

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

Petition by Carl Olsen for the adoption of rules relating to Iowa Code Chapter 124	SECOND BRIEF IN SUPPORT OF PETITION FOR RULE MAKING
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This is just a brief history of my previous efforts to obtain a religious exception like the one for peyote.

Olsen v. DEA, 878 F.2d 1458 (D.C. Cir. 1989), cert. denied, 495 U.S. 906 (1990).

Employment Division v. Smith, 494 U.S. 872, 889 (1990).

A state controlled substances act does not violate the federal constitution if it is both neutral toward religion and generally applicable. If either of those conditions is not met, then the state must apply a strict scrutiny analysis called the “compelling interest test” and the subordinate “least restrictive means” test.

1. Is there a compelling state interest in prohibiting the substance?
2. If condition 1 is met, is total prohibition the least restrictive means of enforcing the prohibition against a religious user?

Olsen v. Iowa Board of Pharmacy, Case No. CVCV056841 (April 2, 2019). The board is not required to accept petitions to make scheduling recommendations to the legislature. It can accept petitions if it wants to, but it is not required to accept them.

2019 - Medical Cannabidiol Board recommends a federal exemption like the one for peyote for Iowa patients, after Carl Olsen requested it.

2020 - Iowa Legislature enacts a law requiring the department to apply for a federal exemption. Carl Olsen lobbied legislators for this in 2019, and the board recommended it in January of 2020.

2021 - Iowa Department of Health filed for the federal exemption. The U.S. Drug Enforcement Administration (DEA) hasn't responded.

Olsen v. Iowa Department of Public Health, Case No. CVCV062566 (May 4, 2022). Carl Olsen tried to bring a declaratory judgment action against the state for violating his religious freedom. The court denied the claim because the state cannot be sued. The state has sovereign immunity. A recent Iowa Supreme Court decision explains this in *Burnett v. Smith*, No, 22-1010 (May 5, 2023).
<https://www.iowacourts.gov/courtcases/17340/embed/SupremeCourtOpinion>

2023 - Iowa Senate Judiciary Committee Chair introduced a bill to provide the Department with legal assistance in addressing the issue with the DEA's lack of a response. Carl Olsen requested the bill and the Medical Cannabidiol Board recommended it in January of 2023. Senate File 69.

Olsen v. Iowa Department of Health and Human Services, Case No. CVCV065114 (August 20, 2023). The court found that religious use of cannabis is not a qualifying condition for registration under Iowa Code Chapter 124E.

Dated this 4th day of October, 2023

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