

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>CARL OLSEN, Petitioner,</p> <p>v.</p> <p>STATE OF IOWA Respondent.</p>	<p>No. CVCV068508</p> <p><i>SECOND MOTION FOR SUMMARY JUDGMENT</i></p>
--	---

Petitioner Carl Olsen respectfully moves for summary judgment as there are no disputed issues of material fact or credibility that warrant a hearing in this case and the petitioner is entitled to judicial relief as a matter of law.

HISTORY

The Petitioner joined a religious organization known as Rastafari in the early 1970s. The religious organization the Petitioner joined later incorporated in Jamaica by the name of “Ethiopian Zion Coptic Church” in 1976. Many the members, including the Petitioner, were arrested for possession and distribution of cannabis in the late 1970s and early 1980s. Many of the members, including the Petitioner, were sentenced to prison. Courts consistently found our belief in the religious use of cannabis was genuine and sincere, but that the church lacked controls to prevent diversion.

In 2015 Jamaica amended its drug laws to authorize religious use of cannabis by Rastafari, and there are some controls to prevent diversion, mostly dealing with large gatherings where cannabis will be used for religious purposes.¹ Since 2015, anyone in Jamaica can grow cannabis plants at home for personal use, religious or otherwise.²

COLLATERAL ESTOPPEL

¹ <https://ethiopianzioncopticchurch.org/pdfs/TheDangerousDrugsAmendmentAct.pdf>

² <https://laws.moj.gov.jm/library/act-of-parliament/5-of-2015-the-dangerous-drugs-amendment-act>

Collateral estoppel should not apply to the Petitioner in this case because simple possession is a different legal issue than the issue in previous cases involving membership of the Petitioner in a religious organization and the distribution of cannabis. *Comes v. Microsoft Corp.*, 709 N.W.2d 114, 118 (Iowa 2006) (“the issue concluded must be identical”). See *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”); and *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”).

Collateral estoppel should not apply in this case because, unlike in previous cases, the State no longer considers the personal and private use of highly concentrated Δ^9 -THC vapes by persons registered under Iowa Code Chapter 124E a threat to the public health and safety sufficient to deny access to highly concentrated Δ^9 -THC vapes with very few restrictions.

EXCEPTION TO SCHEDULING

Cannabis is currently being moved to Schedule 3, but that still won't make it available by prescription. Even in Schedule 3, Chapter 124E will be inconsistent with federal drug law. Chapter 124E would easily qualify as an exception under 21 U.S.C. § 822(d), just like religious use of peyote. The most dangerous thing about Chapter 124E is that it does not have federal authorization under 21 U.S.C. § 822(d).

Δ^9 -THC has had accepted medical use for a over two decades, but only in a synthetic version. In 1986, a synthetic version of Δ^9 -THC, a dronabinol product, was placed in Schedule 2, and in 1999 it was transferred to Schedule 3. Schedule 3 does not reflect how safe Δ^9 -THC actually is. Δ^9 -THC would have to be extremely safe considering that highly concentrated Δ^9 -

THC has been available to thousands of Iowans for over five years now, without an adverse incident.

The State can't justify providing less protection for personal and private religious use of cannabis by the Petitioner than someone registered under Chapter 124E to use pure Δ^9 -THC in a vape device. A cannabis plant has some Δ^9 -THC in it, but nowhere near the levels authorized in Chapter 124E and nowhere near as highly processed and concentrated.

The use of highly concentrated Δ^9 -THC in a vape device for a non-conventional medical treatment, without a prescription and without medical supervision as required by Iowa Code Chapter 124 and Title 21 United States Code Chapter 13, is not a fundamental right that rises above the fundamental right to religious freedom. *State v. Middlekauff*, 974 NW 2d 781, 802-803 (Iowa 2022):

Middlekauff's second classification, Iowans authorized to use medical cannabidiol as compared to out-of-state individuals authorized to use marijuana flower for medical treatment, shows that the two groups are similarly situated. Marijuana is still a schedule I controlled substance under the Federal CSA and Iowa CSA. However, both individuals are authorized to use certain forms of marijuana for medical treatment. We proceed with this equal protection challenge.

