IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN, Petitioner, v. STATE OF IOWA Respondent.	No. CVCV068508 ***MOTION FOR RECONSIDERATION OF RULING ON MOTIONS FOR SUMMARY JUDGMENT***

Petitioner Carl Olsen respectfully moves for reconsideration of the Ruling on Motions for Summary Judgment entered by the Court on December 15, 2025 (Docket No. D0033). The Petitioner is pro se and asks the Court to construe his pleadings liberally.

On page 2 of the Court's Ruling, the Court asks the Petitioner to specifically cite which provisions of the United States and Iowa constitutions are being violated.

PROVISION OF THE CONSTITUTIONS BEING VIOLATED

1. **First Amendment.** The inclusion of a religious exception for religious use of the Schedule 1 peyote plant in Iowa Code Chapter 124 by members of Native American Church to the exclusion of the petitioner, without any due process by which the petitioner can apply for accommodation for his religious use of the Schedule 1 cannabis plant, violates the Establishment Clause of the First Amendment to the United States Constitution and Article 1, Section 3, of the Iowa Constitution.
2. **First Amendment.** The inclusion of a religious exception for religious use of the Schedule 1 peyote plant Iowa Code Chapter 124 by members of Native American Church to the exclusion of the petitioner, without any due process by which the petitioner can apply for accommodation for his religious use of the Schedule 1 cannabis plant, violates the Free Exercise Clause of the First Amendment to the United States Constitution and Article 1, Section 3, of the Iowa Constitution.

3. **First Amendment.** The preference for the secular use of the Schedule 1 cannabis plant in Iowa Code Chapter 124 and Iowa Code Chapter 124E to the exclusion of the petitioner, without any due process by which the petitioner can apply for accommodation for his religious use of the Schedule 1 cannabis plant, violates the Free Exercise Clause of the First Amendment to the United States Constitution and Article 1, Section 3, of the Iowa Constitution.
4. **Fourteenth Amendment.** The inclusion of a religious exception for religious use of the Schedule 1 peyote plant in Iowa Code Chapter 124 by members of Native American Church to the exclusion of the petitioner, without any due process by which the petitioner can apply for accommodation for his religious use of the Schedule 1 cannabis plant, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 1, Section 6, of the Iowa Constitution.
5. **Fourteenth Amendment.** The inclusion of a religious exception for religious use of the Schedule 1 peyote plant in Iowa Code Chapter 124 by members of Native American Church to the exclusion of the petitioner, without any due process by which the petitioner can apply for accommodation for his religious use of the Schedule 1 cannabis plant, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article 1, Section 6, of the Iowa Constitution.
6. **Fourteenth Amendment.** The secular preference for the use of the Schedule 1 cannabis plant in Iowa Code Chapter 124 and Iowa Code Chapter 124E, without any due process by which the petitioner can apply for accommodation for his religious use of the Schedule 1 cannabis plant, violates the Due Process Clause of the

Fourteenth Amendment to the United States Constitution and Article 1, Section 6, of the Iowa Constitution.

7. **Fourteenth Amendment.** The secular preference for the use of the Schedule 1 cannabis plant in Iowa Code Chapter 124 and Iowa Code Chapter 124E, without any due process by which the petitioner can apply for accommodation for his religious use of the Schedule 1 cannabis plant, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article 1, Section 6, of the Iowa Constitution.
8. **Fourteenth Amendment.** The secular preference for the use of the Schedule 1 cannabinoid Δ^9-THC in Iowa Code Chapter 124 and Iowa Code Chapter 204, without any due process by which the petitioner can apply for accommodation for his religious use of the Schedule 1 cannabis plant, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 1, Section 6, of the Iowa Constitution.
9. **Fourteenth Amendment.** The secular preference for the use of the Schedule 1 cannabinoid Δ^9-THC in Iowa Code Chapter 124 and Iowa Code Chapter 204, without any due process by which the petitioner can apply for accommodation for his religious use of the Schedule 1 cannabis plant, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article 1, Section 6, of the Iowa Constitution.

