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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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

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

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INTRODUCTION

This action is brought under the Iowa Religious Freedom Restoration Act, 2024 Acts ch. 1003 (Iowa RFRA). The Iowa RFRA is codified as Chapter 675.

Section 8 of the Iowa RFRA, not codified, 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."

The Iowa Controlled Substances Act, 1971 Acts ch. 148 (Iowa CSA), is statutory state law and was adopted before the Iowa RFRA. The Iowa CSA is codified as Chapter 124.

The Iowa CSA is a significant burden on the religious use of cannabis by the petitioner. "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

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obtain appropriate relief, including damages, injunctive relief, or other appropriate redress." Iowa Code § 675.4(2).

The state cannot show a threat to public health and safety that would justify enforcement of the Iowa CSA against the petitioner in violation of the first amendment (religious freedom) to the U.S. Constitution. Iowa Code § 675.4(1) ("even if the burden results from a rule of general applicability").

The Iowa CSA lacks facial neutrality by including a preference for members of a religious sect that uses Schedule 1 peyote in violation of the first and fourteenth amendments (religious discrimination) to the U.S. Constitution. The preferred religious sect has unrestricted protection from enforcement of the Iowa CSA for an entire religious denomination, the Native American Church, of which the petitioner is not a member.

The Iowa CSA is not generally applicable to cannabis in violation of the first and fourteenth amendments (religious discrimination) to the U.S. Constitution. The preferred commercial use of cannabis and cannabis extracts, including THC alone or in combination with other cannabinoids, has nearly unrestricted protection from enforcement of the Iowa CSA for an entire class of persons of which the petitioner is not a member.

The petitioner realized that cannabis is the sacrament in 1970 and joined a Jamaican Rastafarian religious organization in 1971. The religious organization the petitioner joined in 1971 incorporated in Jamaica as the Ethiopian Zion Coptic Church in 1976 by an Act of Parliament. Acts of Jamaica, 1976 Act No. 11[1]. Jamaica amended its drug laws in 2015 to recognize sacramental use of cannabis by Rastafarians by an Act of Parliament. Acts of Jamaica, 2015 Act No. 5.[2]

[1] https://ethiopianzioncopticchurch.org/pdfs/jamaica_1976.pdf
[2] https://laws.moj.gov.jm/library/act-of-parliament/5-of-2015-the-dangerous-drugs-amendment-act

"[T]he Ethiopian Zion Coptic Church represents a religion within the first amendment to the Constitution of the United States" . . . "[U]se of cannabis is an essential portion of the religious practice" . . . "[T]he 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." *Town v. State ex rel. Reno*, 377 So. 2d 648, 649 (Fla. 1979). The petitioner was a guest at the Town residence, 43 Star Island, Miami Beach, Florida from 1978 to 1984.

The petitioner was arrested in Iowa in 1978 and imprisoned in Iowa in 1984 for intent to distribute cannabis to the church without authorization under the Iowa CSA. *State v. Olsen*, No. 171-69079 (July 18, 1984) (attached as "Exhibit A")[3].

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). "But a subsequent modification of the significant facts or a change or development in the controlling legal principles may make that determination obsolete or erroneous, at least for future purposes." *Commissioner v. Sunnen*, 333 U.S. 591, 599 (1948).

The Iowa RFRA demands strict scrutiny for laws that are both neutral toward religious beliefs and generally applicable, which is not the legal principle the petitioner received in *State v. Olsen*, Slip op. at 3: "Olsen now contends we must make an independent finding of a compelling state interest rather than defer to the legislature's decision to regulate marijuana." The Iowa RFRA explicitly rejects deference to acts of the legislature without strict scrutiny. *Boerne v. Flores*, 521 U.S. 507, 516 (1997) ("judicial authority to determine the constitutionality of laws"). *LS Power v. IUB*, No. 24-0641 (Iowa, June 12, 2025), Slip op. at 13 ("The constitutionality of

[3] https://carl-olsen.com/pdfs/olsen-iowa-rfra/CV68508-Exhibit-A.pdf

that enactment is a matter within Iowa state court subject matter jurisdiction, and so too is the remedy for that violation").

