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IN THE IOWA SUPREME COURT

CARL OLSEN, Petitioner/Appellant, v. STATE OF IOWA, Respondent/Appellee.	Supreme Court No. 26-1757 District Court No. 05771 CVCV068508

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE CELENE GOGERTY, TRIAL JUDGE

APPELLANT'S BRIEF AND ARGUMENT

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. The district court erred by finding collateral estoppel precludes Olsen from claiming the Iowa Uniform Controlled Substances Act is facially unconstitutional because it lacks both neutrality and general applicability.

Important Authorities

West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624 (1943)
Montana v. United States, 440 U.S. 147 (1979)
State v. Olsen, 315 N.W.2d 1 (Iowa 1982)
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Olivier v. City of Brandon, Mississippi, 146 S. Ct. 916 (2026)

II. The district court erred by finding Olsen is not substantially burdened by the criminalization of his sacrament, cannabis.

Important Authorities

Wisconsin v. Yoder, 406 U.S. 205 (1972)
Town v. State ex rel. Reno, 377 So.2d 648 (Fla. 1979)
Thomas v. Review Board, 450 U.S. 707 (1981)
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Trinity Lutheran Church of Columbia, Inc. v. Comer, 582 U.S. 449 (2017)
Masterpiece Cakeshop v. Colo. Civil Rights, 584 U.S. 617 (2018)

III. The district court erred by failing to compare Olsen's personal and private religious use of cannabis with the exception for cannabis recently added to the Iowa Uniform Controlled Substances Act.

Important Authorities

Gonzales v. O Centro Espírita Beneficente União do Vegetal, 546 U.S. 418 (2006)
Tandon v. Newsom, 593 U.S. 61 (2021)
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United States v. Hemani, 146 S. Ct. 1677 (2026)

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because the issues raised involve substantial constitutional questions as to the validity of a statute and substantial questions of enunciating or changing legal principles. Iowa R. App. P. 6.903(2)(a)(4), 6.1101(2)(a) , and 6.1101(2)(f) (2025).

INTRODUCTION

The Iowa Uniform Controlled Substances Act (CSA), 1971 Acts Chapter 148, Iowa Code Chapter 124, is unconstitutional as applied to the personal and private religious use of cannabis by Olsen because the Iowa CSA lacks both facial neutrality and general applicability. *Employment Division v. Smith*, 494 U.S. 872, 881 (1990) ("the Free Exercise Clause in conjunction with other constitutional protections").

A process like the one in the federal Controlled Substances Act (CSA), Pub. L. No. 91-513, 84 Stat. 1236, 1242 (October 27, 1970), 21 U.S.C. Chapter 13, for making exceptions by regulation, 21 U.S.C. § 822(d), 21 C.F.R. § 1307.03, was omitted from the Iowa CSA in 1971.

A federal regulation, 21 C.F.R. § 1307.31, authorizing use of peyote without a prescription by members the Native American Church, was then added as a statutory exception, Iowa Code § 124.204(8), to the Iowa CSA in 1971.

A statutory exception, Iowa Code § 124.401(5)(c), was later added to the Iowa CSA in 2017 for cultivation of cannabis, 2017 Acts Chapter 162, to provide highly concentrated THC products, 2020 Acts Chapter 1116, without a prescription or direct medical supervision to over 23,000 Iowans registered under the Iowa Medical Cannabidiol Act (MCA), Iowa Code Chapter 124E.

These exceptions and the lack of redress, in conjunction with each other, deprive Olsen of religious freedom without due process to use cannabis for prayer in the privacy of his own home and property in violation of the First and Fourteenth amendments to the Constitution of the United States.

In 1993, a judicial process was added to federal law that provides injunctive relief for federal violations of religious freedom under the First Amendment to the Constitution of the United States without requiring exhaustion of administrative remedies, the Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. No. 103-141, 107 Stat. 1488 (November 16, 1993), codified at 42 U.S.C. Chapter 21B. See *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 430 (2006) ("RFRA challenges should be adjudicated in the same manner as constitutionally mandated applications of the test").

In 2024, a judicial process was added to State law that provides injunctive relief for State violations the Iowa Constitution, Art. 1 § 3, and the First Amendment to the Constitution of the United States, the Iowa Religious Freedom Restoration Act of 2024 (RFRA), 2024 Acts Chapter 1003, Iowa Code Chapter 675.

First Amendment Establishment Clause

The inclusion of a statutory exception for the religious use of peyote by members of the Native American Church in 1971 Acts Chapter 148 § 204(5), Iowa Code § 124.204(8), and the omission of a process by which Olsen could have sought equal protection in 1971 Acts Chapter 148 § 302, Iowa Code § 124.302, (or elsewhere in the Iowa CSA) violates Olsen's First

Amendment right to facially neutral laws of general applicability in violation of the Establishment Clause. The Iowa CSA is unconstitutional on its face because it includes a preference for a single church and no process by which anyone else can apply. *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"); *Olsen v. Drug Enforcement Admin.*, 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 *Larson v. Valente*, 456 U.S. 228, 244 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another"); *Edwards v. Aguillard*, 482 U.S. 578, 587 (1987) ("It is not a trivial matter, however, to require that the legislature manifest a secular purpose and omit all sectarian endorsements from its laws"); *Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573 (1989) ("government may not demonstrate a preference for one particular sect or creed"); *McCreary County v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 881 (2005) ("Neither a state nor the Federal Government . . . can pass laws which aid one religion, aid all religions, or

prefer one religion over another"); *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 638 (1943):

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Fourteenth Amendment Due Process Clause

The omission of a process in the Iowa CSA, like the one in the federal CSA, 21 U.S.C. § 822(d), and recommended in 1971 by the Iowa Drug Abuse Study Committee in Section 302(4) of its report (executive branch authority to waive registration requirements), by which Olsen could have sought a registration waiver like the statutory exception waiving registration requirements for the religious use of peyote by members of the Native American Church, Iowa Code § 124.204(8), violates Olsen's Fourteenth Amendment right to Due Process. The Iowa CSA is unconstitutional on its face because exceptions are added to the Iowa CSA by legislation and not by regulation. The statutory authority for the federal regulation excepting the religious use of peyote, 21 U.S.C. § 822(d), is referenced in *O Centro*, 546 U.S. 418 at 432-433 ("the Act itself contemplates that exempting certain

people from its requirements would be 'consistent with the public health and safety'"). The Iowa CSA is contradictory, because it exempts certain people by statute rather than by regulation, and it has no process for adding (or removing) exemptions without legislation.

