks"). *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 304-305 (2000) ("fundamental rights may not be submitted to vote; they depend on the outcome of no elections") (citation omitted).

In applying the Federal RFRA to the Federal CSA in *O Centro*, the court enjoined the enforcement of the CSA against the importation of plants from South America containing Schedule 1 DMT. The DEA did not respond by adding another published regulation in the Code of Federal Regulations for the O Centro church. The DEA simply issued a secular import license it would not have otherwise issued and made some other contractual agreements. *O Centro*, 546 U.S. at 427:

> The court entered a preliminary injunction prohibiting the Government from enforcing the Controlled Substances Act with respect to the UDV's importation and use of hoasca. The injunction requires the church to import the tea pursuant to federal permits, to restrict control over the tea to persons of church authority, and to warn particularly susceptible UDV members of the dangers of hoasca.

[34] https://www.regulations.gov/docket/DEA-2024-0059

Hoasca (ayahuasca) is central to established religious beliefs in Brazil. *O Centro Espírita Beneficente União do Vegetal v. Ashcroft*, 342 F.3d 1170, 1174 (10th Cir. 2003) ("Brazil, in which there are about 8,000 União do Vegetal members, recognizes União do Vegetal as a religion and exempts sacramental use of hoasca from its prohibited controlled substances").

Cannabis is central to established religious beliefs in Jamaica. *Town v. State ex rel. Reno*, 377 So. 2d 648, 649 (Fla. 1979) ("the Ethiopian Zion Coptic Church is not a new church or religion but the record reflects it is centuries old and has regularly used cannabis as its sacrament"). Jamaica recognized the sacramental use of cannabis by Rastafarians in the 2015 Amendments to the Dangerous Drugs Act.[35]

The DEA is currently trying to implement regulations for the Federal RFRA, but Congress did not authorize the DEA to create regulations for the RFRA. It has been over thirty (30) years since the Federal RFRA was enacted in 1993 and the DEA is still trying to create regulations for it. The RFRA is a judicial process (the compelling interest test), which means the DEA was never authorized to make regulations for it.

But the DEA is persistent. See U.S. Department of Justice, Drug Enforcement Administration, Notice of Proposed Rule Making, Registration for Religious Organizations under the Religious Freedom Restoration Act, RIN: 1117-AB66, DEA Docket No. 649, October 2024 (not printed in the Federal Register).[36]

The DEA has drawn friendly fire for trying to regulate the RFRA. See U.S. Government Accountability Office ("GAO"), GAO-24-106630, Report to Congressional Committees, Drug

[35] https://laws.moj.gov.jm/library/act-of-parliament/5-of-2015-the-dangerous-drugs-amendment-act
[36] https://www.reginfo.gov/public/Forward?SearchTarget=Agenda&textfield=1117-AB66

Control: DEA Should Improve its Religious Exemptions Petition Process for Psilocybin (Mushrooms) and Other Controlled Substances, May 30, 2024.[37]

Exceptions are not limited to religious, cultural, or political causes. Exceptions, 21 U.S.C. § 822(d), have only one test, "consistent with the public health and safety."

> Under the Establishment Clause, government aid or preference to religion is constitutional only if it satisfies each part of a three-prong test: (1) it must have a secular purpose; (2) it must have a primary effect which neither aids nor inhibits religion; and (3) its application must not result in excessive entanglement of government with religion.

Peyote Exemption for Native American Church, 5 Op. O.L.C. 403, 415-416 (1981) .[38] *O Centro*, 546 U.S. at 434 ("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").

Because Iowa Schedule 1 says cannabis has no accepted medical use anywhere in the United States, the exception for cannabis in Iowa Code § 124.401(5)(c), just like the exception for peyote in Iowa Code § 124.204(8), has a secular purpose (a worthy cause which is consistent with the public health and safety).

PERSONAL USE

Simple possession of cannabis has been recognized as worthy of greater protection under than distribution in a couple of federal cases. *United States v. Bauer*, 75 F.3d 1366, 1376 (9th Cir. 1996) ("As to the three counts on which the appellants were convicted of simple possession, the exclusion of the religious defense was in error"); *Guam v. Guerrero*, 290 F.3d 1210, 1222-

[37] https://www.gao.gov/products/gao-24-106630
[38] https://www.justice.gov/file/149736/dl?inline

1223 (9th Cir. 2002) (importation of marijuana), citing *United States v. Bauer*, 84 F.3d 1549, 1559 (9th Cir. 1996) ("The [RFRA] was relevant to the counts of simple possession").