This action is based on the threat the Iowa CSA presents to the petitioner for religious use of cannabis. "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).

CHANGE IN CONTROLLING FACTS

In 1984 the Supreme Court of Iowa found the religious beliefs of the petitioner to be genuine, sincere, and protected by the First Amendment, but not the distribution of cannabis to members of the Ethiopian Zion Coptic Church. *State v. Olsen*, No. 171-69079 (July 18, 1984).

The court cited a California case, *People v. Woody*, 394 P.2d 813 (Cal. 1964), describing precautions taken to protect the health and safety of the participants using peyote at a religious ceremony, precautions the court found were not present for the religious use of cannabis by the Ethiopian Zion Coptic Church. The court did not consider the relative toxicity of the two substances or their relative psychoactive strength, deferring instead to their category in the Iowa CSA.

This categorical approach was rejected in *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 432-433 (2006) (UDV). The Schedule 1 category is for substances with no accepted medical use. Substances in Schedule 1 are not ranked by toxicity or psychoactive strength. There is no category in the CSA for a substance with low potential for abuse and no accepted medical use. Under the compelling interest test, these differences matter in determining whether there is a threat to public health and safety.

Four years after *State v. Olsen*, the chief administrative law judge for the DEA looked at the evidence and reached the conclusion: "Nearly all medicines have toxic, potentially lethal

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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").[4] That finding alone explains why precautions would be different for cannabis and peyote. 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.

The name of the petitioner appears on the cover of that 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").[5] See 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 the ALJ scheduling recommendation because cannabis was not widely used in medical treatment, but not the findings on toxicity and safety. See 54 Fed. Reg. 53767 (December 29, 1989): Denial of Petition.

It would have been challenging for the Iowa Supreme Court to imagine that THC concentrate would become legal in Iowa in 2017 for non-drug, non-prescription use today, without removing cannabis or THC from Schedule 1 of the CSA. And two years after that, the Iowa Hemp Act, 2019 Acts ch. 130, legalized cannabis with low concentrations of THC and THC in food and nutritional supplements. Iowa Code § 124.204(7).

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

The petitioner was not found with any weapons, there were no victims, and the petitioner did not resist arrest. Prior to the Iowa RFRA in 2024, there was no redress for loss of religious freedom. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion).

Until the Iowa RFRA gave consent in 2024, the state could not be sued for constitutional injuries without its consent. See *Burnett v. Smith*, 990 N.W.2d 289 (Iowa 2023) (state cannot be sued for damages resulting from false arrest); *Sikora v. State*, 23 N.W.3d 300 (Iowa 2025) (state cannot be sued for damages resulting from wrongful imprisonment).

COMPELLING INTEREST

The state has no compelling interest in prohibiting personal, private, not for profit, religious use of cannabis.

The U.S. Department of Health and Human Services (HHS) recently announced that cannabis should not be in Schedule 1. Rescheduling of Marijuana, Docket ID: DEA-2024-0059.[6] See Letter for Anne Milgram, Administrator, DEA, from Rachel L. Levine, M.D., Assistant Secretary for Health, HHS (Aug. 29, 2023) (2016-17954-HHS).[7]

The secular exception for cannabis, Iowa Code § 124.401(5)(c), Iowa Code Chapter 124E, authorizes 4.5 grams of THC per 90 days, approx. 50 mg per day. Products with concentrations of up to 80% THC in vaporizable form are used more frequently according to the annual reports. About 20% of users have waivers allowing greater total amounts of THC in a 90-

[6] https://www.regulations.gov/docket/DEA-2024-0059
[7] https://www.regulations.gov/document/DEA-2024-0059-0006

day period. Iowa Department of Health and Human Services, Medical Cannabidiol Board, Annual Report to the Iowa General Assembly, December 2024, at page 22.[8]

