

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN, Petitioner, v. STATE OF IOWA, Respondent.	Case No. CVCV068508 RESPONDENT'S MOTION TO DISMISS
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COMES NOW, Respondent, and, pursuant to Iowa Rule of Civil Procedure 1.421, moves this Court to dismiss Petitioner’s Petition. In support of their motion, Respondent states the following:

INTRODUCTION

Carl Olsen, appearing pro se continues his multi-decade, unsuccessful, attack on Iowa’s Controlled Substances Act (Chapter 124) as that law relates to his claimed religious use of cannabis¹. While not entirely clear from the present lawsuit, it would appear Mr. Olsen is asking this court to enjoin the State from interfering with his “religious use of cannabis” by enforcing Iowa’s well-established laws regulating controlled substances. Mr. Olsen alleges that Iowa’s Religious Freedom Restoration Act (Chapter 675) prohibits the State from enforcing its Controlled Substances Act with respect to him. Mr. Olsen has made these same claims in multiple prior proceedings including under the federal Religious Freedom Restoration Act (RFRA). *See Olsen v. Mukasey*, 541 F. 3d 827 (8th Cir. 2008). *See also Olsen v. State of Iowa*, 808 F. 2d 652 (8th Cir. 1986). His claims under the federal act were dismissed on collateral estoppel/claim preclusion

¹ Mr. Olsen has gone so far in his efforts to include attempting to intervene in matters remote as federal court in California. *See U.S. v. Lepp*, 2013 WL 173960 (N.D. Ca. Jan. 16, 2013).

grounds as the same compelling interest standard set forth in the federal RFRA is the same standard that was applied in his other, unsuccessful, challenges to state and federal Controlled Substances Acts. *Mukasey* 541 F. 3d at 831.

Once again, Mr. Olsen asserts that he is a member of the Ethiopian Zion Coptic Church and adheres to its teachings that advocate for the use of marijuana. *Id* at 830; Petition ¶¶ 26-24. In *State v. Olsen*, 315 N.W. 2d 1 (Iowa 1982), Mr. Olsen defended his controlled substance conviction by raising a free exercise of religion defense. *Id* at 7-8. In *Olsen* the Iowa Supreme court assumed that the religion practiced by Mr. Olsen is one protected by the free exercise clause and that the State bears the burden of then showing that Mr. Olsen’s religious interest is outweighed by “a compelling state interest.” *Id* at 8. The Iowa Supreme Court easily determined that there was a compelling state interest “sufficient to override Olsen’s free exercise clause argument...” *Id* at 9.

MOTIONS TO DISMISS

Motions to dismiss test “the legal sufficiency of the challenged pleading.” *Southard v. Visa U.S.A., Inc.*, 734 N.W.2d 192, 194 (Iowa 2007). A motion to dismiss “accept[s] as true the petition’s well-pleaded factual allegations, but not its legal conclusions.” *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014). Dismissal is required when, accepting all facts as true, “the petition shows the claim or claims are legally deficient and the plaintiff has no right of recovery as a matter of law.” *White v. Harkrider*, 990 N.W.2d 647, 650 (Iowa 2023).

Relevant here, whether a plaintiff is collaterally estopped from bringing a statutory cause of action is a question of law resolvable through a motion to dismiss. *Cornell v. State*, 529 N.W. 2d 606, 610 (Iowa App. 1994).

THE RELIGIOUS FREEDOM RESTORATION ACT

Iowa’s Religious Freedom Restoration Act (RFRA) set forth in Iowa Code Chapter 675

was signed into law on April 29, 2024, with an immediate effective date. As may be pertinent to this case, Iowa Code section 675.4 provides:

1. State action shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless the government demonstrates that applying the burden to that person's exercise of religion is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

2. 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. Standing to assert a claim or defense under this chapter shall be governed by the general rules of standing under state and federal law. The plaintiff, if the prevailing party, may also recover reasonable attorney fees and costs.

Because injunctive relief is expressly contemplated by the RFRA, an injunction may only be issued "upon proof of a violation of the statute". *Worthington v. Kenkel*, 664 N.W. 2d 228, 232 (Iowa 2004).

PETITIONER DOES NOT HAVE STANDING TO PURSUE THIS CAUSE OF ACTION

Standing "must exist at the commencement of the litigation." *Klein v. Iowa Pub. Info. Bd.*, 968 N.W. 2d 220, 234 n. 9 (Iowa 2021) (quoting *Baker v. City of Iowa City*, 750 N.W. 2d 93, 97 (Iowa 2008)). There are two components to standing that Petitioner must satisfy to obtain standing. A complaining party must first have a specific personal or legal interest in the litigation and then must also be injuriously affected. *LS Power Midcontinent, LLC v. State*, 988 N.W. 2d 316, 329-30 (Iowa 2023). For the first prong, Petitioner's injury must be different than that of the general population. *Id.* Petitioner's claimed injury is no different from anyone wishing to claim a religious exemption to Iowa's controlled substances laws. Mr. Olsen fails to overcome the first hurdle to gain standing before this court. Mr. Olsen also fails on the second standing prong because he is not currently facing any action, criminal or civil, against him. In order to confer standing with this

court “[T]he injury cannot be ‘conjectural’ or ‘hypothetical’, but must be ‘concrete’ and ‘actual or imminent.’” *Id* (other citations omitted). Mr. Olsen fails to meet the prerequisite standing requirements to pursue his claimed cause of action.

