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June 25, 2025.

Jeffrey Peterzalek  
Deputy Attorney General  
Department of Justice  
Hoover State Office Building, 2nd Floor  
Des Moines, IA 50319

Re: Carl Olsen v. State of Iowa  
Case No : 05771 CVCV068508  
Polk County District Court

Dear Mr. Peterzalek,

This is my attempt to meet the requirements in the April 30, 2025, Order Setting Trial And Approving Plan. That order mentions settlement and discovery.

Because my injury comes from a state statute enacted in 1971 that I have been unable to challenge until 2024, and because that same statute does not authorize the executive branch to add exceptions for genuine and sincere religious beliefs, a settlement agreement is impossible.

For the same reason, I have no discovery requests for the state. For your convenience, I am attaching a list of public documents that are relevant to my claim.

Once settlement negotiations and discovery are complete, I will file for summary judgment. Please let me know when you are ready to proceed.

If you have any questions, please let me know.

Thank you!

/s/ Carl Olsen  
Carl Olsen

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p><b>CARL OLSEN,</b> Petitioner,</p> <p>v.</p> <p>STATE OF IOWA Respondent.</p>	<p>No. CVCV068508</p> <p><b>DISCOVERY AND DISCLOSURE</b> <b>Iowa R. Civ. P. 1.500 through 1.517</b></p>
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**NOTHING TO DISCOVER**

The petitioner has no discovery requests for the state. The burden on the religious freedom of the petitioner is entirely statutory. The remedy is a recently enacted statute that authorizes an individual to bring a civil action against the government.

**DISCLOSURE**

The petitioner believes Chapter 124 is unconstitutional on its face because it contains a religious preference embedded in statutory schedules copied from federal regulations. The federal statute does not have a religious preference in the statutory schedules. Chapter 124 omits administrative authority over schedules, again, the opposite (from a constitutional perspective) of the federal act. See [21 U.S.C. § 812\(c\)\(Schedule I\)\(c\)\(12\)](#), [21 U.S.C. § 822\(d\)](#), [21 C.F.R. § 1307.31](#).

Chapter 124 has no method of accommodating genuine and sincere religious beliefs. More recent, and equally important public health legislation, [Iowa Code § 94.2\(2\)](#) and [Iowa Code § 139A.8\(4\)\(a\)\(2\)](#), make exceptions for both medical reasons and religious beliefs. See [641 Iowa Admin. Code § 7.3\(2\)](#) (“conflicts with a genuine and sincere religious belief”). Chapter 124E created a medical exception to Chapter 124 in 2017.

The petitioner believes that Chapter 124 is unconstitutional on its face because it contains a secular preference in § 401(5)(c) (referencing Chapter 124E) that excludes religious use.

The petitioner believes that Chapter 124 is unconstitutional on its face because it contains a secular preference for commercial exploitation of cannabis in § 204(7) (referencing Chapter 204) that excludes religious use.

### **PRIMARY EVIDENCE**

**FACT 1:** [Final Report](#) of the Drug Abuse Study Committee to the Sixty-Fourth General Assembly of the State of Iowa (January 1971).<sup>1</sup>

**FACT 2:** “Uniform Controlled Substances Act” [1971 Iowa Acts ch. 148](#) (March 5, 1971), currently codified at [Iowa Code Chapter 124](#).<sup>2</sup>

**FACT 3:** The decision of the Iowa Supreme Court in [State v. Olsen](#), No. 171-69079 (Iowa July 18, 1984) (unpublished opinion).<sup>3</sup>

**FACT 4:** “Communicable and Infectious Disease Reporting and Control Act” [2000 Iowa Acts ch. 1066](#) (April 7, 2000), currently codified at [Iowa Code Chapter 139A](#).<sup>4</sup>

**FACT 5:** “Medical Cannabidiol Act” [2014 Iowa Acts ch. 1125](#) (May 30, 2014).<sup>5</sup>

**FACT 6:** “Medical Cannabidiol Act” [2017 Iowa Acts ch. 162](#) (May 12, 2017).<sup>6</sup>

**FACT 7:** “Iowa Hemp Act” [2019 Iowa Acts ch. 130](#) (May 13, 2019), currently codified at [Iowa Code Chapter 204A](#).<sup>7</sup>

**FACT 8:** “Medical Cannabidiol Act” [2020 Iowa Acts ch. 1116](#) (June 29, 2020), currently codified at [Iowa Code Chapter 124E](#).<sup>8</sup>

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<sup>1</sup> <https://www.legis.iowa.gov/docs/publications/IP/255497.pdf>

<sup>2</sup> <https://www.legis.iowa.gov/docs/publications/iactc/64.1/CH0148.pdf>