Chapter 124E has no restrictions on any other component in the plant. Chapter 124E has no restriction on the time or place THC can be used. 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 Iowa Hemp Act, Iowa Code Chapter 204, has no limit on the total amount of THC that can be purchased or consumed in a given period of time or where it can be used. The legislature added a cap on the amount per serving last year, but a serving varies depending on the type of product (beverage or nutritional supplement). The terminology is for food and nutritional supplements. 2024 Acts ch. 1176 (July 1, 2024), codified as Iowa Code § 204.2(2)(c)(2)(b). The legislature made it a simple misdemeanor punishable as a scheduled violation to operate a motor vehicle with an open container of "a beverage containing any amount of tetrahydrocannabinol" earlier this year. 2025 Acts ch. 9 (March 28, 2025), to be codified in Iowa Code § 321.284. See Iowa Department of Health and Human Services, Consumable Hemp, Guidance: Public Consumption of THC Beverages.[9]

Cannabis would not even be in Schedule 1 if it did not contain 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"). Now, THC is considered safe enough for recreational use and given to people

[8] https://www.legis.iowa.gov/docs/publications/DF/1518508.pdf
[9] https://hhs.iowa.gov/media/16985/download?inline

with a wide variety of medical conditions and in a wide variety of formulations (any cannabinoid and any preparation thereof). THC has been authorized for the same non-drug use as the religious use of peyote, a non-drug, non-prescription, beneficial (good) use.

As the Iowa Supreme Court mentioned in *State v. Olsen*, the peyote use described in *People v. Woody* was occasional and supervised. The currently accepted use of cannabis in the Iowa CSA is not occasional or supervised.

The Iowa CSA does not regulate religious users of peyote at all. There is no limit on the amount of peyote a user can possess, no age limits, no restricted locations, no restriction on sharing, and absolutely no way an enforcement officer could interpret the exception without asking that church what that church allows or does not allow.

Businesses supplying THC products to patients must be licensed under Chapter 124E, but that is not the same as a registration under the Iowa CSA, Iowa Code § 124.302.

Chapter 124E allows participants to get THC from out-of-state, which means the state cannot track those amounts of THC purchased in a 90-day period. Iowa Code § 124E.13. Chapter 204 allows the participants in Chapter 124E to purchase additional amounts of THC, and the state has no means of tracking those additional amounts of THC.

Chapter 124E uses the term "medical," but it is more like a food or nutritional supplement. The term "medical," in Chapter 124E is not defined the same way as in Chapter 124. The only thing universally agreed on is that cannabis has therapeutic value.[10]

The respondent has no compelling interest in prohibiting the personal, private, not for profit, religious use of cannabis by the petitioner.

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

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PRIVACY INTEREST

The petitioner has a right to privacy that is violated by the Iowa CSA.

The home generally receives the highest level of constitutional protection, particularly concerning privacy and protection against government intrusion. U.S. Const., amend. 4, U.S. Const., amend. 14, and Iowa Const. art. 1, § 8.

Simple possession of cannabis has received greater protection under the Federal RFRA than distribution. *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, 1222-1223 (9th Cir. 2002) ("prosecuted for importation of marijuana, not simple possession"), citing *United States v. Bauer*, 84 F.3d 1549, 1559 (9th Cir. 1996) ("The [RFRA] was relevant to the counts of simple possession").

The Federal RFRA has protected distribution of Schedule I DMT in plant form, hoasca (ayahuasca), to members of a church in *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418 (2006) (UDV). The Iowa CSA protects distribution of Schedule I mescaline in plant form, peyote, to members of a church in Iowa Code § 124.204(8). The Iowa CSA protects distribution of Schedule I THC to members of a protected class (people with certified medical conditions) in Iowa Code § 124.401(5)(c). The Iowa CSA protects distribution of Schedule I THC to members of a protected class (persons over 21 years of age) in Iowa Code § 124.204(7) (technically, THC is not in any schedule if it has been derived from hemp, but it is the same molecule).

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CRIMINAL AND CIVIL PENALTIES

Religious users of peyote do not register individually, but they are registered as a protected class in the Iowa CSA under Iowa Code § 124.204(8).

Therapeutic users of cannabis are registered individually under Chapter 124E and are a protected class in the Iowa CSA under Iowa Code § 124.401(5)(c).