The Uniform Controlled Substances Act has the same corresponding section 302(d) at page 47, as the report of the 1971 Iowa Drug Abuse Study Committee in section 302(4) at page 26. In the Iowa CSA, 1971 Acts Chapter 148, section 302(4) of the 1971 Iowa Drug Abuse Study Committee report is missing.

Fourteenth Amendment Equal Protection Clause

The inclusion of a statutory exception for the secular use of cannabis in the Iowa CSA, Iowa Code § 124.401(5)(c), and the omission of a process by which Olsen could have sought an exception for religious use of cannabis, violates Olsen's First Amendment right to Free Exercise and Olsen's Fourteenth Amendment right to Equal Protection. *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531 (1993) ("Neutrality and general applicability are interrelated, and, as becomes apparent in this case, failure to satisfy one requirement is a likely indication that the other has not been satisfied").

NATURE OF THE CASE

Olsen brought this civil action, authorized by the Iowa RFRA, to enjoin the enforcement of the Iowa CSA against his personal and private religious use of cannabis.

The State responded that it had a compelling interest in the general enforcement of the Iowa CSA, which Olsen took no issue with. See *O Centro*, 546 U.S. at 430:

> RFRA, and the strict scrutiny test it adopted, contemplate an inquiry more focused than the Government's categorical approach.

The issue Olsen raises is that the Iowa CSA has exceptions, and that these exceptions are equally compelling governmental interests. Unlike the federal CSA, these exceptions are added by the Iowa legislature, not by regulation.

The legislature has a fundamental right to make laws, and it has a fundamental right to make exceptions to those laws. Religious freedom is a fundamental right. The Iowa RFRA should be interpreted as a restoration of the constitutional right to religious freedom. In addition to restoring religious freedom, the Iowa RFRA creates a private cause of action against the government. See *Burnett v. Smith*, 990 N.W.2d 289, 296 (Iowa 2023) ("the state cannot be sued without its consent").

The federal RFRA was written to rebuke the U.S. Supreme Court for its decision in *Smith*. *Smith* held that applying the First Amendment to State criminal laws that are both neutral and generally applicable is a violation of State sovereignty, and rejected a judicial test like the one mandated by the RFRA. *Smith*, 494 U.S. at 888 ("watering it down here would subvert its rigor in the other fields where it is applied").

The U.S. Supreme Court weighed in on the RFRA in 1997, finding the RFRA violates State sovereignty in *City of Boerne v. Archbishop Flores*, 521 U.S. 507 (1997). Justice Stevens went a bit further in his concurring opinion. *Boerne*, 521 U.S. at 536 (Stevens, J., concurring) ("In my opinion, the Religious Freedom Restoration Act of 1993 (RFRA) is a 'law respecting an establishment of religion' that violates the First Amendment to the Constitution"). The U.S. Supreme Court gave the RFRA a constitutional interpretation in *O Centro*, 546 U.S. at 430 ("RFRA challenges should be adjudicated in the same manner as constitutionally mandated applications of the test").

A statutory exception was recently added to the Iowa CSA that creates a "system of individual exemptions" for the cultivation of cannabis to make highly concentrated THC products for medical use without a prescription or direct medical supervision. Iowa Code § 124.401(5)(c). Olsen claims the

Iowa CSA is facially unconstitutional because it is not generally applicable, particularly when it comes to his sacrament, cannabis, and the Iowa CSA has no "system of individual exemptions" Olsen can use to apply for an exemption.

See *Smith*, 494 U.S. at 884 ("where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason"); *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).

The State presented no evidence that Olsen's personal and private religious use of cannabis is a threat to anyone. The State witnesses testified that the personal and private religious use of cannabis by Olsen would not cause them any harm. The district court found that Olsen sincerely believes cannabis is his sacrament. Iowa Code § 675.3(2) ("sincerely held religious belief"). But, instead of judgment in Olsen's favor, the district court found that Olsen is not substantially burdened by the criminal penalties for possession of cannabis. Instead of stopping there and dismissing the case for lack of jurisdiction, the district court continued to apply a rational basis standard to the Iowa CSA rather than strict scrutiny. Findings of Fact,

Conclusions of Law, and Order (D0076), September 10, 2026, pp. 11-12 ("Substantial burden"), pp. 13-15 ("Compelling interest" and "Least restrictive means").

Although the State admitted the use of highly concentrated formulations of THC under the Iowa MCA by over 23,000 Iowans is consistent with public health and safety, it objected to the personal and private religious use of cannabis by Olsen without a valid explanation. Both State witnesses said they would not be injured if Olsen uses cannabis for religious worship in the privacy of his own home. The State listed off a litany of things Olsen might do, based on what other people have done causing serious injury to themselves or others. There was no strict scrutiny analysis comparing and explaining why the use of cannabis by Olsen is more dangerous than the use of highly concentrated THC products by over 23,000 Iowans. The State presented no evidence that 23,000 Iowans registered under Chapter 124E are unable to use products containing extremely high concentrations of THC without injuring themselves or others, or to keep these products away from unauthorized users.

Although Chapter 124E is a complex regulatory scheme, most of that complexity is on the business end. End users under Chapter 124E are not heavily regulated. In contrast, businesses that supply peyote to the Native

American Church are required to register, Iowa Code § 124.204(8), and the users are not required to register.

Users under Chapter 124E are issued a registration card. Iowa Code § 124E.4. The only requirement is that the users must obtain a certification that they have a qualifying condition from a health care practitioner on an annual basis. Iowa Code § 124E.3(2)(a). The registration card allows users to use highly concentrated THC products on a daily basis without a prescription or direct medical supervision. The default is 4.5 grams of THC per 90-days, which averages 50 milligrams per day. Iowa Code § 124E.9(14). Users can request a waiver for higher amounts of THC. Iowa Code § 124E.9(15). Users cannot share their products with anyone or use them where a property owner objects. Iowa Code § 124E.23.