<sup>3</sup> Attached to this document. Reprinted as Exhibit A in the decision of the United States District Court for the Southern District of Iowa in [Olsen v. Iowa](#), S.D. Iowa No. 83-301-E (S.D. Iowa March 19, 1986) (unreported opinion), Not Reported in F.Supp., 1986 WL 4045 (S.D.Iowa) (a copy is attached to this document)

<sup>4</sup> <https://www.legis.iowa.gov/docs/publications/iactc/78.2/CH1066.pdf>

<sup>5</sup> <https://www.legis.iowa.gov/docs/publications/iactc/85.2/CH1125.pdf>

<sup>6</sup> <https://www.legis.iowa.gov/docs/publications/iactc/87.1/CH162.pdf>

<sup>7</sup> <https://www.legis.iowa.gov/docs/publications/iactc/88.1/CH0130.pdf>

<sup>8</sup> <https://www.legis.iowa.gov/docs/publications/iactc/88.2/CH1116.pdf>

**FACT 9:** “COVID-19 vaccination requirements by employers — waiver” [2021 2nd Extra Iowa Acts ch. 0001](#) (October 29, 2021), currently codified at [Iowa Code Chapter 94](#).<sup>9</sup>

**FACT 10:** “Religious Freedom Restoration Act” [2024 Iowa Acts ch. 1003](#) (April 2, 2024), currently codified at [Iowa Code Chapter 675](#).<sup>10</sup>

**FACT 11:** “Iowa Hemp Act” [2024 Iowa Acts ch. 1176](#) (May 17, 2024), currently codified at [Iowa Code Chapter 204](#).<sup>11</sup>

### **SUPPLEMENTAL EVIDENCE**

State, federal, and international drug laws are interconnected. The international drug treaties contain exceptions that accommodate constitutionally enacted domestic laws. Single Convention, Article 36; Psychotropic Convention, Article 22. Federal law accommodates exceptions that are consistent with public health and safety. 21 U.S.C. § 822(d).

Chapter 124 does not authorize the executive branch to accommodate additional exceptions or remove existing ones. The exceptions to Chapter 124 are all statutory. The exception for religious use of peyote in Chapter 124 was simply copied from a federal administrative regulation, 21 C.F.R. § 1307.31 (the statutory authority for this regulation is 21 U.S.C. § 822(d)).

**FACT 12:** [Single Convention on Narcotic Drugs](#), May 25, 1967, 18 U.S.T. 1407, 520 U.N.T.S. 151.<sup>12</sup>

**FACT 13:** “Controlled Substances Act” Public law: 91-513, [84 Stat. 1236](#), 1242 (October 27, 1970).<sup>13</sup>

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<sup>9</sup> <https://www.legis.iowa.gov/docs/publications/iactc/89.1.2/CH0001.pdf>

<sup>10</sup> <https://www.legis.iowa.gov/docs/publications/iactc/90.2/CH1003.pdf>

<sup>11</sup> <https://www.legis.iowa.gov/docs/publications/iactc/90.2/CH1176.pdf>

<sup>12</sup> [https://www.unodc.org/pdf/convention\\_1961\\_en.pdf](https://www.unodc.org/pdf/convention_1961_en.pdf)

<sup>13</sup> <https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg1236.pdf>

**FACT 14:** [Convention on Psychotropic Substances](#), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175.<sup>14</sup>

**FACT 15:** Commission on Marihuana and Drug Abuse, Public law: 91-513, [84 Stat. 1236](#), 1280-1281, [Marijuana: A Signal of Misunderstanding](#), First Report of the National Commission on Marihuana and Drug Abuse, March 1972, pp. 152, 154.<sup>15</sup>

**FACT 16:** U.S. Department of Justice, Office of Legal Counsel, Peyote Exemption for Native American Church, December 22, 1981, [5 Op. O.L.C. 403](#) (1981).<sup>16</sup>

**FACT 17:** [In The Matter Of Marijuana Rescheduling Petition](#), Docket No. 86-22, Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of Administrative Law Judge. Francis L. Young, Administrative Law Judge. Dated: Sept. 6, 1988.<sup>17</sup>

**FACT 18:** “Religious Freedom Restoration Act” Public law: 103-141, [107 Stat. 1488](#) (November 16, 1993).<sup>18</sup>

**FACT 19:** “American Indian Religious Freedom Act Amendments” Public law: 103-344, [108 Stat. 3125](#) (October 6, 1994).<sup>19</sup>

**FACT 20:** U.S. Department of Justice, Office of Legal Counsel, Licensing Marijuana Cultivation, June 6, 2018, [42 Op. O.L.C. 63](#) (2018).<sup>20</sup>