Since those decisions from the Ninth Circuit, neither of which actually reached the merits, importation and distribution of Schedule 1 hallucinogens has been recognized as protected activity under the RFRA. See *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418 (2006) .

Iowa Code § 124.204(8) is not limited to simple possession, but it does make a distinction between simple possession and commercial activity. Chapter 124E is not limited to simple possession, but does define simple possession of Δ^9-THC by a subset of persons with certified medical conditions in Iowa Code § 124.401(5)(c) as a separate class. Chapter 124E also protects commercial cultivation of cannabis for the extraction of Δ^9-THC and distribution of Δ^9-THC products, as separate classes. In addition, Chapter 124E also protects the interstate transportation of cannabis extracts in concentrations exceeding the .3% Δ^9-THC by dry weight formula protected under Chapter 204. Iowa Code §§ 124E.13, 124E.14, and 124E.15.

This case is not about commercial manufacture or distribution, not even sharing for no profit, but all of those activities are exceptions under Iowa Code § 124.204(8) and under Chapter 124E. Non-commercial simple possession and accommodation are recognized as separate activities under Chapter 124. Peyote suppliers (commercial distributors) must register and commercial cannabis growers and distributors must have separate licenses.

CRIMINAL AND CIVIL PENALTIES

The penalty for simple possession of cannabis without an exception under Chapter 124 is not trivial. For a third and later offense the penalty for simple possession is an aggravated misdemeanor (up to 2 years in prison and a fine up to $8,540). Iowa Code § 124.401(5)(b); Iowa

Code § 903.1(2). Over 42.5 grams of processed cannabis is subject to a tax penalty of $5 per gram, and $750 per unprocessed cannabis plant. Iowa Code §§ 453B.1(3)(a)(2), (3); Iowa Code §§ 453B.7(1), (3). "There is no question that the challenged restrictions, if enforced, will cause irreparable harm." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020).

The commission created by the Federal CSA in 1970 to review the schedules of controlled substances recommended that both possession of cannabis and accommodation be decriminalized. Commission on Marihuana and Drug Abuse, Public law: 91–513, 84 Stat. 1236, 1280-1281, Marijuana: A Signal of Misunderstanding, First Report of the National Commission on Marihuana and Drug Abuse, March 1972, pp. 152, 154.[39] Accommodation for cannabis is included as a lesser offense in the IUCSA, currently codified as Iowa Code § 124.410.

NEUTRALITY AND GENERAL APPLICABILITY

"Like the Federal Equal Protection Clause found in the Fourteenth Amendment to the United States Constitution, Iowa's constitutional promise of equal protection 'is essentially a direction that all persons similarly situated should be treated alike.' " *Varnum v. Brien*, 763 N.W. 2d 862, 878 (Iowa 2009). "The purposes of the law must be referenced in order to meaningfully evaluate whether the law equally protects all people similarly situated with respect to those purposes." *Varnum v. Brien*, 763 N.W. 2d at 883.

The purpose of the IUCSA is found in the Iowa Drug Abuse Study Committee, 1971, report ("to limit the improper use of drugs and other substances for depressant, stimulant, or hallucinogenic purposes"), citing HCR 122, Sixty-third General Assembly of Iowa, adopted at the 1970 session, reprinted in the House Journal at pages 1036-1037, March 16, 1970.[40]

[39] https://www.ojp.gov/ncjrs/virtual-library/abstracts/marijuana-signal-misunderstanding
[40] https://www.legis.iowa.gov/docs/publications/YHJL/855088.pdf

The IUCSA does not consider religious use an improper use, per se, because it has a religious exception for peyote.

The exceptions for cannabis and Δ^9-THC under Chapter 124E and Chapter 204 are not improper use, other than the failure of the State to get federal authorization for Chapter 124E under 21 U.S.C. § 822(d).

Nothing about these exceptions are invalid simply because they were previously felony offenses. The Petitioner should not be held to a different standard from the past simply because the Petitioner has religious beliefs that are not shared by the majority. *Fulton v. Philadelphia*, 593 U.S. 522, 532 (2021):

> "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981).