We now must determine what level of scrutiny is involved. "Unless a suspect class or a fundamental right is at issue, equal protection claims are reviewed under the rational basis test." *Doe*, 927 N.W.2d at 662 (quoting *King*, 818 N.W.2d at 25). No suspect class is involved. Middlekauff generally states that fundamental rights are implicated but does not explain what the fundamental right is. The State argues rational basis is appropriate because there is no fundamental right to the possession of marijuana. See *Raich v. Gonzales*, 500 F.3d 850, 866 (9th Cir. 2007). We agree with the State and apply rational basis.

STATE SPONSORED CRIME

Chapter 124E puts registered persons at risk by exposing them to self-incrimination under the federal Controlled Substances Act. The fact the State will not comply with 21 U.S.C. § 822(d) and get a waiver for highly concentrated Δ^9 -THC vapes like the waiver that exists for the religious use of peyote in 21 C.F.R. § 1307.31, shows the State has developed a preference for

federal racketeering over constitutionally protected religious freedom. Federal racketeering is not a fundamental right. *Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865, 884 (10th Cir. 2017) (“manufacture, distribution, and sale of that substance is, by definition, racketeering activity”).

Chapter 124E is unnecessarily dangerous because it forces participants to violate federal law without justification. Federalism requires the State to apply for federal authorization under 21 U.S.C. § 822(d) for Chapter 124E, because not doing so forces the public to tolerate federal racketeering. *Bond v. United States*, 564 U.S. 211, 220 (2011) (“Her rights in this regard do not belong to a State”). Where compliance with federal law is possible, and entirely consistent with 21 U.S.C. § 903, obtaining a waiver under 21 U.S.C. § 822(d) is mandatory and failure to do so is negligence.

There is a federal exception for religious use of Schedule 1 peyote authorized by 21 U.S.C. § 822(d) found in 21 C.F.R. § 1307.31. The Medical Cannabis Board has been asking the State to get an exception under 21 U.S.C. § 822(d) for Chapter 124E, just like the one for peyote, continuously for the past seven years since over-the-counter sales began in December of 2018. The State is forcing the public to choose between violating federal drug law or going without an alternative medical treatment the State acknowledges to be in the interest of public health and safety, which is what makes Chapter 124E consistent with 21 U.S.C. § 822(d) (“consistent with the public health and safety”) and 21 U.S.C. § 903 (“application of state law”).

COMPELLING INTEREST

The State lacks any compelling interest in prohibiting the religious freedom of the Petitioner to use cannabis plants personally and privately under these circumstances.

PREVIOUS STATE CASES

Previously, in *State v. Olsen*, 315 N.W.2d 1 (Iowa 1982), the Petitioner claimed a constitutional right for members of a religious organization to distribute cannabis. This case is not about a religious organization or the distribution of cannabis.

Previously, in *Olsen v. DEA*, 878 F.2d 1458 (D.C. Cir. 1989), the Petitioner sought a religious exemption for a religious organization. This case is not about a religious organization or the distribution of cannabis.

PREVIOUS FEDERAL CASES

Previously, in *Olsen v. Mukasey*, 541 F.3d 827, 831 (8th Cir. 2008), the Petitioner argued the RFRA, as interpreted in *Gonzales v. O Centro Espirita Beneficente União Do Vegetal*, 546 U.S. 418 (2006), changed the method for determining whether the government has a compelling interest in prohibiting religious use of cannabis. The Petitioner should have relied on personal and private use as a factual difference in that case, rather than as a change in controlling law.

A change in controlling law was created by Congress in the RFRA, not by the U.S. Supreme Court in *O Centro*. The RFRA allowed the Petitioner to file a civil action for an injunction, but had no relevance to the issue of simple possession as a separate legal question. Nothing significant about the classification of cannabis had changed in 2008 when *Olsen v. Mukasey* was decided and the Petitioner simply failed to focus on the only thing that was materially different, simple possession.

Collateral estoppel does not apply if controlling facts or legal principles have changed significantly since Olsen's prior judgments. See *Montana v. United States*, 440 U.S. 147, 155 (1979). Collateral estoppel "is designed to prevent repetitious lawsuits over matters which have once been decided and which have remained substantially static, factually and legally." *Comm'r v. Sunnen*, 333 U.S. 591, 599 (1948).