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<sup>14</sup> [https://www.unodc.org/pdf/convention\\_1971\\_en.pdf](https://www.unodc.org/pdf/convention_1971_en.pdf)

<sup>15</sup> <https://babel.hathitrust.org/cgi/pt?id=mdp.39015015647558&seq=11>

<sup>16</sup> <https://www.justice.gov/olc/opinion/peyote-exemption-native-american-church>

<sup>17</sup> <https://files.iowamedicalmarijuana.org/imm/young.pdf>

<sup>18</sup> <https://www.govinfo.gov/content/pkg/STATUTE-107/pdf/STATUTE-107-Pg1488.pdf>

<sup>19</sup> <https://www.govinfo.gov/content/pkg/STATUTE-108/pdf/STATUTE-108-Pg3125.pdf>

<sup>20</sup> <https://www.justice.gov/olc/opinion/licensing-marijuana-cultivation-compliance-single-convention-narcotic-drugs>

**FACT 21:** “Agricultural Improvement Act of 2018” Public law: 115-334, [132 Stat. 4490](#) (December 20, 2018).<sup>21</sup>

**FACT 22:** World Health Organization, UN Commission on Narcotic Drugs reclassifies cannabis to recognize its therapeutic uses. 4 December 2020.<sup>22</sup>

**FACT 23:** U.S. Department of Justice, Drug Enforcement Administration, Diversion Control Division, Guidance Regarding Petitions for Religious Exemption from the Controlled Substances Act Pursuant to the Religious Freedom Restoration Act (Revised), November 20, 2020.<sup>23</sup>

**FACT 24:** U.S. Department of Justice, Drug Enforcement Administration, Notice of Proposed Rule Making, Registration for Religious Organizations under the Religious Freedom Restoration Act, RIN: 1117-AB66, March 2022.<sup>24</sup>

**FACT 25:** U.S. Department of Justice, Office of Legal Counsel, Questions Related to the Potential Rescheduling of Marijuana, April 11, 2024, [Slip Opinion](#) (2024).<sup>25</sup>

**FACT 26:** U.S. Department of Justice, Drug Enforcement Administration, Notice of Proposed Rule Making, Rescheduling of Marijuana, 89 Fed. Reg. 44597, May 21, 2024.<sup>26</sup>

**FACT 27:** U.S. Government Accountability Office (“GAO”), Drug Control: DEA Should Improve its Religious Exemptions Petition Process for Psilocybin (Mushrooms) and Other Controlled Substances May 30, 2024.<sup>27</sup>

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<sup>21</sup> <https://www.govinfo.gov/content/pkg/STATUTE-132/pdf/STATUTE-132-Pg4490.pdf>

<sup>22</sup> <https://www.who.int/news/item/04-12-2020-un-commission-on-narcotic-drugs-reclassifies-cannabis-to-recognize-its-therapeutic-uses>

<sup>23</sup> [https://www.deadiversion.usdoj.gov/GDP/\(DEA-DC-5\)\(EO-DEA-007\)\(Version2\)RFRA\\_Guidance\\_\(Final\)\\_11-20-2020.pdf](https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-5)(EO-DEA-007)(Version2)RFRA_Guidance_(Final)_11-20-2020.pdf)

<sup>24</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1117-AB66>

<sup>25</sup> <https://www.justice.gov/olc/opinion/questions-related-potential-rescheduling-marijuana>

<sup>26</sup> <https://www.federalregister.gov/documents/2024/05/21/2024-11137/schedules-of-controlled-substances-rescheduling-of-marijuana>

<sup>27</sup> <https://www.gao.gov/products/gao-24-106630>

## **REQUIRED REPORTS**

**FACT 28:** Iowa Department of Health and Human Services, Medical Cannabidiol Board, Annual Report to the Iowa General Assembly, December 2022.<sup>28</sup>

**FACT 29:** Iowa Department of Health and Human Services, Medical Cannabidiol Board, Annual Report to the Iowa General Assembly, December 2023.<sup>29</sup>

**FACT 30:** Iowa Department of Health and Human Services, Medical Cannabidiol Board, Annual Report to the Iowa General Assembly, December 2024.<sup>30</sup>

## **REGULATIONS**

**FACT 31:** 641 Iowa Admin. Code ch. 154, Medical Cannabidiol Program.<sup>31</sup>

**FACT 32:** 641 Iowa Admin. Code ch. 156, Consumable Hemp Products.<sup>32</sup>

## **PRESS (MEDICAL)**

Barbara Rodriguez, [\*AG tells agency to halt part of Iowa's medical marijuana law\*](#). Des Moines Register, September 10, 2017.<sup>33</sup>

