

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN, Petitioner, v. STATE OF IOWA, Respondent.	Case No. CVCV068508 PETITIONER’S REPLY TO RESPONDENT’S POST-TRIAL BRIEF
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COMPELLING INTEREST

In response to this court’s Ruling on Motions for Summary Judgment, D0033, December 12, 2025, the State presented witnesses and evidence from the Iowa Department of Public Safety (DPS) that establish a compelling governmental interest in the enforcement of the Iowa Uniform Controlled Substances Act (IUCSA), Iowa Code Chapter 124. Respondent’s Post-Trial Brief, Section I, page 5 (“enforcing its narcotics laws”) (abbreviated “Resp. Br.” hereafter).

Exceptions to the IUCSA, like the one for religious use of peyote in Iowa Code § 124.204(8) and the one for non-prescription use of marijuana in Iowa Code § 124.401(5)(c), are compelling State interests because they are included in the IUCSA.

The Iowa Religious Freedom Restoration Act (IRFRA), Iowa Code Chapter 675, is a compelling State interest because it has been incorporated into the IUCSA. See Iowa Code § 675.3(4) (“implementation or application of any law”).

The IRFRA requires strict scrutiny, particularly here where: (1) the Petitioner’s sacrament is marijuana; (2) the IUCSA has an exception for the use of a controlled substance by one specific religious organization; (3) the IUCSA has an exception for non-prescription use of marijuana and marijuana extracts; and (4) the IUCSA lacks an administrative process for requesting an exception.

In 2024 a judicial process for requesting an injunction was added by the IRFRA, which adds due process omitted from the IUCSA when it was enacted in 1971.

LEAST RESTRICTIVE MEANS

Commercial production and distribution of peyote for religious use is regulated by the Department of Inspections, Appeals, and Licensing (DIAL) (suppliers must register). See Iowa Code § 124.204(8); Iowa Code § 124.302 (registration). Production and distribution of marijuana for non-prescription use of marijuana extracts is regulated by the Iowa Department of Health and Human Services (DHHS). See Iowa Code § 124.401(5)(c); Iowa Code Chapter 124E (regulatory program).

Members of the Native American Church using peyote are not required to register and are not regulated.

Patients using THC pursuant to the Iowa Medical Cannabidiol Act are not required to register with the Iowa Board of Pharmacy, but they are issued a registration card by the Iowa Department of Health and Human Services under Iowa Code § 124E.4. See Iowa Code § 124.401(5)(c). Patients must have a qualifying condition, § 124E.2(2), they are limited by dispensaries to a set number of grams of THC they can purchase in a 90-day period, § 124E.9(14), and they must renew their medical condition certification annually, § 124E.3(2)(a).

In this case, the Petitioner is seeking a court order, an injunction, that would provide identification like the patient registration card. The order can describe the terms and conditions of the injunction.

The Respondent says an exception should not be granted because, “the State is employing the least restrictive means of enforcing its controlled substances laws.” Resp. Br. at 2. That

argument has been squarely rejected by the U.S. Supreme Court in *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 436-437 (2006):

We do not doubt that there may be instances in which a need for uniformity precludes the recognition of exceptions to generally applicable laws under RFRA. But it would have been surprising to find that this was such a case, given the longstanding exemption from the Controlled Substances Act for religious use of peyote, and the fact that the very reason Congress enacted RFRA was to respond to a decision denying a claimed right to sacramental use of a controlled substance.

The State failed to present any evidence that the injunction requested by the Petitioner would cause anyone harm. Both of the State witnesses testified they would not be harmed. Because the State has failed to show a compelling interest in enforcing the IUCSA against the private use of marijuana by this Petitioner, it attempts to excuse the deficiency: (1) people of questionable character might apply for an injunction pursuant to the IRFRA; and (2) past unauthorized use makes this Petitioner untrustworthy.

SLIPPERY SLOPE

The State relies on the slippery slope argument rejected in *O Centro*, 546 U.S. at 435-436, “the court would invite a flood of exemption claims.” Resp. Br. at 10. See *O Centro*, 546 U.S. at 436 (“Nothing in our opinion suggested that courts were not up to the task”).

EXCEPTIONS

The IUCSA is not uniform regarding the establishment of an official State religion, the Native American Church. Iowa Code § 124.204(8). See *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”). See *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 discernable from the language or context”).

The IUCSA is not uniform regarding marijuana and THC, which seriously undercuts the State’s objection. There is an exception from Iowa Code § 124.203, Iowa Code § 124.204(4)(m) (marijuana), and Iowa Code § 124.204(4)(av) (marijuana extract), for cultivation of marijuana to make non-prescription marijuana extracts in Iowa Code § 124.401(5)(c), Iowa Code Chapter 124E.

The U.S. Supreme Court has held that the non-prescription use of marijuana is not a constitutionally protected right that triggers strict scrutiny. See *Gonzales v. Raich*, 545 U.S. 1 (2005). The U.S. Supreme Court has held that the non-prescription use of peyote is not a constitutionally protected right that triggers strict scrutiny. See *Employment Division v. Smith*, 494 U.S. 872 (1990).

But once a state makes exceptions, strict scrutiny is triggered. The State has to give equal consideration to others. Due Process and Equal Protection are constitutional rights binding on the States through the Fourteenth Amendment. See *Id.*, 494 U.S. at 876-877 (“applicable to the States by incorporation into the Fourteenth Amendment”).