Olsen v. Mukasey, 541 F.3d at 831.

SIMPLE POSSESSION

Simple possession was not a change in controlling law, it was only a different fact. The only change RFRA made was allowing the Petitioner to bring a First Amendment claim in a civil action rather than making a First Amendment defense to a criminal prosecution, but that does not a change controlling law once the litigation has commenced.

Chapter 124E differentiates between distribution and simple possession. Chapter 124E breaks those differences down into four categories: (1) manufacturers; (2) distributors; (3) caregivers; and (4) registered users. Chapter 124E applies different controls to each category. Chapter 124 also differentiates between three of these categories, distribution, accommodation, and simple possession, applying different levels of controls to each.

CONGRESSIONAL INTENT

Other material facts regarding the classification of cannabis began changing in 2014 when Congress began suspending federal enforcement of Schedule 1 against state laws authorizing the use of cannabis without a prescription and outside of the normal context of Schedule 1 in both the state and federal controlled substances acts. Maybe a dozen or so states had exceptions for medical cannabis in 2008 when *Olsen v. Mukasey* was decided, but now that number has increased to forty-seven out of fifty. Iowa authorized therapeutic use of cannabis as an exception to Schedule 1 in 2014, and authorized cultivation of cannabis as an exception to Schedule 1 in 2017. *Olsen v. Mukasey* was decided before these state and federal changes regarding cannabis took place.

In 2023 the Secretary of Health and Human Services, authorized by Congress under 21 U.S.C. § 811(b), determined that cannabis does not belong in Schedule 1, and in 2024 the Office of Legal Counsel, U.S. Department of Justice, authorized under 21 U.S.C. § 811(a), held the Secretary's determination is binding on the Department of Justice at this point in the process. In

2025 the President of the United States asked the Department of Justice to expedite the rescheduling of cannabis from Schedule 1 to Schedule 3 to complete the process.³

These changes in state and federal law are significant changes that render collateral estoppel inapplicable.

STANDING

Because of the Iowa Religious Freedom Restoration Act (“IRFRA”), the Petitioner does not have to be arrested again and make a constitutional defense in a criminal prosecution for religious freedom and uniform operation of law. Members of another religious organization have an exception for religious use of peyote in Iowa, which has always made it unconstitutional that no one else could apply for equal consideration without being arrested and criminally prosecuted first.

An exception for highly concentrated Δ^9 -THC vapes as an alternative to prescription drugs is now authorized in Iowa, and again without any means of equal consideration for religious use of the plant it comes from. The Iowa CSA substantially burdens the religious freedom of the Petitioner because it does not provide any means of redress for religious freedom in spite of having exceptions for another religious sect to use another Schedule 1 plant and in spite of having another exception for non-drug, non-prescription, non-religious use of cannabis.

Any compelling interest the State may have previously claimed to have had in denying religious freedom was before highly concentrated Δ^9 -THC vapes as an alternative to prescription drugs and without medical supervision was added as an exception to Chapter 124. Under Chapter 124E, the role of health care providers is limited to certifying a person has a qualifying

³ <https://www.federalregister.gov/documents/2025/12/23/2025-23846/increasing-medical-marijuana-and-cannabidiol-research>

medical condition. The State no longer considers compliance with federal drug law a compelling state interest.

UNCONSTITUTIONAL

The Iowa Uniform Controlled Substances Act (“IUCSA”) is facially unconstitutional because § 302(d) of the Uniform Act (due process) recommended in § 302(4) by the model act drafted by the Iowa Drug Abuse Study Committee in 1971⁴, and in 21 U.S.C. § 822(d), was never added to the enacted version of the Iowa CSA, but a federal regulation for religious use of the Schedule 1 peyote plant was added into Schedule 1 of Chapter 124. If that process had been included, and the exception for peyote added by regulation, the Petitioner could have applied for a religious exemption instead of waiting for the State to enact a religious freedom restoration act to provide a judicial process for redress.

See APPENDIX II, Text of Uniform Controlled Substances Act as revised and recommended by the Drug Abuse Study Committee, § 302(4) (“The board by rule may waive the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety”), at page 26 (45 of 91), lines 19-21 (omitted from the act enacted by the legislature in 1971). In the text recommended by the committee, § 302 has six subsections. But 1971 Acts Chapter 148 § 302 only has five subsections.