Michaela Ramm, [\*Iowa's medical marijuana program is growing as THC waivers soar. Is it leading to abuse?\*](#) Des Moines Register, February 27, 2023.<sup>34</sup>

Michaela Ramm, [\*Tensions grow between medical marijuana board and Iowa's only manufacturer over THC caps\*](#). Des Moines Register, February 27, 2023.<sup>35</sup>

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<sup>28</sup> <https://www.legis.iowa.gov/docs/publications/DF/1313462.pdf>

<sup>29</sup> <https://www.legis.iowa.gov/docs/publications/DF/1441905.pdf>

<sup>30</sup> <https://www.legis.iowa.gov/docs/publications/DF/1518508.pdf>

<sup>31</sup> <https://www.legis.iowa.gov/law/administrativeRules/rules?agency=641&chapter=154&pubDate=06-11-2025>

<sup>32</sup> <https://www.legis.iowa.gov/law/administrativeRules/rules?agency=641&chapter=156&pubDate=06-11-2025>

<sup>33</sup> <https://www.desmoinesregister.com/story/news/2017/09/10/ag-tells-agency-halt-part-iowas-medical-marijuana-law/651151001/>

<sup>34</sup> <https://www.desmoinesregister.com/story/news/health/2023/02/27/rapid-rise-in-iowa-medical-marijuana-waivers-fuels-fears-of-abuse/69690359007/>

<sup>35</sup> <https://www.desmoinesregister.com/story/news/health/2023/02/27/board-efforts-to-expand-iowa-medical-marijuana-corrupts-oversight/69949737007/>

Cooper Worth, [\*Bud & Mary's launches TheMyx, a THC powder promising to turn anything into an 'edible'\*](#). Des Moines Register, March 4, 2025.<sup>36</sup>

### **PRESS (RECREATIONAL)**

Lindsey Moon, Phineas Pope, [\*You can't buy recreational cannabis in Iowa, but you can legally get high. How?\*](#) Iowa Public Radio, September 7, 2023.<sup>37</sup>

Michaela Ramm, [\*High on hemp? Why the state's medical marijuana laws may be driving Iowans to edible THC.\*](#) Des Moines Register, October 5, 2023.<sup>38</sup>

Jessica Rish, [\*Day Dreaming: N. Liberty's Field Day is brewing its own hemp-derived THC beverage.\*](#) Iowa City Press-Citizen, February 26, 2024.<sup>39</sup>

Erin Jordan, [\*Iowa's medical cannabis program competing with cheaper, unregulated THC products.\*](#) Cedar Rapids Gazette, March 1, 2024.<sup>40</sup>

Philip Joens, [\*Iowa brewers say Iowa regulation of THC products helpful, though imperfect.\*](#) Des Moines Register, May 14, 2024.<sup>41</sup>

Robin [\*With Iowa's new hemp law taking effect, THC beverage producers launch new drinks.\*](#) Opsahl, Iowa Capital Dispatch, July 30, 2024.<sup>42</sup>

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<sup>36</sup> <https://www.desmoinesregister.com/story/news/health/2025/03/04/bud-marys-thc-themyx-iowa-medical-marijuana-dispensaries/80841222007/>

<sup>37</sup> <https://www.iowapublicradio.org/studioone/news/2023-09-07/you-cant-buy-recreational-cannabis-in-iowa-but-you-can-legally-get-high-how>

<sup>38</sup> <https://www.desmoinesregister.com/story/news/health/2023/10/05/consumable-hemp-including-heavy-thc-products-are-gaining-popularity-in-iowa-marijuana-des-moines/70969527007/>

<sup>39</sup> <https://www.press-citizen.com/story/entertainment/2024/02/26/field-days-hemp-derived-thc-drink-is-first-exclusively-brewed-in-iowa/72700298007/>

<sup>40</sup> <https://www.thegazette.com/health-care-medicine/iowas-medical-cannabis-program-competing-with-cheaper-unregulated-thc-products/>

<sup>41</sup> <https://www.desmoinesregister.com/story/news/2024/05/14/iowa-thc-potency-laws-limits-not-entirely-unwelcome-among-weed-brewers/73517855007/>

<sup>42</sup> <https://iowacapitaldispatch.com/2024/07/30/with-iowas-new-hemp-law-taking-effect-thc-beverage-producers-launch-new-drinks/>



Josie Fischels, [\*Months after new potency limits go into effect, THC-infused drinks go bigger.\*](#) Iowa Public Radio, November 18, 2024.<sup>43</sup>

Cooper Worth, [\*Decorah's Toppling Goliath launches THC drinks in Iowa, across Midwest.\*](#) Des Moines Register, December 19, 2024.<sup>44</sup>

Molly Ashford, [\*As more states move to restrict intoxicating hemp, people in the industry worry for its future.\*](#) Iowa Public Radio, June 10, 2025.<sup>45</sup>

### **CONSTITUTIONS**

[U.S. Const. amend. 1](#) and [Iowa Const. art. 1 § 3](#) are relevant to religious freedom.