Granting an injunction to Olsen would be similar to registering users under Chapter 124E. A court order protecting Olsen's personal use of his sacrament, cannabis, in the privacy of his own home and property with an agreed upon plant and possession limit identifies who and what is being protected just like the registration card. The State witness, Susan Sher, admitted Chapter 124E is consistent with public health and safety because it has parameters. Trial Tr. 97:8-13. Users authorized by Chapter 124E have a registration card so they can easily be identified. A court order satisfies

that same law enforcement concern. Olsen referenced plant and possession limits in Minnesota as an example of parameters he will voluntarily agree to. See Minnesota Statutes § 342.09. Trial Tr. 33:16-25, 34:1-13.

The State has no less restrictive means ("system of individualized exemptions") it can use in enforcing the act against Olsen, because the State never created one. The State omitted those means (regulations) from the Iowa CSA in 1971. The only way to get an exception like the exception for peyote in Iowa Code § 124.204(8) or the exception for cannabis in Iowa Code § 124.401(5)(c) is by legislation or by court order (injunction). The Iowa CSA is facially unconstitutional. The Iowa RFRA provides a remedy, a court order (an injunction).

In order to prove the Iowa CSA has a rational basis, the State showed examples where cannabis, or any other substance that may have tested positive for having THC in it, was present while some tragedy occurred. The State could not say how many of these cases were attributed solely to the use of cannabis or if the cannabis being used was adulterated or contaminated. If cannabis was present, it was reported as cannabis. If THC was present, it was reported as cannabis. If some chemical concoction that tested positive for THC was present, it was reported as cannabis. Under the rational basis analysis, the evidence presented by the State is

sufficient to pass the test for constitutionality. But it does not pass the test for strict scrutiny.

The U.S. Department of Health and Human Services recently found the totality of all the data shows, "[T]he vast majority of individuals who use marijuana are doing so in a manner that does not lead to dangerous outcomes to themselves or others." HHS, *Basis for the Recommendation to Reschedule Marijuana into Schedule III of the Controlled Substances Act* (Aug. 2023), at page 7.[1] See *United States v. Hemani*, 146 S. Ct. 1677, 1693 (2026):

> In saying this much, we do not question that sometimes an individual's unlawful use of marijuana (or any other controlled substance) may render him a danger to others. But, again, the government disclaims the need to show anything like that in this case. Instead, it asks us to conclude that anyone who regularly uses marijuana is categorically violent and dangerous without any further showing.

Hemani used cannabis regularly and unlawfully and still retained the Second Amendment right to own a gun, but the district court held that Olsen's use of cannabis for religious worship in the privacy of his own home is categorically dangerous without any further showing.

[1] https://www.regulations.gov/document/DEA-2024-0059-0006

The State presented only data involving unregulated, illicit substances that tested positive for THC which may or may not have come from a cannabis plant. As the Drug Enforcement Administration (DEA) Administrative Law Judge (ALJ) found in 1988, "Marijuana, in its natural form, is one of the safest therapeutically active substances known to man." Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of Administrative Law Judge, DEA Docket No. 86-22, September 6, 1988, at pages 58-59, attached as Exhibit B to Olsen's Brief in Support of Motion for Summary Judgment (D0021), September 25, 2025. Cannabis, in its natural form, is Olsen's sacrament.

The State has authorized cultivation of cannabis to make products with extremely high concentrations of THC for use by end users with a registration card. But a registration card is not a prescription and these products are not used under direct medical supervision. Iowa Code § 124.401(5)(c); Iowa Code Chapter 124E. This court recently explained the difference between a prescription and a registration card for medical marijuana in *State v. Middlekauff*, 974 N.W.2d 781 (Iowa 2022). What this demonstrates is how incredibly safe these products are in comparison to prescription medications.

The district court found that Olsen sincerely believes that cannabis is his sacrament and then inexplicably held that Olsen is not substantially burdened by severe criminal penalties for the possession of his sacrament, cannabis, in Iowa. The district court did not apply strict scrutiny, reasoning that Olsen can use consumable hemp products, Iowa Hemp Act, 2024 Acts Chapter 1176, Iowa Code Chapter 204, as a substitute for cannabis because some of them may have THC in them. Findings of Fact, Conclusions of Law, and Order (D0076), September 10, 2026, at pages 11-12.

THC is not Olsen's sacrament. See *United States v. Ballard*, 322 U.S. 78, 86–87 (1944) (the trier of fact is forbidden from determining the truth or falsity of religious beliefs); *Holt v. Hobbs*, 574 U.S. 352, 361-362 (2015) ("RLUIPA's 'substantial burden' inquiry asks whether the government has substantially burdened religious exercise (here, the growing of a 1-inch beard), not whether the RLUIPA claimant is able to engage in other forms of religious exercise").

Consumable hemp products may contain cannabinoids that are not capable of being naturally produced by a cannabis plant or other contaminants. Congressional Research Service, *Changes to the Statutory Definition of Hemp and Implications for Agricultural Policy* (2026), https://www.congress.gov/crs-product/IF13136, September 28, 2026;

Congressional Research Service, *Delay in Changes to Hemp Definition: Cannabinoids Not Capable of Being Naturally Produced by the Cannabis Plant* (2026), https://www.congress.gov/crs-product/IF13136, October 28, 2026. Des Moines Register, *Looming hemp ban threatens farms, businesses*, Monday, November 2, 2026, at page C008.

The Native American Church does not use mescaline as a substitute for peyote. O Centro Espírita Beneficente União do Vegetal does not use DMT as a substitute for ayahuasca. See *O Centro*, 546 U.S. at 423. Consumable hemp products being commercially exploited for recreational use in Iowa under the Iowa Hemp Act are being banned by Congress because they were mistakenly authorized. See FY2026 Agriculture continuing appropriations (P.L. 119-37, Division B, § 781, 139 STAT. 485, 558). Section 781 has not taken effect yet. Congress moved the date from Nov. 12 to Dec. 11, 2026 (P.L. 119-103 § 2019), and efforts to delay it further are ongoing.