The penalty for simple possession of cannabis 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 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.[11] Accommodation for cannabis is included in the Iowa CSA, currently codified as Iowa Code § 124.410.

RELIGIOUS DISCRIMINATION

"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.

[11] https://www.ojp.gov/ncjrs/virtual-library/abstracts/marijuana-signal-misunderstanding

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 Iowa CSA is to prevent drug abuse, not drug use. See *Gonzales v. Oregon*, 546 U.S. 243, 269 (2006) ("prohibiting a doctor from acting as a drug 'pusher' instead of a physician").

The Iowa CSA does not restrict religious use of peyote in any way. Peyote users are not registered, and they can transport any amount of peyote anywhere in and out of the state.

In 2014, the legislature authorized interstate transportation of cannabis extracts not to exceed thirty-two ounces containing up to three percent THC from an out-of-state source. 2014 Acts ch. 1125 § 7(1)(b); Iowa Code § 124D.6(1)(b) (2015). That section was carried forward in 2017 but without a limit on the number of ounces. 2017 Acts ch. 162 § 16; Iowa Code § 124E.13 (2018). In 2020, the three percent limit on THC was removed, so cannabis extracts can have any amount of THC in them. 2020 Acts ch. 1116 § 20; Iowa Code § 124E.9(14) (2021). Interstate transportation remained unchanged and protected. Iowa Code § 124E.13 (2021).

Although Iowa Code § 124E.9(14) sets a limit for dispensaries of 4.5 grams of THC per ninety days, it does not set any limit on the amount of THC a user may bring into the state from an out-of-state source or how much a user can possess.

These two exceptions (peyote and THC) for interstate and intrastate transportation undercut any state interest in prohibiting interstate or intrastate transportation of cannabis for religious use in the context of only one person.

There is no requirement in Iowa Code § 124.204(8) that members of the Native American Church carry a registration card. There is a statute that says their use of peyote is protected, but

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no method of identifying who or what is protected. The breadth of the peyote church exception is extraordinary, leaving law enforcement without any way of identifying who is a member or what activity is protected. Cannabis extract users under Chapter 124E are registered. The conditions on use under Chapter 124E are minimal: (1) the extracts must be for one person; and (2) the extracts cannot be smoked.

Cannabis was added to the Iowa Code in 1921 as a habit-forming drug with an exception for medical use. 1921 Acts ch. 282. Peyote was added to the Iowa Code in 1925 as a narcotic drug with no exceptions. 1925 Acts ch. 52. Both plants ended up in Schedule I of the Iowa CSA in 1971.

The Ethiopian Zion Coptic Church is centuries older than the 1921 act that added the cannabis plant as habit-forming drug with an exception for medical use in Iowa, or the act adding it to Schedule 1 of the Iowa CSA in 1971. See *Town v. State ex rel. Reno*, 377 So. 2d 648, 649 (Fla. 1979). The religious exception for the peyote church was added in 1967, 1967 Acts ch. 189 § 2(12). The peyote church is also older (officially created in 1918 in Oklahoma) than the act that made peyote a narcotic drug in 1925 or the act adding it to Schedule 1 of the Iowa CSA in 1971. U.S. Department of Justice, Office of Legal Counsel, Peyote Exemption for Native American Church, December 22, 1981, 5 Op. O.L.C. 403, 409 (1981) ("its special historical status").[12] The Iowa Supreme Court noted this same distinction, historical context, in *Mitchell County v. Zimmerman*, 810 N.W.2d 1, 7 (Iowa 2012) ("See *Yoder*, 406 U.S. at 219, 226, 235 (noting that '[t]he requirement for compulsory education beyond the eighth grade is a relatively recent development in our history,' whereas the Old Order Amish faith has a 'history of three centuries' ").

[12] https://www.justice.gov/file/149736/dl?inline

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The most used form in Iowa is a vaporizer with a delta-9-THC concentration of 80%. In contrast, the average potency of cannabis in 2022 was approximately 16%. National Institute on Drug Abuse, Cannabis Potency Data (July 16, 2024).[13]

"[G]overnment regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). "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).