[U.S. Const. amend. 4](#) and [Iowa Const. art. 1 § 8](#) are relevant to privacy.

[U.S. Const. amend. 14](#) and [Iowa Const. art. 1 § 6](#) are relevant to equal protection and due process.

### **UNITED STATES CODE**

[21 U.S.C. § 812\(c\).](#)

[21 U.S.C. § 822\(d\).](#)

[21 U.S.C. § 844.](#)

[21 U.S.C. § 903.](#)

[42 U.S.C. § 1996a.](#)

[42 U.S.C. §§ 2000bb-2000bb-4.](#)

### **CODE OF FEDERAL REGULATIONS**

[21 C.F.R. § 1307.03.](#)

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<sup>43</sup> <https://www.iowapublicradio.org/ipr-news/2024-11-18/new-hemp-limits-thc-infused-drinks-get-bigger>

<sup>44</sup> <https://www.desmoinesregister.com/story/entertainment/dining/2024/12/19/decorah-toppling-goliath-merry-rain-cannabis-thc-cbd-drinks-iowa/77024786007/>

<sup>45</sup> <https://www.iowapublicradio.org/harvest-public-media/2025-06-10/states-restrict-intoxicating-hemp-industry-future>

[21 C.F.R. § 1307.31.](#)

## **IOWA CODE**

[Iowa Code § 124.204\(4\)\(m\).](#)

[Iowa Code § 124.204\(4\)\(p\).](#)

[Iowa Code § 124.204\(7\).](#)

[Iowa Code § 124.204\(8\).](#)

[Iowa Code § 124.401\(5\)\(c\).](#)

[Iowa Code § 124E.2\(10\).](#)

[Iowa Code § 124E.2\(12\).](#)

[Iowa Code § 124E.5\(5\).](#)

[Iowa Code § 124E.13.](#)

[Iowa Code § 124E.14.](#)

[Iowa Code § 124E.15.](#)

[Iowa Code § 124E.18.](#)

[Iowa Code § 204.2\(2\).](#)

[Iowa Code § 204.14D.](#)

[Iowa Code § 204.14E.](#)

[Iowa Code § 675.2.](#)

[Iowa Code § 675.3.](#)

[Iowa Code § 675.4.](#)

## **IOWA REGULATIONS**

[641 IAC Chapter 154 § 12.](#)

[641 IAC Chapter 154 § 13.](#)

[641 IAC Chapter 154 § 22.](#)

[641 IAC Chapter 156 § 1.](#)

Dated June 25, 2025.

Respectfully submitted.

CARL OLSEN

/s/ Carl Olsen

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By Email

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,

) Filed July 18, 1984

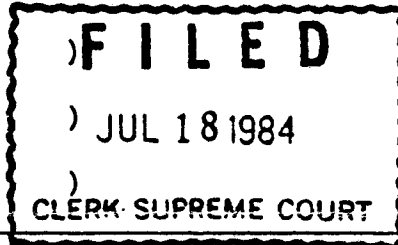
Appellee,

)

vs.

CARL ERIC OLSEN,

Appellant.



$\frac{171}{69079}$

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Appeal from the Iowa District Court for Muscatine County, R. K. Stohr, Judge.

Defendant appeals from a judgment convicting him of unlawful possession of marijuana with intent to deliver, a violation of Iowa Code section 204.401(1). AFFIRMED.

Carl Eric Olsen, Miami Beach, Florida, pro se.  
James R. Cook of Cook & Waters, Des Moines, on the brief.

Thomas J. Miller, Attorney General, Joseph P. Weeg, Assistant Attorney General, and Stephen J. Petersen, County Attorney, for appellee.

Considered by Reynoldson, C.J., and Uhlenhopp, Larson, Schultz, and Wolle, JJ.

PER CURIAM.

Defendant, Carl Eric Olsen, appeals from a judgment convicting him of unlawful possession of marijuana with intent to deliver, a violation of Iowa Code section 204.401(1). This case was before us in State v. Olsen, 293 N.W.2d 216 (Iowa), cert. denied, 449 U.S. 993, 101 S. Ct. 530, 66 L. Ed. 2d 290 (1980), in which we reversed and remanded when a State's witness was permitted to testify beyond the scope of the minutes of testimony. Following his conviction on a second trial, defendant again appeals and we affirm.