Olsen believes cannabis is the body and blood of Christ. *Town v. State ex rel. Reno*, 377 So.2d 648, 649 (Fla. 1979) ("members of the church believe that cannabis is the mystical body and blood of 'Jes-us'"). Olsen has never claimed that THC is his sacrament. See *Thomas v. Review Board*, 450 U.S. 707, 714 (1981) ("religious beliefs need not be acceptable, logical,

consistent, or comprehensible to others in order to merit First Amendment protection").

Olsen joined the Ethiopian Zion Coptic Church prior to its incorporation in Jamaica in 1976. *Town*, 377 So.2d at 649 ("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"). Before the church incorporated in Jamaica it was known by the name of Rastafari. Jamaica authorized religious use of cannabis by Rastafari in 2015. 2015 Act No. 5, pp. 4, 6-7, and 11.

The Iowa RFRA does not require membership in a church. This case is not about what other members of Olsen's church may do. The Iowa RFRA protects, "the ability to act or refuse to act in a manner substantially motivated by one's sincerely held religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief." Iowa Code § 675.3(2). Olsen suspended his use of cannabis, contrary to his religious beliefs, because the State is threatening to take away what liberty Olsen has remaining and send Olsen to prison.

The State said Olsen has "been practicing this religion without smoking marijuana for 36 years." But Olsen hasn't given up hope. Olsen has been waiting for divine justice to catch up with the law. Millions of

Americans have had their right to grow this miraculous natural healing herb at home restored while Olsen has been denied. Trial Tr. 57:9-24.

After completing a prison sentence for distribution of cannabis as part of church activities, Olsen worked for the Iowa Department of Transportation for 13 years, Captain Jack Communications for 3 years, and Drake University for 17 years. Olsen earned a paralegal degree from DMACC in 1991, had his right to vote restored in 1992, and earned a certificate in computer networking from Hamilton College in 2000.

In 2008, in response to this court's decision in *State v. Bonjour*, 694 N.W.2d 511 (Iowa 2005) (denying a medical necessity defense for cannabis because the legislature had given the pharmacy board the authority to decide whether cannabis had medical use), Olsen successfully petitioned the Iowa Board of Pharmacy to recommend removing cannabis from Schedule 1 of the Iowa CSA, which the board agreed to do in 2010. *McMahon et al. v. Iowa Board of Pharmacy* (Carl Olsen, Intervenor), Iowa Supreme Court No. 09-1789, May 14, 2010.

In 2013, Olsen intervened in a petition to remove cannabis from Schedule 1 of the federal CSA, *Americans for Safe Access, et al. v. Drug Enforcement Admin*. (Carl Olsen, Intervenor), 706 F.3d 438, 441 (D.C. Cir. 2013) ("He asserts a religious interest in the use of marijuana"), *cert*.

denied, 571 U.S. 885 (2013), Docket No. 13-84. Certiorari was also denied separately in *Olsen v. Drug Enforcement Admin.*, 571 U.S. 1025 (2013), Docket No. 13-484.

In 2017, the State authorized cultivation of cannabis for medical use, the Iowa MCA. Olsen believes that religious use of cannabis is a compelling interest equal to, or greater than, the recently excepted secular use of cannabis and THC in the Iowa MCA, because religious freedom is enshrined in the State and federal constitutions. See *Fulton v. Philadelphia*, 593 U.S. 522, 534 (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. *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S., at 542-546.

In 2018, in response to the Iowa MCA, Olsen petitioned the Iowa Board of Pharmacy to recommend the Iowa legislature add an exception for the religious use of cannabis by Rastafari. The board declined and judicial review upheld the board's decision, *Olsen v. Iowa Board of Pharmacy*, Case No. CVCV056841 (Iowa District Court, Polk County, April 2, 2019), at 5 ("the Iowa legislature — and not the Iowa Board of Pharmacy — is the appropriate body to address the types of changes Petitioner seeks in chapter 124").

In 2023, Olsen petitioned the Iowa Department of Inspections, Appeals, and Licensing to create rules for handling religious exceptions to the Iowa CSA. Olsen argued the exception for religious use of peyote, Iowa Code § 124.204(8), implied a duty to make administrative rules. The department declined, and judicial review upheld the department's decision, *Olsen v. Iowa Department of Inspections, Appeals, and Licensing*, Case No. CVCV066477 (Iowa District Court, Polk County, December 4, 2024), at 8 ("the Board correctly asserted that it did not have delegated power by the legislature to create religious exceptions to the Controlled Substances Act").

During the judicial review hearing in CVCV066477, Olsen tried to introduce the newly enacted Iowa RFRA as an explicit grant of legislative authority to create the rules he requested. Case No. CVCV066477, Transcript of Proceedings – Petition for Judicial Review – Oral Argument, Friday, September 13, 2024, Assistant Attorney General Kevin Protzmann, 21:18-25:

> Now, it may very well be that that was enacted this year, but to the extent Mr. Olsen thinks that that controls this case, it doesn't. That might provide an avenue for a litigant to go to court to argue that the Controlled Substances Act, you know, because it restricts religious use of different products, like marijuana, for example — if Mr. Olsen wants to litigate that, he's free to go to court and try to do so.

In January 2025, Olsen brought this civil action against the State under the First and Fourteenth amendments to the Constitution of the United States, to declare the Iowa CSA unconstitutional as applied to his personal and private religious use of cannabis and enjoin its enforcement against him in the future.

The district court, construing this Court's decisions in *State v. Olsen*, 315 N.W.2d 1 (Iowa 1982), *State v. Olsen*, No. 171-69079 (Iowa, July 18, 1984), attached to *Olsen v. State of Iowa*, Not Reported in F. Supp., 1986 WL 4045 (S.D. Iowa), as Appendix A, in conjunction with the decisions in *Olsen v. Drug Enforcement Admin.*, 878 F.2d 1458 (D.C. Cir. 1989), and *Olsen v. Mukasey*, 541 F.3d 827 (8th Cir. 2008), held that Olsen's constitutional claims were barred by collateral estoppel. Ruling on Motions for Summary Judgment (D0033), December 12, 2025, at page 11.