On page 2 of the Court's Ruling, the Court asks the Petitioner for a Statement of Material Facts and an Affidavit.

AFFIDAVIT OF CARL OLSEN

The Affidavit of Carl Olsen, Iowa Rule of Civil Procedure 1.981(5), is attached to this motion.

STATEMENT OF MATERIAL FACTS

The Statement of Material Facts as to which there is no genuine issue to be tried, Iowa Rule of Civil Procedure 1.981(8), is attached to this motion.

MEMORANDUM OF AUTHORITIES

In addition to the Memorandum of Authorities in the Petitioner's Brief in Support of Summary Judgment, the Petitioner submits the following:

COLLATERAL ESTOPPEL

On page 7 of the Ruling, the Court cites *U.S. v. Middleton*, 690 F.2d 820, 825 (11th Cir. 1982) ("the government's compelling interest in protecting the public from drugs it determines to be dangerous"). Congress enacted the Controlled Substances Act in 1970 and made an "initial" determination that cannabis should be placed in Schedule 1 of the act. 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, ..."). Here is some of the history surrounding the legislation:

> 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 (the same "government" *Middleton* refers to) under 21 U.S.C. § 811 to make findings of fact found that cannabis is non-toxic and "one of the safest therapeutic substances known to man."[1]

The decision in *Middleton* is not preclusive on the question of compelling interest, the danger to public health and safety. *Middleton* is superseded by an administrative scheduling procedure authorized by Congress under 21 U.S.C. § 811 to review the compelling interest, the danger to public health and safety.

Any perceived "danger" resulting in the initial and temporary classification of cannabis by Congress in 1970 and cited in the *Middleton* decision was undermined in 1988 by the

[1] See Exhibit B attached to the Petitioner's Motion for Summary Judgment.

government ALJ authorized by Congress to do exactly that (determine the "danger" to public health and safety).

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).

Some states, such as California, allow home cultivation for medical use. See *United States v. Raich*, 545 U.S. 1 (2005). According to the Marijuana Policy Project, a total of 25 states allow home cultivation of cannabis for medical use.[2] Again, Congress is the same "government" *Middleton* refers to.

On December 18, 2025, President Trump signed an Executive Order[3] directing the Attorney General to transfer cannabis from Schedule 1 to Schedule 3.[4] Cases from the 1980s do not have any preclusive effect on the question of "danger" in light of how cannabis is being regulated today. Restrictions on the medical use of cannabis and Δ^9-THC, the psychoactive component in cannabis, are minimal.

On page 7 of the Court's Ruling, the Court characterizes these changes as:

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[2] https://www.mpp.org/assets/pdf/issues/legalization/freedom-to-grow-map-of-states-allowing-home-cultivation-of-cannabis-in-us-25-07.pdf

[3] https://www.whitehouse.gov/presidential-actions/2025/12/increasing-medical-marijuana-and-cannabidiol-research/ - official video is here: https://www.youtube.com/watch?v=DTVbPs1RoKo

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

> The Petitioner argues the prior cases are outdated as attitudes have changed regarding marijuana. He points to the enactment of Iowa Code Chapter 124E in 2020, which allowed some medical use of cannabidiol.

These public laws are not just changes in "attitude."

Chapter 124E is deceptively named as "cannabidiol." Iowa Code Chapter 124E does not require any "cannabidiol" at all. The definition in Iowa Code § 124E.2 is "any cannabinoid" or "any preparation thereof" but not cannabidiol. Even in federal Schedule 3, the FDA will never approve a prescription product with a definition like that, any cannabinoid or any preparation thereof. CBD (cannabidiol) is not scheduled at all if it is made from hemp, Iowa Code Chapter 204. Epidiolex (prescription CBD) was a Schedule V prescription medication[5] until it was entirely removed in 2020 because it had been completely legalized as a hemp product.[6]

The name of the act is so inaccurate and deceptive the board overseeing the program asks that it be changed to "Medical Cannabis Act" every year in its annual reports to the legislature. The Department simply refers to it as "medical cannabis."