CONSTITUTIONAL VIOLATIONS

1. The religious preference for the Native American Church in Iowa Code § 124.204(8) to the exclusion of all others violates the Free Exercise and Establishment clauses of the First Amendment to the Constitution of the United States; and

⁴ <https://www.legis.iowa.gov/docs/publications/IP/255497.pdf>

2. The lack of a process making exceptions violates the Due Process and Equal Protection clauses of the Fourteenth Amendment; and
3. The secular preference for therapeutic use of highly concentrated Δ^9 -THC vape devices violates the Due Process and Equal Protection clauses of the Fourteenth Amendment.

DUE PROCESS

Due process was omitted from the Iowa CSA in 1971 (accidentally or intentionally), contrary to the recommendation in § 302(4) of the Final Report of the Drug Abuse Study Committee to the Sixty-Fourth General Assembly of the State of Iowa (January 1971), in § 302(d) of the Uniform Act, and in 21 U.S.C. § 822(d) of the federal Controlled Substances Act.

In *Employment Division v. Smith*, the U.S. Supreme Court made it clear that the Oregon Uniform Controlled Substances Act did not have exceptions and the Employment Division of Oregon had no obligation to create one. *Employment Division v. Smith* acknowledged that absolute prohibition is an option, but only if applied uniformly, across the board, without exceptions. The 1977 Oregon legislature adopted provisions of the 1973 Uniform Controlled Substances Act (1977 Senate Bill 904; 1977 Oregon Laws Chapter 745).

Oregon Laws 1977, Chapter 745, SECTION 28. Uniformity of interpretation. Sections 1 to 29 of this 1977 Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of sections 1 to 29 of this 1977 Act among those states which enact similar laws.

Oregon Laws 1977, Chapter 745, SECTION 29. Short title. Sections 1 to 29 of this 1977 Act may be cited as the Uniform Controlled Substances Act.

Those two sections of the Oregon act correspond to Iowa Code §§ 124.601 and 602 in the Iowa CSA, but unlike the Oregon CSA, the IUCSA is not uniform. States are not compelled to adopt the Uniform Act, but when they do, they are responsible for implementing it uniformly.

LEAST RESTRICTIVE MEANS

An injunction against the enforcement of the Iowa CSA against the religious use of cannabis by the Petitioner under the IRFRA is the only remedy provided by law because the lesser restrictive means of enforcement under the Iowa CSA was omitted. The Respondent has no less restrictive means available now under the Iowa CSA, because § 302(4) of the act recommended by the Iowa Drug Abuse Study Committee, § 302(d) of the Uniform Act, § 822(d) of the federal CSA, was not included as an option in the Iowa CSA when it was enacted.

LEGAL STANDARD

A motion for summary judgment is appropriately granted when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Venckus v. City of Iowa City*, 990 N.W. 2d 800, 807 (Iowa 2023).

On motion for summary judgment, the court must: (1) view the facts in the light most favorable to the nonmoving party, and (2) consider on behalf of the nonmoving party every legitimate inference reasonably deduced from the record. *Venckus*, 990 N.W. 2d at 807.

An issue of fact is material only when the dispute is over facts that might affect the outcome of the suit, given the applicable governing law. *Varnum v. Brien*, 763 N.W. 2d 862, 874 (Iowa 2009).

CONCLUSION

The petitioner moves the Court for summary judgment and injunctive relief enjoining enforcement of Chapter 124 against the personal and private religious use of cannabis by the Petitioner.

Dated March 4, 2026.

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

Attachments:

Affidavit of Carl Olsen
Statement of Material Facts
Exhibit A – *State v. Olsen*, No. 171-69079 (Iowa Supreme Court, July 18, 1984)
Exhibit B – DEA Administrative Law Judge, No. 86-22 (September 6, 1988)
Exhibit C – Letter to Carl Olsen from Dr. Jeffery Schaeffer (August 18, 1986)
Exhibit D – Letter from DEA Assistant Administrator to Carl Olsen (June 16, 2022)
Exhibit E – *McMahon v. Board*, No. 09-1789 (Iowa Supreme Court, May 14, 2010)

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)