Each of the previous claims the district court cited were based on State and federal exceptions for the religious use of peyote by the Native American Church. Olsen's constitutional claims in this case are based on the exception for cannabis in the Iowa CSA and the accepted use of cannabis in the Iowa MCA, which is not the same as the previous claims.

In the administrative actions Olsen initiated in 2018 and 2023, Olsen argued the agency had the implicit constitutional and statutory authority to

take the action he requested. The State agency was not asked to enjoin the application of the Iowa CSA against Olsen. Olsen argued the authority and the duty to act were constitutionally implied because: (1) the Iowa CSA explicitly authorizes exceptions for the religious use of controlled substances, Iowa Code § 124.204(8); and because: (2) the Iowa CSA now explicitly authorizes an exception for the cultivation of cannabis to make products containing extremely high concentrations of THC for use without a prescription and without direct medical supervision, Iowa Code § 124.401(5)(c).

Until the Iowa RFRA was enacted in 2024, Olsen had no explicit authority to sue the State directly to enjoin the unconstitutional application of the Iowa CSA against him personally.

STATEMENT OF FACTS

Facts Presented by Olsen

Cannabis is central and essential to Olsen's religious beliefs. Trial Tr. 12:22-23. Essential oils are referenced in the King James Version of the Bible and Olsen interprets those references to include cannabis extracts (essential oils) referenced in the Iowa CSA, Iowa Code § 124.204(4)(av). Cannabis extracts are schedule 1 controlled substances in the Iowa CSA excepted for use in the Iowa MCA since 2014, Iowa Code § 124.401(5)(c),

Iowa Code § 124E.2(10) ("any pharmaceutical grade cannabinoid found in the plant"). Trial Tr. 14:15-23. Smoking is referenced in the King James Version of the Bible and Olsen testified he learned about cannabis by smoking it. Olsen interprets these references in the King James Version of the Bible to be references to smoking cannabis. Trial Tr. 14:25 through 15:20.

The Iowa law prohibiting possession of cannabis is a substantial burden on Olsen's religious beliefs because it imposes a two-year prison sentence and fine not to exceed $8,540 for each instance of simple possession. Trial Tr. 16:13-25. Olsen suspended his use of cannabis because of the threat of criminal and civil penalties. Trial Tr. 15:20-22. Olsen would re-join the Ethiopian Zion Coptic Church if Iowa authorized the church to use cannabis. Trial Tr. 17:24-25. In all of Olsen's previous cases, both State and federal courts held unanimously that the laws prohibiting possession of cannabis are a substantial burden on Olsen's religious beliefs. Trial Tr. 31:6-13. Olsen has never been accused of injuring anyone. Trial Tr. 31:22-25.

Olsen said he would agree to the same terms and conditions as the cultivation and possession limits for medical use of cannabis in the State of Minnesota. Trial Tr. 33:16-25, 34:1-13. The exceptions to Chapter 124 for

peyote and cannabis require registration for businesses. Olsen is not seeking a business registration. The Religious Freedom Restoration Act is a judicial remedy by which one person can seek a court order describing one person and the activity of that one person being protected. Trial Tr. 30:12-15.

Delta-9 THC is the primary psychoactive component of the cannabis plant. Trial Tr. 40:6-8. Over 23,000 Iowans can purchase and possess Δ-9 THC in Iowa. Trial Tr. 47:16-24. Exhibit AA at 14-15. The majority (90%) of formulations under Chapter 124E have a high concentration of Δ-9 THC. Trial Tr. 48:1-3. Exhibit AA at 22. The most common (78%) use of formulations under Chapter 124E is inhalation by vaporization. Trial Tr. 48:4-14. Exhibit AA at 22. There is a default limit on how much Δ-9 THC registered users can possess, but the user can set a higher limit if needed. Trial Tr. 50:15-19. Exhibit AA at 24. Delta-9 THC is not known to be toxic. Trial Tr. 51:8-10.

Formulations under Chapter 124E must be used privately and cannot be used on private property without the owner's permission. Trial Tr. 49:8-11. The use of these highly concentrated THC products is not medically supervised. Trial Tr. 46:2-25.

A substantial number of States allow raw cannabis for medical treatment. Trial Tr. 57:2-7. Millions of people possess raw cannabis legally under State laws in the United States. Trial Tr. 57:9-12. Millions of people grow their own cannabis at home in the United States legally under State medical marijuana laws. Trial Tr. 57:13-24. States surrounding Iowa authorize home cultivation of cannabis for medical use under the condition the authorized users do not share it with anyone or use it in public. Trial Tr. 23:3-6. Some of the States bordering Iowa that allow people to grow their own cannabis at home are Minnesota, Illinois, and Missouri. Trial Tr. 57:24, 58:1-25.

Facts Presented by the Respondent

Marijuana is the number one substance reported by juveniles that are treated for substance abuse. Trial Tr. 74:14-16. In 2025, 40.2 percent of Iowans who were admitted to substance use disorder treatment, cited "recent," which means past 30 days, marijuana use. Trial Tr. 75:1-4.

The Iowa consumable hemp program, Chapter 204, has caused an increase in emergency department visits for marijuana use, which has nearly doubled in the last ten years. Trial Tr. 77:7-24, Trial Tr. 120:2-6. Department data does not track organically grown cannabis separately from highly contaminated cannabis, or products with synthetically

manufactured cannabinoids, it only tracks THC and makes no distinction between naturally occurring and chemically engineered THC. Trial Tr. 100:2. Potency in concentrates and edibles has increased and they are widely available. Trial Tr. 77:25, 78:1-3. The Iowa consumable hemp program enacted in 2019 had no age restriction and no THC limit until 2024. Consumable hemp products caused a large increase in emergency department visits and calls to the Iowa Poison Control Center, specifically youth accessing those products. In 2024, age restrictions and a THC limit were added to the consumable hemp program. Trial Tr. 87:17-25, 88:1-21.

The THC and age limits for Iowa consumable hemp products added in 2024 are inconsistent with the ban on consumable hemp products enacted by Congress in 2025. Trial Tr. 68:17-22. See:

> FY2026 Agriculture appropriations law (P.L. 119-37, Division B) amending the statutory definition of hemp in 7 U.S.C. § 16390 established by the Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334, § 10113); and see FY2027 Continuing Appropriations and Extensions Act (through 12/11/2026), H.R. 6500., P.L. 119-103, § 2019 (SECTION 781 EXTENSION), 09/02/2026.