Olsen admits that when stopped by the West Liberty police in May of 1978, he was transporting 129 pounds of marijuana and \$10,915 in cash. His sole defense is that his possession and use of the marijuana are protected by the first amendment's guarantee of religious freedom.

Olsen is a member and priest of the Ethiopian Zion Coptic Church. Testimony at his trial revealed the bona fide nature of this religious organization and the sacramental use of marijuana within it. Testimony also revealed church members use marijuana continuously and publicly, commencing at an early age. Olsen admitted to smoking marijuana while driving and to using the drug a few hours before testifying in his second trial. Nonetheless, he asks us on this appeal to afford his religious use of marijuana unlimited constitutional protection.

I. This court dealt at length with Olsen's first amendment claim in State v. Olsen, 315 N.W.2d 1, 7-9 (Iowa

1982), a case involving this defendant but based on a different automobile stop and arrest. We find no reason to retreat from our holding there that "[a] compelling state interest sufficient to override Olsen's free exercise clause argument is demonstrated in this case." In fact, since our last Olsen decision, we have been joined in our analysis by yet another court, see Whyte v. United States, 471 A.2d 1018 (D.C. 1984).

Olsen now contends we must make an independent finding of a compelling state interest rather than defer to the legislature's decision to regulate marijuana. The cases do not support Olsen's assertion. See Leary v. United States, 383 F.2d 851, 860-61 (5th Cir. 1967), rev'd on other grounds, 395 U.S. 6, 89 S. Ct. 1532, 23 L. Ed. 2d 57 (1969); Whyte, 471 A.2d at 1021; State v. Rocheleau, 142 Vt. 61, 68, 451 A.2d 1144, 1148 (1982).

II. Defendant also raises an equal protection challenge, based on the legislative exemption granted the peyote ceremonies of the Native American Church. See Iowa Code § 204.204(8) (1983). This statutory exemption may be derived from the California Supreme Court's decision in People v. Woody, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964). The Woody court noted in granting the prosecution exemption that peyote was used only in a desert enclosure and only during a special Saturday sundown to Sunday sunrise ceremony. The participants were fed breakfast at the close of the ceremony and were kept isolated from the general population

until the drug's effects had dissipated. Defendant can point to no such safeguards in the Coptic Church's indiscriminate use of marijuana; the drug is smoked publicly and continuously and made available to church members regardless of age or occupation. These significant distinctions render meritless defendant's equal protection argument.

We affirm the judgment of the district court.

AFFIRMED.

1986 WL 4045

Only the Westlaw citation is currently available.  
United States District Court, S.D. Iowa, Central Division.

Carl Eric OLSEN and the Ethiopian  
Zion Coptic Church, Plaintiffs,  
v.  
STATE OF IOWA, Defendant.

Civ. No. 83-301-E  
|  
March 19, 1986.

**Attorneys and Law Firms**

James R. Cook, Des Moines, Iowa, for plaintiffs.

Joseph P. Weeg, Asst. Atty. Gen., Des Moines, Iowa, for defendant.

**ORDER**

DONALD E. O'BRIEN, District Judge.

\*1 This matter is before the Court on defendant's resisted motion for summary judgment. A hearing was held on November 25, 1985. After careful consideration of the parties' briefs and arguments, this Court grants defendant's motion.

Plaintiff is a priest of the Ethiopian Zion Coptic Church. This religion uses marijuana as an integral part of its religious doctrine. *United States v. Rush*, 738 F.2d 497, 512 (1st Cir.1984), cert. denied, — U.S. —, 105 S.Ct. 1355 (1984). In 1978, plaintiff was convicted of possession of a controlled substance (marijuana) with intent to deliver in violation of Iowa Code Section 204.401(1) (1977). The Iowa Supreme Court reversed plaintiff's conviction on appeal. *State v. Olsen*, 293 N.W.2d 216 (Iowa), cert. denied, 449 U.S. 993 (1980). Olsen was retried, convicted, and appealed. The Iowa Supreme Court affirmed, finding that plaintiff's right to equal protection was not violated by the Iowa laws on marijuana usage. No. 171-69079 (July 18, 1984) at 3-4 (unreported opinion attached). On May 9, 1985, plaintiff filed a Petition for Declaratory Judgment, claiming that the Iowa criminal statutes regarding controlled substances discriminated against

his religious beliefs, thereby denying him equal protection of the laws.