The department's 2024 annual report says 75.6 percent of products sold were in vaporizable form and 82.6 percent of products sold were high potency delta-9 THC. 19.86 percent of patients had delta-9 THC waivers allowing them to purchase more than 4.5 grams of delta-9 THC in a 90-day period. The approved vaporized form comes in a 500 mg device with 400 mg of delta-9 THC (80%) (Aliviar | Cartridges | Comfort Plus | 0.5 g).[14] The products are intended to be consumed privately. Iowa Code § 124E.12; 641 Iowa Admin. Code 154.12. Patients experiment with dosage to find out what works best for them.

The state cannot show any interest in restricting private, personal, not for profit, religious use of cannabis by the petitioner than it shows for users of experimental delta-9 THC vape devices. "[I]nstead of requiring the State to explain why it could not safely permit at-home worshipers to gather in larger numbers while using precautions used in secular activities, the

[13] https://nida.nih.gov/research/research-data-measures-resources/cannabis-potency-data
[14] https://dutchie.com/embedded-menu/bud-and-marys-windsor-heights/product/aliviar-cartridges-comfort-plus-0-5-g

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Ninth Circuit erroneously declared that such measures might not 'translate readily' to the home." *Tandon v. Newsom*, 593 U.S. at 64.

Under Chapter 124E a user must have a qualifying medical condition, Iowa Code § 124E.3. But the only thing that does is qualify the user to get a registration card. After that, the user is on their own to decide what to use and how to use it. There is no medical supervision. A medical professional cannot prescribe the extracts. A dispensary must employ a pharmacist or a pharmacy technician, but that person cannot dispense the extracts. Iowa Code § 124E.9(13).

The recreational use of THC under Chapter 204 is limited to 4 milligrams per serving, but if each serving does not exceed three tenths of one percent (.3%) THC, there is no limit on the number of servings that can be purchased or consumed at one time. A dozen THC gummies under Chapter 204 would be 48 milligrams of THC, approximately the same as the daily average of 50 milligrams per day under Chapter 124E. Recreational users only need to be 21 or older, so no record of purchases exists for an individual user. Chapter 124E does not prohibit the use of these Chapter 204 consumable hemp products, which means the THC limit in Chapter 124E do not include these additional amounts of THC.

The controls under Chapter 124E are nowhere near as strict as the controls for religious use of peyote described by the Iowa Supreme Court in *State v. Olsen*, No. 171–69079, slip op. at 3–4 (July 18, 1984). The court cited a California case, *People v. Woody*, 394 P.2d 813 (Cal. 1964). The controls described in that California case are not included in the Iowa Code § 124.204(8).

Just four years after *State v. Olsen*, in 1988, the Administrative Law Judge (ALJ) for the U.S. Drug Enforcement Administration (DEA) held that "marijuana, in its natural form, is one of the safest therapeutically active substances known to man." DEA Docket No. 86–22, Sept. 6,

1988, pp. 58–59. "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." *Id.*, at page 56. "Brill et al. (1970) and Smith (1968) have noted that there have not been any reliable reports of human fatalities attributable purely to marihuana, although very high doses have been administered by users." Commission on Marihuana and Drug Abuse, Marihuana: a signal of misunderstanding; first report (1972). Appendix v.1, at page 31.[15]

Chapter 124E defines cannabis products as quasi-pharmaceutical ("any pharmaceutical grade cannabinoid ... or any other preparation thereof"), and it includes raw flower, Iowa Code § 124E.2(10). No pharmaceutical drug has a description that broad. Prescription drugs are precise formulations. *State v. Middlekauff*, 974 N.W.2d 781, 796 (Iowa 2022) ("drug name, strength, dosage, as well as directions for use"). Raw flower is on the agenda for the Medical Cannabidiol Board meeting again on August 22, 2025, for the third time since it was first considered by the board in 2019.[16]