Both State witnesses said they would not be injured if Olsen uses cannabis for religious reasons in the privacy of his home, does not share it with anyone, and does not use it in public. Trial Tr. 93:11-14, 117:16-22.

Both state witnesses were unaware of anyone else in Iowa that has ever made a religious claim for cannabis. Trial Tr. 105:22-24, 120:8-10.

Chapter 124E is consistent with public health and safety because there is a registration card, Trial Tr. 97:8-10, and because there are parameters around the use of THC, Trial Tr. 97:12-13. Consumable hemp, on the other hand, is specifically a public health and safety concern, Trial Tr. 97:17-18.

ARGUMENT

Olsen does not share cannabis with anyone or expose anyone to cannabis. The State has authorized 23,000 Iowans to use chemically engineered, highly potent THC without a prescription or direct medical supervision under the condition they agree not to share THC with anyone or expose anyone to THC. Olsen wants to use cannabis for prayer in the privacy of his home without sharing it or exposing anyone to it. Matthew 6:6 (KJV):

> But thou, when thou prayest, enter into thy closet, and when thou hast shut thy door, pray to thy Father which is in secret; and thy Father which seeth in secret shall reward thee openly.

The State says Olsen only "wants to smoke marijuana." Trial Tr. 126:7-8. But smoking cannabis is Olsen's sacrament. The court found that Olsen is sincere. Order (D0076), Sept. 10, 2026, at page 11 ("the Petitioner

has met his burden to establish a sincere religious belief"). Smoking is mentioned throughout the Bible, Tr. 15:1-2. The glory of God filled the temple with smoke. Revelation 15:8 (KJV). I am the temple of the living God. 2 Corinthians 6:16 (KJV).

The State prohibits smoking tobacco in public places, Iowa Code § 142D.3. Smoking tobacco in private is not prohibited, Iowa Code § 142D.4.

Olsen suspended his use of cannabis in 1990 after the decision in *Employment Division v. Smith*, 494 U.S. 872 (1990). The U.S. Supreme Court denied Olsen's request for an exemption for his church in *Olsen v. Drug Enforcement Admin.*, 495 U.S. 906 (1990). The U.S. Supreme Court held in *Smith* that State criminal statutes are subject to strict scrutiny only if they lack neutrality or general applicability. Olsen always received strict scrutiny because of the State and federal exceptions for the religious use of peyote by the Native American Church. Even though the laws were not facially neutral, Olsen lost because the two churches were not similarly situated.

Congress disagreed with the decision not to apply strict scrutiny in *Smith* and tried to reverse it by enacting the federal Religious Freedom Restoration Act (RFRA) in 1993, codified at 42 U.S.C. Chapter 21B, followed by the American Indian Religious Freedom Act Amendments in

1994, codified at 42 U.S.C. § 1996a, to protect the religious use of peyote by native Americans. The federal RFRA was held unconstitutional as applied to the States in *Boerne v. Flores*, 521 U.S. 507 (1997). Congress lacks the constitutional authority to force States to apply the federal RFRA to their State criminal statutes. States began enacting their own RFRA laws in response to the decision in *Boerne*, and Iowa enacted its RFRA law in 2024.

Accepted secular use of cannabis was beginning to emerge when *Smith* was decided and has since grown into accepted use without a prescription or direct medical supervision in a large majority of states including Iowa in 2017.

An important development occurred in 1988, two years before *Smith* was decided. The Drug Enforcement Administration (DEA) Chief Administrative Law Judge (ALJ) found that, "Marijuana, in its natural form, is one of the safest therapeutically active substances known to man." DEA Docket No. 86-22, September 6, 1988, at pages 58-59, attached as Exhibit B to Olsen's Brief in Support of Motion for Summary Judgment (D0021), September 25, 2025. The administrator rejected the recommendation of the ALJ to reschedule cannabis, but only because there were not enough medical professionals that had accepted it for medical use

in 1988. Olsen was one of the parties in that petition. Denial of Petition, 54 FR 53767, Friday, December 29, 1989.

Cannabis had not yet been accepted by any State in 1990 when *Smith* was decided and Olsen's petition for certiorari was denied in *Olsen v. DEA*, 878 F.2d 1458 (D.C. Cir. 1989), *cert denied*, 495 U.S. 906 (1990). Olsen had exhausted the claim that his church was similar enough to the Native American Church to receive equal protection. *Smith* did not receive First Amendment strict scrutiny because Oregon's drug laws were neutral and generally applicable, and did not have any exceptions. Olsen has always received strict scrutiny because both the State and the federal drug laws have exceptions in them for the religious use of peyote. *Olsen v. Mukasey*, 541 F.3d 827, 832 (8th Cir. 2008) ("Strict scrutiny was the appropriate analysis"), *cert. denied sub nom. Olsen v. Holder*, 556 U.S. 1221 (2009).

Not long after the decision in *Smith*, States began accepting the use of cannabis without a prescription or direct medical supervision on a massive scale. The federal Compassionate Care Program for cannabis patients began in 1978 and ended in 1992. See *Conant v. Walters*, 309 F.3d 629, 648 (9th Cir. 2002) (Appendix). Two of the four patient testimonies in the Appendix are from Iowans who incorporated Iowans for Medical Marijuana

with Olsen in 2006, Iowa Business No. 334412. The three began using that name in 1990 when Olsen suspended his use of cannabis.

Today there are 48 States and several U.S. territories that authorize use of Schedule 1 cannabis and cannabis extracts without a prescription or direct medical supervision. Twenty-four (24) of those States allow home cultivation. *Holt*, 574 U.S. at 369 ("But when so many prisons offer an accommodation, a prison must, at a minimum, offer persuasive reasons why it believes that it must take a different course, and the Department failed to make that showing here").