Iowa has enacted a statutory right to cultivate marijuana for non-prescription marijuana extracts, predominantly THC, and has done so without seeking federal authorization under 21 U.S.C. § 822(d). The majority of those extracts are high potency THC vape devices, far beyond the level of THC found in a marijuana plant. Users possess these extracts without medical supervision, because participation in the program is a violation of federal law. Businesses involved in producing and distributing marijuana extracts are engaged in organized crime, and patients must violate federal law to participate.

Almost every state has some version of a medical marijuana law and all of them require violation of federal law to participate. Some compelling reason has motivated this highly unusual behavior. What is driving this? Is this a slippery slope to perdition, or something seriously wrong with how marijuana is classified?

CHARACTER ASSASSINATION

The State insists the Petitioner cannot be trusted because he previously participated in the unauthorized distribution of marijuana over four decades ago. See Resp. Br. at 2 (“20 tons of marijuana”).

The posture of the parties has reversed over the past four decades. While the Petitioner has not engaged in the unauthorized use of marijuana, the State has turned to organized crime to run a health care program in Iowa without federal authorization, negligently placing medical patients in federal jeopardy.

The State’s compelling interest in preventing diversion to unauthorized persons is fully satisfied because this Petitioner testified under oath that he does not share marijuana with anyone and is not requesting the authority to share marijuana with anyone. Trial Tr. at 22-23. This Petitioner testified under oath that he does not share marijuana with children and is not requesting the authority to share marijuana with children. Trial Tr. at 24.

The State keeps repeating it cannot regulate the Petitioner. See Respondent’s Post-Trial Brief, Section II, pages 8-9 (“regulatory feasibility”). Unlike the federal act, the IUCSA does not authorize the Attorney General of Iowa to make exceptions by regulation.

Members of the Petitioner’s church share some common beliefs. Marijuana is the blood of Christ. John 6:53 (KJV) (“Except ye eat the flesh of the Son of man, and drink his blood, ye have no life in you”). The body of Christ has many members. I Corinthians 12:12 (KJV).

How other members of the church manifest their religious beliefs is not before the court today. The State is not allowed to favor “one or the other side in controversies over religious authority or dogma,” such as the time and place other members find appropriate for using the sacrament. *Smith*, 494 U.S. at 877.

I am a “stranger in a strange land.” Exodus 2:22 (KJV). “How shall we sing the LORD’S song in a strange land?” Psalms 137:4 (KJV). Members of the church are expected to obey the laws. Titus 3:1 (KJV) (“Put them in mind to be subject to principalities and powers, to obey magistrates”). Hebrews 11:13 (KJV):

These all died in faith, not having received the promises, but having seen them afar off, and were persuaded of them, and embraced them, and confessed that they were strangers and pilgrims on the earth.

If a member has a problem with the law, the IRFRA allows that member to bring the matter before a court to determine whether the application of that law to that person serves a compelling governmental interest.

This Petitioner is not seeking authorization to use marijuana on property he does not own, like in a prison. The State cites two prison cases where federal RFRA claims were made: *Winters v. State*, 549 N.W.2d 819 (Iowa 1996); *Ochs v. Thalacker*, 90 F.3d 293 (8th Cir. 1996). Both cases predate *City of Boerne v. Archbishop Flores*, 521 U.S. 507 (1997), which held the federal RFRA unconstitutional as applied to the states. In those two cases, the inmates could not show their beliefs were shared by other members of their professed religion. In contrast, “[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). See *O Centro*, 546 U.S. at 436 (“Nothing in our opinion suggested that courts were not up to the task”).

The State cites examples of federal RFRA claims by religious organizations seeking to distribute marijuana. *United States v. Christie*, 825 F.3d 1048 (9th Cir. 2016); *Multi-Denominational Ministry of Cannabis and Rastafari, Inc. v. Holder*, 365 Fed. Appx. 817 (9th Cir. 2010). Both of those cases cite *United States v. Bauer*, 84 F.3d 1549, 1559 (9th Cir. 1996). *Bauer* draws a line of separation between distribution and simple possession:

Under RFRA, however, the government had the obligation, first, to show that the application of the marijuana laws to the defendants was in furtherance of a compelling governmental interest and, second, to show that the application of these laws to these defendants was the least restrictive means of furthering that compelling governmental interest. The Act was relevant to the counts of simple possession.

Id. at 1559.

The State says, “If criminal statutes against marijuana were nullified as to those who claim the right to possess and traffic this drug for religious purposes . . . then the anti-marijuana laws would be meaningless and impossible to enforce.” *State v. Balzer*, 954 P.2d 931 (Wash. App. 1998). In contrast, this Petitioner is not distributing marijuana. Private possession for personal religious use by this Petitioner that does not involve other persons is clearly well within the zone of activity protected under the cases the State is citing.

CONCLUSION

The IUCSA can withstand rational basis analysis. Under strict scrutiny analysis the RFRA requires enjoining the enforcement of the IUCSA against the personal, private, religious use of marijuana by this Petitioner. The State can move to dissolve an injunction if its terms are violated. Violating the terms of an injunction would be a crime under the IUCSA just like it would be without the injunction. No harm accrues to the State’s legitimate interests of protecting the public health and safety by granting this injunction.

Dated September 7, 2026.

Respectfully submitted.

CARL OLSEN

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