Cannabis extracts have not been tested or clinically proven to be safe or effective for use in interstate commerce like prescription drugs. Users of cannabis extracts use it at their own risk. The risk appears slight judging from data collected thus far. That data is currently the basis for a proposed federal rule rescheduling cannabis to Schedule 3 of the Federal CSA. Cannabis has not been formally tested and approved for safety and effectiveness under the Federal CSA, but there has been so much experience with actual use that the FDA now says it safe and effective enough to move it to Schedule 3 without interstate marketing approval. U.S. Department of Justice, Drug Enforcement Administration, Notice of Proposed Rule Making, Rescheduling of

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[15] https://babel.hathitrust.org/cgi/pt?id=coo.31924013982875&seq=51
[16] https://hhs.iowa.gov/media/16895/download?inline=

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Marijuana, 89 Fed. Reg. 44597, May 21, 2024. See *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 or, as the Administrator contends, approval for interstate marketing of the substance").

Chapter 124E has no controls on what users can do with the extracts in the privacy of their homes or even in most public places. There are some places that patients are not allowed to use the extracts, but they all involve the rights of others not to be involved in federal criminal activity, Iowa Code §§ 124E.21, 124E.22, 124E.23. The only hard rule is that patients with serious medical conditions cannot smoke cannabis extracts, Iowa Code § 124E.17. Raw cannabis can be vaporized without smoking it, but raw cannabis hasn't been approved as a vaporizable form yet under Chapter 124E because of fears that patients might smoke it. The board is considering raw flower again for the third time as of this writing (a decision is expected in November 2025).

The most recent data from the department, Medical Cannabidiol Board, Annual Report to the Iowa General Assembly, December 2024, shows that 75.6% of products are consumed by vaporization and 82.6% of products are high-potency THC products. 19.86% of registered users have waivers allowing them to exceed 4.5 grams of THC in a 90-day period. There have been no reports of diversion or adverse reactions since December 2018 when Chapter 124E became operational.

The controls on production and distribution in Chapter 124E do not apply at all if a patient gets their extracts from an out-of-state source, Iowa Code § 124E.13, or in Minnesota, Iowa Code § 124E.14, Iowa Code § 124E.15, so the only hard rule is that the extracts can't be smoked, Iowa Code § 124E.17.

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RELIGIOUS PREFERENCE

The Iowa CSA lacks facial neutrality because it contains a preference for religious use of peyote by a single 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); *Olsen v. DEA*, 878 F.2d 1458, 1461 (D.C. Cir. 1989) ("to turn away all churches save one opens a grave constitutional question").

Congress considered adding a statutory religious exception for the religious use of peyote in 1965. 111 Cong. Rec. H15977 (daily ed. July 8, 1965) (statement of Rep. Harris).[17] Instead, a federal regulation for religious use peyote was created in 1966. 31 Fed. Reg. 4679 (1966).[18] That federal regulation was copied into the Iowa Code in 1967. 1967 Acts ch. 189 § 2(12).

The Controlled Substances Act of 1970 (Federal CSA) does not have religious exceptions in its schedules or anywhere else in the act. Public law: 91-513, 84 Stat. 1242 (1970), codified as 21 U.S.C. §§ 801-971. The five federal schedules are administrative regulations in 21 C.F.R. Part 1308. Exceptions to the Federal CSA are administrative regulations under 21 C.F.R. Part 1307. The exception for the religious use of peyote is found in 21 C.F.R. § 1307.31.

The federal legislative history explains why the religious exception for peyote was never added to the statute, but it does not explain how it ended up in that regulation. 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. *Id.*, 111 Cong. Rec. at H15978. And now we have the RFRA, both federal and state, which leaves it to the courts to interpret First Amendment rights, full circle, the Commissioner of FDA in 1965 to the Iowa RFRA in

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[17] https://carl-olsen.com/pdfs/olsen-iowa-rfra/111CongRec15977.pdf
[18] https://carl-olsen.com/pdfs/olsen-iowa-rfra/31FedReg4679.pdf

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2024. *UDV*, 546 U.S. at 436-437 ("the very reason Congress enacted RFRA was to respond to a decision denying a claimed right to sacramental use of a controlled substance"). Interpreting the constitution is the role of the judiciary under the separation of powers in the U.S. Constitution. *Boerne v. Flores*, 521 U.S., at 516 ("judicial authority to determine the constitutionality of laws").