COLLATERAL ESTOPPEL REQUIRES DISMISSAL OF MR. OLSEN’S CLAIMS

Issue preclusion, or direct or collateral estoppel, “ ‘means simply that when an issue ... has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.’ ” *State v. Seager*, 571 N.W.2d 204, 208 (Iowa 1997) (quoting *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S.Ct. 1189, 1194, 25 L.Ed.2d 469, 475 (1970)). In order for the prior determination to have preclusive effect in subsequent litigation, four elements must be met. These prerequisites are:

“(1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.”

Comes v. Microsoft Corp., 709 N.W.2d 114, 118 (Iowa 2006).

Iowa’s recently enacted RFRA both mirrors the federal RFRA and contains the identical “compelling governmental interest” requirement as a free exercise clause analysis. *See generally* Iowa Chapter 675. In *United States v. Rush*, 738 F. 2d 497 (1st Cir. 1984) the First Circuit considered and rejected Mr. Olsen’s free exercise of religion defense. Then again in *Olsen v. DEA*, 878 F. 2d 1458 (D.C. Cir. 1989) the Court affirmed the DEA’s denial of a religious use exemption from marijuana laws. And, as noted above, the Iowa Supreme Court has also held the State of Iowa has a compelling state interest that outweighs the concerns raised by Mr. Olsen. Mr. Olsen’s claims of the government lacking a sufficient compelling interest to prohibit his use of marijuana in the exercise of his religion have been litigated multiple times in the Iowa Courts as well as federal.

And he has lost every time. Mr. Olsen is estopped from continuing to raise these same issues against the State.

EVEN IF PETITIONER WERE NOT ESTOPPED FROM RAISING THESE SAME CLAIMS AGAIN THIS CASE MUST STILL BE DISMISSED AS IT IS WITHOUT LEGAL MERIT.

Even if collateral estoppel were not applicable, this case must still be dismissed as it is well established that the state has both a compelling interest in enforcing its controlled substances law and that a religious exemption is not a viable less-restrictive means of enforcing Iowa's marijuana prohibition. *See Olsen v. Drug Enforcement Admin*, 878 F. 2d 1458, 1462 (U.S. App D.C.) (Courts have accepted the congressional determination that marijuana poses a threat to individual health and social welfare); *State v. Olsen*, 315 N.W. 2d 1, 9 (Iowa 1982) (a compelling state interest is demonstrated); *Nesbeth v. U.S.*, 870 A. 2d 1193, 1198 (D.C. Ct. App 2005) (It is not an open question that enforcement of marijuana laws serves a compelling government interest).

A compelling state interest being clearly established, the next question to be addressed is if that compelling government interest can be accomplished through less restrictive means. *See Interest of N.S.*, 13 N.W. 3d 811, 820 (Iowa 2024). A religious exemption is simply not a viable less-restrictive means of enforcing Iowa's Controlled Substances Act. As one court has noted, "if the criminal statutes against marijuana were nullified as to those who claim the right to possess and traffic this drug for religious purposes ...for all practical purposes the anti-marijuana laws would be meaningless, and enforcement impossible." *State v. Balzer*, 954 P.2d 931, 940 (Wash. App. 1998). In a more recent case analyzing the same issue under the federal RFRA, the Ninth Circuit readily determined that the government had both a compelling interest in enforcing its controlled substance laws and if the religious exemption claimed was allowed "its compelling interest would be meaningfully compromised." *United states v. Christie*, 825 F. 3d 1048, 1057 (9th Cir. 2016). Finally, in *U.S. v. Middleton*, 690 F. 2d 820 (11th Cir.), a case also involving a religious

freedom claim, like here, by a member of the Ethiopian Zion Coptic Church, that Circuit's Court of Appeals determined the governments compelling interest, "...would be substantially harmed by a decision allowing members of the Ethiopian Zion Coptic Church to possess marijuana freely." *Id* at 825.

CONCLUSION

WHEREFORE Respondent respectfully requests that the Court dismiss Petitioner's Petition in its entirety and award any other relief appropriate under the circumstances.

Respectfully submitted,

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ATTORNEY FOR RESPONDENT

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on February 19, 2025:

- | | |
|---|--|
| <input type="checkbox"/> U.S. Mail | <input type="checkbox"/> FAX |
| <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> Overnight Courier |
| <input type="checkbox"/> Federal Express | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> ECF System Participant (Electronic Service) | |

Signature: */s/ Audra Jobst*