The Iowa Supreme Court has already upheld the constitutionality of Iowa Code Section 204.401(1) against plaintiff's equal protection attack. *State v. Olsen*, supra, at 3-4. The federal declaratory judgment statute, 28 U.S.C. §§ 2201-2202 does not give this Court the power to review a state court decision. *Travelers Insurance Co. v. Davis*, 490 F.2d 536, 644 (3rd Cir.1974). Plaintiff cites *Peyote Way Church of God, Inc. v. Smith*, 742 F.2d 193 (5th Cir.1984), for the proposition that this Court can enter a declaratory judgment on the constitutionality of the Iowa controlled substance laws. However, the *Peyote Way* decision is distinguishable from the instant case because in the former, there was no prior state court decision involving the constitutionality of the criminal statute in the religious context.

Assuming for purposes of discussion that *Peyote Way* applies, the equal protection issue has already been decided adverse to plaintiff by another federal circuit. In *United States v. Rush*, 738 F.2d 497 (1st Cir.1984), cert. denied, — U.S. —, 105 S.Ct. 1355 (1984), the Court held that, "the Ethiopian Zion Coptic Church cannot be deemed similarly situated to the Native American Church for equal protection purposes." *Id.* at 513. In *Rush*, the Ethiopian Zion Coptic Church claimed it should be afforded a religious exemption from the marijuana laws on the same terms as the peyote exemption granted to the Native American Church. *Id.* The Court reasoned that the Native American Church's exemption was a product of congressional findings and legislative history underlying the American Indian Religios Freedom Act, and that the Ethiopian Zion Coptic Church had not received similar congressional dispensation for marijuana use. *Id.*

\*2 While this Court is not bound by another circuit's decision, the Eighth Circuit has recently spoken of the need for deference to other circuits:

[a]lthough we are not bound by another circuit's decision, we adhere to the policy that a sister circuit's reasoned decision deserves great weight and precedential value. As an appellate court, we strive to maintain uniformity in the law among our circuits, wherever reasoned analysis will allow ... [t]his duty applies to the district courts in this circuit.

*Keasler v. United States*, 766 F.2d 1227, 1233 (8th Cir.1985), (footnote and citations omitted). Thus, even were this Court to



consider granting plaintiff a declaratory judgment, such relief is foreclosed by the *Rush* decision.

Plaintiff's equal protection issue is also barred by collateral estoppel, or issue preclusion. "Under collateral estoppel, once a court has decided an issue of law or fact necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Montana v. United States*, 440 U.S. 147, 153 (1979). The Supreme Court faced a similar problem in *Allen v. McCurry*, 449 U.S. 90 (1980). In that case, plaintiff brought a § 1983 action against the officers who entered his home seizing evidence used against him in his state criminal trial. *Id.* at 91. The Court noted that 28 U.S.C. § 1738 requires federal courts to give preclusive effect to state court judgments whenever the courts of the state where the judgments were issued would do so. *Id.* at 96.

Justice Stewart's majority opinion held that as the state court had already decided the search and seizure issue, and because petitioner did not assert that the state court failed to provide him with a full and fair opportunity to litigate the issue, collateral estoppel barred relitigation in federal court on the same issue in a § 1983 action. *Id.* at 101. Justice Stewart wrote, "the Court's view of § 1983 in *Monroe* lends no strength to any argument that Congress intended to allow relitigation of federal issues decided after a full and fair hearing in a state court simply because the state court's decision may have been erroneous." *Id.*

Thus, the only issue remaining is whether the Iowa Supreme Court's order can be given collateral estoppel effect under the test announced in *In re Piper Aircraft Litigation*, 551 F.2d 213 (8th Cir.1977). Four elements must be satisfied under the collateral estoppel test:

- (1) [T]he issue sought to be precluded must be the same as that involved in the prior action;
- (2) that issue must have been actually litigated;
- (3) it must have been determined by a valid and final judgment; and
- (4) the determination must have been essential to the prior judgment.

*Id.* at 218–219.

Applying the above elements to the facts of the instant case, this Court concludes that collateral estoppel effect must be given to the Iowa Supreme Court's judgment. Plaintiff here challenges the statute on equal protection grounds, which is the same issue decided by the Iowa Supreme Court. (see attached unreported opinion at 3–4). The issue was also actually litigated at the state level. The Iowa Supreme

Court based its' decision on testimony regarding the Church's indiscriminate use of marijuana, indicating that this issue was fully litigated. *Id.* at 4. The equal protection issue was also determined in a judgment by the Iowa Supreme Court, and plaintiff has failed to produce any reason why the decision should not be considered valid and final. Finally, the determination of the equal protection issue was essential to the prior judgment, for had the Iowa Supreme Court ruled otherwise, plaintiff's conviction would have been reversed.