COLLATERAL ESTOPPEL

The district court cited *State v. Olsen*, 315 N.W.2d 1 (Iowa 1982); State v. Olsen, No. 171-69079 (Iowa, July 18, 1984), attached to *Olsen v. State of Iowa*, Not Reported in F. Supp., 1986 WL 4045 (S.D. Iowa), as Appendix A; *Olsen v. Drug Enforcement Admin.*, 878 F.2d 1458 (D.C. Cir. 1989); and *Olsen v. Mukasey*, 541 F.3d 827 (8th Cir. 2008), which compared the religious use of peyote by the Native American Church to the religious use of cannabis by the Ethiopian Zion Coptic Church, as collateral estoppel in this case.

Ruling on Motion to Dismiss (D0019), May 22, 2025, pp. 2-4 ("Does collateral estoppel bar this claim?"); Ruling on Motions for Summary Judgment (D0033), December 12, 2025, pp. 4-6 ("Issue Preclusion").

This case is not the same. Olsen is making this claim only for himself, not for participation with other members of a church. And, this case is based on new factual evidence, a recently added statutory exception to the Iowa Controlled Substances Act (CSA), Iowa Code Chapter 124, for cultivation of cannabis to make products containing high concentrations of THC, Iowa Code § 124.401(5)(c), and a regulatory scheme, the Iowa Medical Cannabidiol Act (MCA), Iowa Code Chapter 124E, authorizing personal and private use of products containing high concentrations of THC, Iowa Code § 124E.23. These exceptions did not yet exist when *Olsen v. Mukasey* was decided in 2008.

See *Olsen v. Mukasey*, 541 F.3d at 831 ("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)").

The constitutional arguments presented by the Petitioner in this case are not precluded by collateral estoppel. Collateral estoppel precludes deciding whether the religious use of cannabis by the Ethiopian Zion Coptic

Church is similarly situated to the religious use of peyote by the Native American Church. They are not similarly situated, and Olsen is not arguing those cases were wrongly decided. See *Olivier v. City of Brandon, Mississippi*, 146 S. Ct. 916, 924 (2026) ("The suit, after all, is not about what Olivier did in the past, and depends on no proof addressed to his prior conviction"); *Olivier*, 146 S. Ct. at 925 ("Both in the allegations made, and in the relief sought, the suit is all future-oriented — even if, as a kind of byproduct, success in it shows that something past should not have occurred").

The Petitioner is not challenging the validity of any previous constitutional analysis he received. See *Olivier*, 146 S. Ct at 921 ("he has no interest in using a favorable judgment in this suit to later get his record expunged or avoid his conviction's collateral effects."); *Id.* 146 S. Ct at 924 ("the suit merely attempts to prevent a future prosecution").

The exception for the religious use of peyote by the Native American Church in Iowa Code § 124.204(8) is still unconstitutional. 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").

Olsen's previous cases were all decided before the Iowa RFRA. Proving the exception for the Native American Church is unconstitutional is an essential element that had to be shown in all of those cases before the courts could go on and apply strict scrutiny. Proving Olsen is substantially burdened by the criminalization of his sacrament is also an essential element that had to be shown in all of those cases.

Olsen filed this case because the State added an exception for cannabis, Iowa Code § 124.401(5)(c), not because anything is different about the religious use of peyote by the Native American Church, Iowa Code § 124.204(8). And the substantial burden on Olsen created by the criminalization of his sacrament has not changed.

SUBSTANTIAL BURDEN

The Iowa Religious Freedom Restoration Act (RFRA), Iowa Code Chapter 675, defines substantial burden as "any action that directly or indirectly constrains, inhibits, curtails, or denies the exercise of religion by any person or compels any action contrary to a person's exercise of religion and includes but is not limited to withholding of benefits; assessment of criminal, civil, or administrative penalties; or exclusion from governmental programs or access to governmental facilities." Iowa Code § 675.3(5). In each of the previous decisions cited by the district court in support of

collateral estoppel the courts found that Olsen is substantially burdened by the criminal penalties prohibiting his sacrament, and those findings were essential to the decisions in each of those cases.

Substantial burden on religious exercise is a threshold question that determines whether there is a case or controversy. The purpose of the Iowa RFRA is, "To restore the compelling governmental interest test and to guarantee its application in all cases where the free exercise of religion is substantially burdened by state action." Iowa Code § 675.2(1). At the threshold, if there is no substantial burden on religious exercise, the case ends. The district court found Olsen is not substantially burdened by the Iowa CSA. Findings of Fact, Conclusions of Law, and Order (D0076), September 10, 2026, pp. 11-12 ("Substantial burden"). Then the district court applied a compelling interest and least restrictive means analysis under a rational basis standard. Findings of Fact, Conclusions of Law, and Order (D0076), September 10, 2026, pp. 12-15 ("Compelling government interest" and "Least restrictive means").

On the list of things that create a "substantial burden," a law criminalizing a person's behavior ranks near the top. A "substantial burden" is a threshold jurisdictional question. Iowa Code § 675.2(2) ("To provide a claim or defense to a person whose exercise of religion is

substantially burdened by state action"); Iowa Code § 675.4(2) ("Standing to assert a claim or defense under this chapter shall be governed by the general rules of standing under state and federal law"). If Olsen has no substantial burden, the district court has no authority to rule on the merits of his claim. The district court should have dismissed the case without proceeding any further. If the court is merely giving a rationale for finding no "substantial burden," then the district court needs include that in its "Substantial burden" analysis, not by speculating what the "Compelling government interest" and "Least restrictive means" might be. The district court should clearly say it has no jurisdiction to apply the compelling interest test or strict scrutiny. If Olsen has no injury, the district court should have explained why Olsen is not substantially burdened and stopped.

Olsen is clearly burdened by the Iowa CSA because it criminalizes his sacrament, cannabis, with severe penalties. See *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972) ("Wisconsin law affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs" ... "they must either abandon belief and be assimilated into society at large, or be forced to migrate to some other and more tolerant region"). After trial, the State argued Olsen

could go to a neighboring state that is more tolerant to obtain cannabis. Respondent's Post-Trial Brief (D0074), September 2, 2026, at page 10 ("Mr. Olsen continues to be free to go to neighboring states to engage in his claimed religious practices"). See *Holt*, 574 U.S. at 361-362 (substantial burden asks whether the government has substantially burdened religious exercise, not whether the claimant is able to engage in other forms of religious exercise).