> **1. Amending the name of Chapter 124E to "The Medical Cannabis Act"**
> The Board recommends renaming Chapter 124E to be the "Iowa Medical Cannabis Act" to accurately reflect that products containing THC are also authorized to be sold and manufactured by the law, indicate scientific reality via inclusion of all cannabinoids, mitigate confusion with program stakeholders, and improve program education.
>
> The term "medical cannabidiol" may have been relevant prior to HF2589 and Iowa using a 3% THC limit on products, but Iowa remains the only state using this nomenclature. As Iowa now allows product formulations similar to those in other medical cannabis programs, it is congruent with the rest of the country to update the name. Additionally, the proliferation of intoxicating products in the consumable hemp program further exacerbates this messaging issue. Following the passage of HF2589 in 2020, maintenance of the term "medical cannabidiol" has progressively created a knowledge and education barrier with law enforcement, healthcare, and other stakeholders who are otherwise unaware that

[5] https://www.dea.gov/press-releases/2018/09/27/fda-approved-drug-epidiolex-placed-schedule-v-controlled-substance-act

[6] https://practicalneurology.com/news/prescription-pharmaceutical-cannibidiol-epidiolex-no-longer-a-controlled-substance/2469218/

> high-THC products are legally available in Iowa. Under the new consolidated Bureau within HHS, the public facing messaging refers to the program as "medical cannabis."

2024 Recommendations to the Iowa General Assembly, December 2024, at page 6.[7]

Forty-eight states have authorized the use of cannabis without a prescription and contrary to the requirement for placement in Schedule 1. Iowa became one of those states in 2014.

Federal and state changes enacted in public laws are not just opinion polls. The compelling interest test is fact specific and these statutory changes are material facts. "At all stages of the strict-scrutiny analysis, from evaluating the government's compelling interest justifying a racial classification to deciding whether a remedy is narrowly tailored, courts make fact-specific, context-based judgments." Congressional Research Service, *The Constitution and Race-Conscious Government Action: Narrow Tailoring Requirements*, March 14, 2023.[8]

The Petitioner is not asking the Court to authorize distribution. In previous cases, the Petitioner argued the church had a constitutional right to freely distribute cannabis. In contrast, this case is about one person and the claim is a right to personal and private religious use of cannabis.

Employment Division v. Smith, 494 U.S. 872 (1990), articulates the correct legal standard under the First Amendment today. The *Smith* standard was appropriately applied by the Iowa Supreme Court in *Mitchell County v. Zimmerman*, 810 N.W.2d 1 (Iowa 2012) (comparing secular exceptions allowed by the county to a religious exception that was being denied).

The secular preferences for cannabis and Δ^9-THC in Iowa did not exist when *State v. Olsen*, 315 N.W.2d 1 (Iowa 1982), was decided, nor in any of the cases up to and including *Olsen v. Mukasey*, 541 F.3d 827 (8th Cir. 2008). The recent secular preferences for cannabis and

[7] https://www.legis.iowa.gov/docs/publications/DF/1518508.pdf
[8] https://www.congress.gov/crs_external_products/R/PDF/R47471/R47471.2.pdf

Δ^9-THC for a particular class of persons with qualifying medical conditions is material and not identical to the absence of these facts in prior judgments. Collateral estoppel is inapplicable now. *Montana v. United States*, 440 U.S. 147, 155 (1979); *Commissioner v. Sunnen*, 333 U.S. 591, 599 (1948); *Comes v. Microsoft Corp.*, 709 N.W.2d 114, 118 (Iowa 2006).

What makes a religious condition less compelling than a medical condition? Religious Freedom is a fundamental right. Medical treatment is not.