\*3 The above analysis demonstrates that collateral estoppel applies to bar litigation of the equal protection issue before this Court. These same principles also apply to plaintiff's first amendment issue, as the Iowa Supreme Court decided that aspect of plaintiff's claim in *State v. Olsen*, 315 N.W.2d 1, 7–9 (Iowa 1982). In that case, the court held that "[a] compelling state interest sufficient to override Olsen's free exercise clause argument is demonstrated in this case." *Id.* at 9. Therefore, as the issues plaintiff seeks to litigate before this Court are barred by collateral estoppel, defendant's motion for summary judgment must be granted, and defendant's case dismissed.

IT IS THEREFORE ORDERED that defendant's motion for summary judgment is hereby granted.

IT IS FURTHER ORDERED that plaintiff's petition for a declaratory judgment is hereby denied, and the case dismissed.

EXHIBIT "A"

IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Appellee,

vs.

CARL ERIC OLSEN, Appellant.

Filed July 18, 1984

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69079

Appeal from the Iowa District Court for Muscatine County, R.K. Stohr, Judge.

Defendant appeals from a judgment convicting him of unlawful possession of marijuana with intent to deliver, a violation of [Iowa Code section 204.401\(1\)](#). AFFIRMED.

Carl Eric Olsen, Miami Beach, Florida, pro se. James R. Cook of Cook & Waters, Des Moines, on the brief.

Thomas J. Miller, Attorney General, Joseph P. Weeg, Assistant Attorney General, and Stephen J. Petersen, County Attorney, for appellee.

Considered by Reynoldson, C.J., and Uhlenhopp, Larson, Schultz, and Wolle, JJ.

PER CURIAM.

Defendant, Carl Eric Olsen, appeals from a judgment convicting him of unlawful possession of marijuana with intent to deliver, a violation of [Iowa Code section 204.401\(1\)](#). This case was before us in [State v. Olsen](#), 293 N.W.2d 216 (Iowa), cert. denied, 449 U.S. 993, 101 S.Ct. 530, 66 L.Ed.2d 290 (1980), in which we reversed and remanded when a State's witness was permitted to testify beyond the scope of the minutes of testimony. Following his conviction on a second trial, defendant again appeals and we affirm.

Olsen admits that when stopped by the West Liberty police in May of 1978, he was transporting 129 pounds of marijuana and \$10,915 in cash. His sole defense is that his possession and use of the marijuana are protected by the first amendment's guarantee of religious freedom.

Olsen is a member and priest of the Ethiopian Zion Coptic Church. Testimony at his trial revealed the bona fide nature of this religious organization and the sacramental use of marijuana within it. Testimony also revealed church members use marijuana continuously and publicly, commencing at an early age. Olsen admitted to smoking marijuana while driving and to using the drug a few hours before testifying in his second trial. Nonetheless, he asks us on this appeal to afford his religious use of marijuana unlimited constitutional protection.

I. This court dealt at length with Olsen's first amendment claim in [State v. Olsen](#), 315 N.W.2d 1, 7–9 (Iowa 1982), a case involving this defendant but based on a different automobile stop and arrest. We find no reason to retreat from our holding there that “[a] compelling state interest sufficient to override Olsen's free exercise clause argument is demonstrated in this case.” In fact, since our last *Olsen* decision, we have been joined in our analysis by yet another court, see [Whyte v. United States](#), 471 A.2d 1018 (D.C.1984).

\*4 Olsen now contends we must make an independent finding of a compelling state interest rather than defer to the legislature's decision to regulate marijuana. The cases do not support Olsen's assertion. See [Leary v. United States](#), 383 F.2d 851, 860–61 (5th Cir.1967), rev'd on other grounds, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969); [Whyte](#), 471 A.2d at 1021; [State v. Rocheleau](#), 142 Vt. 61, 68, 451 A.2d 1144, 1148 (1982).

II. Defendant also raises an equal protection challenge, based on the legislative exemption granted the peyote ceremonies of the Native American Church. See [Iowa Code § 204.204\(8\)](#) (1983). This statutory exemption may be derived from the California Supreme Court's decision in [People v. Woody](#), 61 Cal.2d 716, 394 P.2d 813, 40 Cal.Rptr. 69 (1964). The *Woody* court noted in granting the prosecution exemption that peyote was used only in a desert enclosure and only during a special Saturday sundown to Sunday sunrise ceremony. The participants were fed breakfast at the close of the ceremony and were kept isolated from the general population until the drug's effects had dissipated. Defendant can point to no such safeguards in the Coptic Church's indiscriminate use of marijuana; the drug is smoked publicly and continuously and made available to church members regardless of age or occupation. These significant distinctions render meritless defendant's equal protection argument.

We affirm the judgment of the district court.

AFFIRMED.

#### All Citations

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