The Uniform Act, § 302(d), has a process for making exceptions, which Iowa does not have.[19] "The Uniform Act has been adapted in a manner the Committee believes will better meet Iowa's particular needs and circumstances." Final Report of the Drug Abuse Study Committee to the Sixty-Fourth General Assembly of the State of Iowa (January 1971), at page 1.[20] "Decisions on specific changes in the schedules of controlled substances will be made by the General Assembly acting on the basis of recommendations from the Board of Pharmacy Examiners, not by the Board itself through administrative action as the Uniform Act originally provided." *Id.*, at pages 1–2. "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 (no rationale given). Section 204A.2(12) was added in 1967, 1967 Acts ch. 189 § 2(12) (July 1, 1967). The 1967 act refers to regulations promulgated under the Federal Food, Drug, and Cosmetic Act (1938). 1967 Acts ch. 189 § 1(6)(c).

PEYOTE EXCEPTION

The U.S. Drug Enforcement Administration (DEA) did not exist when the peyote regulation was added, and the DEA has never understood it. U.S. Department of Justice, Office

[19] https://www.uniformlaws.org/committees/community-home?CommunityKey=9873a9bf-7335-4be7-855d-b17c9e8ff3dd
[20] https://www.legis.iowa.gov/docs/publications/IP/255497.pdf

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of Legal Counsel (OLC), Peyote Exemption for Native American Church, December 22, 1981, 5 Op. O.L.C. 403 (1981).[21] And see *Olsen v. DEA*, 878 F.2d 1458, 1461 (D.C. Cir. 1989) ("The DEA's contention that Congress directed the Administrator automatically to turn away all churches save one"). The OLC tried to explain this to the DEA in 1981. "The exemption should not be viewed as having a religious purpose." *Id.*, 5 Op. O.L.C. at 418.

The Federal CSA includes a process for making exceptions. The test for an exception in 21 U.S.C. § 822(d) is whether the exception is "consistent with the public health and safety." The regulation authorizing the religious use of peyote, 21 C.F.R. § 1307.31, is authorized by 21 U.S.C. § 822(d) ("consistent with the public health and safety"), but an exception authorized by 21 U.S.C. § 822(d) does not belong in a regulation. The DEA has never been able to explain the regulation because the DEA never added it. It was added 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. Perhaps this is why the Iowa Drug Abuse Study Committee did not understand it in 1971.

The U.S. Supreme Court cited 21 U.S.C. § 822(d) when it applied the Federal RFRA to the Federal CSA in 2006. *UDV*, 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 government argued the peyote exception is a political accommodation. But a political exception fares no better than a religious one. *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 304-305 (2000) ("Because '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)"). The court found the government argument unpersuasive." *UDV*, 546 U.S. at 434

[21] https://www.justice.gov/file/149736/dl?inline

("Nothing about the unique political status of the Tribes makes their members immune from the health risks").

In 1981 the DEA asked the Office of Legal Counsel (OLC) to explain the peyote church exception. The OLC told the DEA that Congress intended to exempt all religions in which the use of peyote is central to established religious beliefs. U.S. Department of Justice, Office of Legal Counsel, Peyote Exemption for Native American Church, December 22, 1981, 5 Op. O.L.C. 403. But limiting the exception to peyote churches still does not explain a political or religious preference for a single controlled substance.

In applying the Federal RFRA to the Federal CSA in *UDV*, the U.S. Supreme Court created a religious exception for a plant tea (hoasca) containing Schedule 1 DMT. 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.

A few years after the OLC memo in 1981, the DEA claimed it lacked authority to make an exception for the religious use of cannabis. The federal court disagreed with the DEA. *Olsen v. DEA*, 878 F.2d 1458, 1461 (D.C. Cir. 1989) ("a statutory exemption authorized for one church alone, and for which no other church may qualify, presents a 'denominational preference' not

easily reconciled with the establishment clause"). "The First Amendment mandates government neutrality between religions and subjects state-sponsored denominational preferences to strict scrutiny." *Catholic Charities Bureau v. Wisconsin*, No. 24-154 (U.S. June 5, 2025), Slip Op. at 1–2. The statutory authority for making exceptions, 21 U.S.C. § 822(d), simply says exceptions must be consistent with the public health and safety, and expresses no preference for religious, political, or any secular causes.