Decisions on which conditions qualified for medical use of cannabis under Chapter 124E were initially made by the legislature. Chapter 124 says cannabis has no medical use. Chapter 124E should be considered a "secular" exception for cannabis. It was a political decision that left the Petitioner's religious use of cannabis out. "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).

Chapter 124E authorize violation of federal drug law. A federal waiver under 21 U.S.C. § 822(d), like the one for religious use of peyote in 21 C.F.R. § 1307.31, would bring Chapter 124E into compliance with federal drug law. And yet the State finds no compelling interest in protecting these persons from federal jeopardy or protecting the public from criminal activity. How can the State come before this Court and talk about federal drug law when it no longer maintains fealty to it? 21 U.S.C. § 822(d) is the federal drug law. The State is promoting federal crime as more compelling than protecting religious freedom.

Unlike the exceptions in *Zimmerman*, 810 N.W.2d at 3 ("the ordinance is not of general applicability because it contains exemptions that are inconsistent with its stated purpose"), Chapter 124E authorizes federal racketeering.

> Marijuana is a controlled substance under the CSA. 21 U.S.C. § 802(16). So the manufacture, distribution, and sale of that substance is, by definition, racketeering activity under RICO. 18 U.S.C. § 1961(1)(A), (D).

Safe Streets Alliance v. Hickenlooper, 859 F.3d 865, 884 (10th Cir. 2017). See *State v. Middlekauff*, 974 NW 2d 781, 793 (Iowa 2022) ("Our interpretations should also be consistent with the Federal CSA").

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.

2024 Recommendations to the Iowa General Assembly, December 2024, at page 7.[9]

Congress has been giving the State a pass in annual restrictions on federal enforcement spending, but the State is taking advantage of that courtesy to avoid complying with 21 U.S.C. § 822(d). A restriction in federal spending does not mean Chapter 124E is compliant with federal drug law. The State comes before the Court placing persons with medical conditions in federal jeopardy and the public at risk without justification, but claims to have a compelling interest in prohibiting religious freedom.

COMPELLING INTEREST

The State has no compelling interest in interfering with the religious use of cannabis by the petitioner because the petitioner cannot be a threat to public health and safety using cannabis in the privacy of his home. Rather than rebut this claim, the State claims it has a compelling

[9] https://www.legis.iowa.gov/docs/publications/DF/1518508.pdf

interest in prohibiting the general public from using cannabis, rather than explaining how that applies to "the person" – the particular claimant.

> 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. O Centro 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.

The Petitioner does not have standing to represent the general public, but the State insists that is what the Petitioner must do. The Petitioner does not distribute cannabis to anyone else. The Petitioner does not receive cannabis from anyone else. The Petitioner does not use cannabis with anyone else. How does the State think the Petitioner has standing to ask for any of these things when all of them would involve another person or persons?

If the Court grants the Petitioner a declaration of religious freedom to use cannabis and enjoins the State from interfering with that personal right, the Petitioner will remain prohibited from sharing cannabis with anyone, not because the State has a compelling interest in prohibiting sharing, but because the Petitioner lacks standing to ask for it. Who would the Petitioner share cannabis with? The State could still bring accommodation or felony charges against the

Petitioner for sharing or distributing cannabis, leaving whatever compelling interest the State thinks it has in preventing other persons from using cannabis entirely intact.

The Petitioner has not used cannabis for 35 years since his First Amendment claims were exhausted in *Olsen v. DEA*, 878 F.2d 1458 (D.C. Cir. 1989), *cert. denied*, 495 U.S. 906 (1990); cited in *Employment Division v. Smith*, 494 U.S. 872, 889 (1990), and in the dissenting opinions at 913, 914, 916, and 918. The Petitioner believes the State's threat to arrest, prosecute, and imprison the Petitioner in Chapter 124 is an immediate and imminent threat.