The Respondent's comments at trial, "Mr. Olsen just wants to smoke marijuana in his home," show hostility toward Olsen's sincere religious beliefs. Trial Tr. 126:4-5. See *Masterpiece Cakeshop v. Colo. Civil Rights*, 584 U.S. 617 (2018) ("The neutral and respectful consideration to which Phillips was entitled was compromised here, however. The Civil Rights Commission's treatment of his case has some elements of a clear and impermissible hostility toward the sincere religious beliefs that motivated his objection").

Olsen has never claimed that THC is his sacrament. See *Thomas v. Review Board*, 450 U.S. 707, 715 (1981) ("Courts should not undertake to dissect religious beliefs"); *Employment Division v. Smith*, 494 U.S. 872, 887 (1990) ("What principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is 'central' to his

personal faith?"); *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989) ("It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds").

Olsen did not testify that THC is his sacrament. The district court has no authority to recommend a counterfeit sacrament. Findings of Fact, Conclusions of Law, and Order (D0076), September 10, 2026, pp. 11-12 ("Substantial burden"). The State witnesses said these chemically engineered THC products have resulted in increased emergency room visits, Trial Tr. 77:4-24, and increased reports to the Iowa Poison Control Center, Trial Tr. 88:3-21.

God did not make THC products. God made cannabis plants. Genesis 1:29 ("And God said, Behold, I have given you every herb bearing seed, which is upon the face of all the earth, and every tree, in the which is the fruit of a tree yielding seed; to you it shall be for meat"). *Town*, 377 So.2d at 649 ("Further, 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"). Olsen knows what his sacrament is. See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014):

> Similarly, in these cases, the Hahns and Greens and their companies sincerely believe that providing the insurance coverage demanded by the HHS regulations lies on the forbidden side of the line, and it is not for us to say that their religious beliefs are mistaken or insubstantial. Instead, our "narrow function . . . in this context is to determine" whether the line drawn reflects "an honest conviction," *id.*, at 716, and there is no dispute that it does.

And see *McCreary County v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 881 (2005) ("This is no time to deny the prudence of understanding the Establishment Clause to require the government to stay neutral on religious belief, which is reserved for the conscience of the individual").

Legislation that prohibits and criminalizes Olsen's sacrament is a substantial burden. See *Thomas v. Review Board*, 450 U.S. 707, 718 (1981) ("putting substantial pressure on an adherent to modify his behavior and to violate his beliefs"); *Bowen v. Roy*, 476 U.S. 693, 706 (1986) ("legislation that criminalizes religiously inspired activity"); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463 (2017) ("the Free Exercise Clause protects against 'indirect coercion or penalties on the free exercise of religion, not just outright prohibitions'"), quoting *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 450 (1988).

STRICT SCRUTINY

After finding Olsen is not substantially burdened by the Iowa CSA, the district court did not apply strict scrutiny. Instead, the district court applied a rational basis standard of review to the Iowa CSA. Findings of Fact, Conclusions of Law, and Order (D0076), September 10, 2026, pp. 12-15 ("Compelling government interest" and "Least restrictive means").

The purpose and intent of the Iowa RFRA is to "restore the compelling governmental interest test and to guarantee its application in all cases where the free exercise of religion is substantially burdened by state action." Iowa Code § 675.2(1). The State failed to show how the personal and private religious use of cannabis by Olsen undermines the State's interest in the public health and safety in a greater way than the personal and private use of products containing highly concentrated delta-9-tetrahydrocannabinol (Δ9-THC) by the over 23,000 Iowans authorized to use them under the Iowa MCA regulatory scheme without a prescription or direct medical supervision. See *State v. Middlekauff*, 974 N.W.2d at 793 ("Neither the registry card nor the written certification is a prescription").

Strict scrutiny means comparing existing exceptions to the exception being sought. See *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) ("government 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"); *Smith*, 494 U.S. at 844 ("[W]here the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of religious hardship without compelling reason").

Iowa has no regulatory system for making individual exemptions, and because of that, including a statutory individualized exemption for the Native American Church makes the Iowa CSA unconstitutional on its face. *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").

A statutory preference for secular use of Olsen's sacrament without a prescription or direct medical supervision was added without an equal opportunity for Olsen to seek redress. See *Fulton v. Philadelphia*, 593 U.S. 522, 534, 141 S. Ct. 1868, 1877 (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").

Earlier this year, the U.S. Supreme Court applied strict scrutiny to depriving marijuana users of their Second Amendment right to own a gun. The government's argument in *Hemani* is the same argument the State is making in this case. See *Hemani*, 146 S. Ct. at 1693:

> In saying this much, we do not question that sometimes an individual's unlawful use of marijuana (or any other controlled substance) may render him a danger to others. But, again, the government disclaims the need to show anything like that in this case. Instead, it asks us to conclude that anyone who regularly uses marijuana is categorically violent and dangerous without any further showing.

The same categorical approach, that all use of controlled substances without a prescription is always dangerous, was rejected in *O Centro*, 546 U.S. at 430-431:

> RFRA, and the strict scrutiny test it adopted, contemplate an inquiry more focused than the Government's categorical approach. 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.

CONCLUSION

The Court should reverse the district court's determination that Olsen is precluded from making constitutional claims by collateral estoppel. The Court should reverse the district court's determination that Olsen is not

substantially burdened by the criminalization of his sacrament, cannabis. Because the evidence shows that the personal and private religious use of cannabis by Olsen poses no greater risk to public health and safety than the currently accepted use of THC without a prescription or direct medical supervision in Iowa Code § 124.401(5)(c), the Court may direct entry of judgment or remand for the district court to apply strict scrutiny. In any event, a remand is necessary to set the terms and conditions of an injunction.

REQUEST FOR ORAL SUBMISSION

Olsen requests that this appeal be submitted for oral argument.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains 8,909 words, excluding parts of the brief exempted by that rule.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the typestyle requirements of Iowa R. App. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Georgia, 14-point type.

Dated November 4, 2026.

Respectfully submitted.

CARL OLSEN

/s/ Carl Olsen

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