After the decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), Congress mandated the peyote exception nationally. "American Indian Religious Freedom Act Amendments" (AIRFAA) Public law: 103-344, 108 Stat. 3125 (October 6, 1994), codified as 42 U.S.C. § 1996a. Unlike the RFRA, the AIRFAA does not create a judicial remedy.

The DEA thought the AIRFAA affirmed its thinking that a political preference saves the peyote church regulation from being unconstitutional. The government argued the AIRFAA was limited to the religious use of peyote, and by implication excluded all other religions. *O Centro Espírita Beneficente União do Vegetal v. Ashcroft*, 342 F.3d 1170, 1186 (10th Cir. 2003). The U.S. Supreme Court held the AIRFAA did not change the RFRA, and did not change the non-sectarian interpretation of the peyote church regulation ("consistent with the public health and safety"). *UDV*, 546 U.S. at 432-434.

The DEA is currently struggling to implement regulations for the Federal RFRA. It has been over thirty (30) years since the Federal RFRA was enacted in 1993. But the RFRA is a judicial process (the compelling interest test), which means the DEA is not authorized to make regulations for the Federal RFRA. The RFRA does not instruct the executive branch to create any regulations. U.S. Department of Justice, Drug Enforcement Administration, Notice of Proposed Rule Making, Registration for Religious Organizations under the Religious Freedom

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Restoration Act, RIN: 1117-AB66, DEA Docket No. 649, October 2024 (not printed in the Federal Register).[22] U.S. Government Accountability Office ("GAO"), GAO-24-106630, Report to Congressional Committees, Drug Control: DEA Should Improve its Religious Exemptions Petition Process for Psilocybin (Mushrooms) and Other Controlled Substances, May 30, 2024.[23]

CANNABIS EXCEPTION

Over the past decade an exception for the non-drug, non-prescription use of cannabis has been added to the Iowa CSA, Iowa Code § 124.401(5)(c), but not because of the federal trigger in Iowa Code § 124.201 or any other change in federal law or federal regulations.

A large majority of states have all done the same thing, all contrary to the Federal CSA, and all with the same characteristic, non-drug, non-prescription use. The federal government is currently in the process of responding to this change. In 2023, the Secretary of Health and Human Services (HHS) recommended reclassification of cannabis from Schedule 1 to Schedule 3, and in 2024, the Office of Legal Counsel (OLC) affirmed that the HHS recommendation is legally valid and binding on the DEA.[24] Schedule 3 will not authorize the use of cannabis without a prescription.

States began experimenting with therapeutic use of cannabis early on, and Iowa had such a program. 1979 Acts ch. 9 § 3(3) (June 1, 1979).

Cannabis was classified in both Schedule 1 and 2 in the Iowa CSA after the 1979 program was terminated. Cannabis remained in two different schedules in the Iowa CSA until 2020. The Iowa legislature removed cannabis from Schedule 2 instead of Schedule 1 to resolve the dual scheduling issue. 2020 Acts ch. 1023 §§ 3, 4, and 8.

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[22] https://www.reginfo.gov/public/Forward?SearchTarget=Agenda&textfield=1117-AB66
[23] https://www.gao.gov/products/gao-24-106630
[24] https://www.regulations.gov/document/DEA-2024-0059-0004

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Respectfully submitted.

CARL OLSEN

/s/ Carl Olsen

CARL OLSEN, Pro Se
130 E. Aurora Ave.
Des Moines, IA 50313
Phone: 515-343-9933
Email carl@carl-olsen.com

Copy to:

Jeffrey Peterzalek
Deputy Attorney General
Department of Justice
Hoover State Office Building, 2nd Floor
Des Moines, IA 50319
by
ECF System Participant (Electronic Service)