And see *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 304-305 (2000):

> "fundamental rights may not be submitted to vote; they depend on the outcome of no elections," *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 638 (1943), …

"A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton v Philadelphia*, 593 U.S. 522, 534 (2021). A plant with Δ^9-THC in it is no more dangerous than the pharmaceutically pure Δ^9-THC extracted from it.

Chapter 124E defines cannabis products as "any pharmaceutical grade cannabinoid ... or any other preparation thereof," Iowa Code § 124E.2(10). In contrast, prescription drugs have precise formulations. *State v. Middlekauff*, 974 N.W.2d 781, 796 (Iowa 2022) ("drug name, strength, dosage, as well as directions for use").

The First Amendment forbids favoring one religion over another, or religion over non-religion. *McCreary County v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 875-876 (2005):

> Given the variety of interpretative problems, the principle of neutrality has provided a good sense of direction: the government may not favor one religion over another, or religion over irreligion, religious choice being the prerogative of individuals under the Free Exercise Clause.

The IUCSA lacks facial neutrality because it contains a preference for religious use of peyote by the Native American Church. Iowa Code § 124.204(8) . *Mitchell County v. Zimmerman*, 810 N.W.2d 1, 9-10 (Iowa 2012) ("A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context"), citing *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (1993); and see *Olsen v. DEA*, 878 F.2d 1458, 1461 (D.C. Cir. 1989) ("to turn away all churches save one opens a grave constitutional question").

COMPELLING INTEREST

The state cannot show a compelling interest in restricting personal, private, religious use of cannabis under these circumstances. "A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way. *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S., at 542–546." *Fulton v. Philadelphia*, 593 U.S. 522, 534 (2021).

The State claims it has a compelling interest in prohibiting the general public from using cannabis, rather than explaining how that applies to "the person" – the particular claimant and why that interest no longer applies to everyone generally.

> RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person" — the

> particular claimant whose sincere exercise of religion is being substantially burdened.

Gonzales v. Espírita Beneficente União do Vegetal, 546 U.S. 418, 430-431 (2006).

"Government's mere invocation of the general characteristics of Schedule I substances, as set forth in the Controlled Substances Act, cannot carry the day." *O Centro*, 546 U.S. at 432.

> The Act contains a provision authorizing 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).

O Centro, 546 U.S. at 432-433.

"The well-established 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." *O Centro*, 546 U.S. at 434.

LEAST RESTRICTIVE MEANS

The second supplemental brief of the Petitioner resisting the motion to dismiss by the State (Docket No. D0013) mentions least restrictive means. The State has no less restrictive means it can employ, because it did not create any.

An example of least restrictive means created by the State is an exception for the Native American Church in Iowa Code § 124.204(8) . But only the Legislative Branch can create another exception like the one for the Native American Church. The Legislative Branch has only given the Judicial Branches authority to enjoin the enforcement of Chapter 124 against the Petitioner, but no authority to amend Chapter 124. Religious preference should not be embedded in statutes, but that is how the Legislative Branch has chosen to accommodate one. Another religious preference like that first one would be just as unconstitutional as the first.

> Even if we were to credit Olsen's equal protection argument or the dissent's portrayal of it in terms of the establishment clause, the remedy Olsen requests hardly follows. Faced with the choice between invalidation and extension of any

> controlled-substances religious exemption, which would the political branches choose? It would take a court bolder than this one to predict, as our dissenting colleague appears to suggest, that extension, not invalidation, would be the probable choice.

Olsen v. DEA, 878 F.2d at 1464.

An example of least restrictive means was created by the State in public health legislation, Iowa Code § 139A.8(4)(a)(2), which creates an administrative process like the one missing from Iowa Code Chapter 124 for making exceptions, for both medical reasons and religious beliefs. See 641 Iowa Admin. Code § 7.3(2) ("conflicts with a genuine and sincere religious belief"). That is the like the administrative process the State did not adopt against the advice of the Drug Abuse Study Committee report in § 302(4), and in § 302(d) of the Uniform Act, and in 21 U.S.C. § 822(d), an option the State chose not to include in Chapter 124, but saw fit to include in Chapter 139A.

Another example of least restrictive means is Chapter 124E, but, again, only the legislature can add new chapters to the Iowa Code.

The legislature enacted the IRFRA as the only remedy and authorized the judicial branch to make religious exceptions by enjoining the enforcement of the act against a person whose exercise of religion has been substantially burdened. Iowa Code § 675.4(2).

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Respectfully submitted.

CARL OLSEN

/s/ Carl Olsen

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