LEAST RESTRICTIVE MEANS

On page 9 of the Court's Ruling, the Court asks the Petitioner to explain what was meant by less restrictive means the State could use to restrict the use of cannabis by the Petitioner in his second supplement brief resisting a prior motion to dismiss (Docket No. D0013). The Petitioner was trying to say the State does not have any less restrictive means without creating them by new legislation. The Petitioner hopes the Court understood these were only hypotheticals of what the State did not do. The Petitioner would like documentation that his conduct is constitutionally protected, but the Iowa RFRA only authorizes this Court to do that by declaratory and injunctive relief.

One example is the exception for the Native American Church. Only the Legislative Branch can create another exception like the one for the Native American Church. The Legislative Branch has not given the Executive or the Judicial branches authority to create religious exemptions by statute. The Petitioner is not suggesting that creating another religious preference by statute is an ideal solution, but that is how it works now. Another religious preference would be just as unconstitutional as the first.

And how does law enforcement know who the members of the Native American Church are? If that was the only example of a religious exception in the Iowa Code, something is better than nothing. But there are some more recent and better examples.

A recent and better example created in 2020 is public health legislation, Iowa Code § 94.2(2) and Iowa Code § 139A.8(4)(a)(2), creating an administrative process for exceptions, both for medical reasons and religious beliefs. See 641 Iowa Admin. Code § 7.3(2) ("conflicts with a genuine and sincere religious belief"). The burden on the State would be minimal since that process already exists and does not require re-inventing the wheel.

The legislature could enact another chapter like Chapter 124E to regulate religious use of cannabis by issuing a registration card. The burden on the State would be minimal since those registration cards already exist and the State would not have to re-invent the wheel.

Because Iowa did not adopt § 302(d) of the Uniform Act, which comes from 21 U.S.C. § 822(d), there are no options for the Respondent to make exceptions that would have been available under the § 302(d) of the Uniform Act or 21 U.S.C. § 822(d) had the State adopted it.

Ideally, the legislature should adopt § 302(d) of the Uniform Act, but it could go with a lesser option that would satisfy constitutionality like Chapter 124E (a registration card) or a provision for secular and religious exceptions like Chapter 139A (whatever identification that exception uses).

The religious preference for the Native American Church might be constitutional if that same level of protection was equally available to new applicants. Without a constitutional injury to someone's religious freedom, the statutory religious exception would be harder to challenge.

Or the legislature could do nothing at all. After all, the legislature enacted the Iowa RFRA to handle religious exceptions and that satisfies constitutionality. For now, just wait and

see if the courts are flooded with petitions for religious use of cannabis and take it from there. If there are very few of them, the courts can handle it. If there are too many, then the legislature can enact further legislation to free up the courts.

Where an administrative process is available, federal courts have held that the RFRA does not require it. *Okleveuha Native American Church v. Holder*, 676 F.3d 829, 838 (9th Cir., 2012); *Arizona Yage Assembly v. Garland*, 595 F.Supp.3d 869, 880 (D. Arizona 2022); *Arizona Yage Assembly v. Garland*, 671 F.Supp.3d 1013, 1020 (D. Arizona, 2023); *O Centro*, 546 U.S. at 434 (RFRA "plainly contemplates that courts would recognize exceptions [to the CSA] — that is how the law works"). RFRA is a judicial process, so the federal remedy under the RFRA is the same as in the Iowa RFRA, declaratory and injunctive relief.

The ideal solution would be some kind of administrative process, and the Iowa RFRA would just be there as a backup if someone wanted to use it. It's hard to see how declaratory and injunctive relief would be preferable to a registration card or a vaccine exception authorization. Having both options, the RFRA in addition to an administrative process, would be ideal.

CONCLUSION

The Petitioner moves the Court for Summary Judgment granting the Petitioner Declaratory and Injunctive relief enjoining the enforcement of Chapter 124 against the personal and private religious use of cannabis by the petitioner. The listing of cannabis in Iowa Code Chapter 124 does not apply to the personal and private religious use cannabis by the Petitioner.

Dated December 22, 2025.

Respectfully submitted.

CARL OLSEN

/s/ Carl Olsen

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