

BEFORE THE DEPARTMENT OF PUBLIC HEALTH

Petition by Carl Olsen
for agency action related to
Iowa Code Chapter 124E

PETITION FOR
AGENCY ACTION
ADDITIONAL EXHIBITS

ADDITIONAL ARGUMENT

Attached is a letter from Iowa Attorney General Tom Miller asking the federal government to “allow each state and territory to determine, for itself, the best approach to marijuana legalization within its borders,” citing S. 1028 in the Senate and H.R. 2093 in the House of Representatives as examples.

The federal government has the ability to recognize exemptions without the need for further federal legislation. See 21 C.F.R. §1307.03 and 21 C.F.R. §1307.31.

The U.S. Supreme Court has consistently recognized the authority of the state to determine the legitimate use of controlled substances, whether it be the authority of a state to deny a religious exemption, such as the one in 21 C.F.R. §1307.31, or whether it be the authority of a state to authorize the use of federally controlled substances to assist suicide.

Because respondents’ ingestion of peyote was prohibited under Oregon law, and because that prohibition is constitutional, Oregon may, consistent with the Free Exercise Clause, deny respondents unemployment compensation when their dismissal results from use of the drug.

Employment Division v. Smith, 494 U.S. 872, 890 (1990)

If a federal official is faced with the alternatives of choosing a location or directing the States to do it, the official may well

prefer the latter, as a means of shifting responsibility for the eventual decision. If a state official is faced with the same set of alternatives – choosing a location or having Congress direct the choice of a location – the state official may also prefer the latter, as it may permit the avoidance of personal responsibility. The interests of public officials thus may not coincide with the Constitution’s intergovernmental allocation of authority. Where state officials purport to submit to the direction of Congress in this manner, federalism is hardly being advanced.

New York v. United States, 505 U.S. 144, 182-3 (1992)

The Government, in the end, maintains that the prescription requirement delegates to a single executive officer the power to effect a radical shift of authority from the States to the Federal Government to define general standards of medical practice in every locality. The text and structure of the CSA show that Congress did not have this far-reaching intent to alter the federal-state balance and the congressional role in maintaining it.

Gonzales v. Oregon, 546 U.S. 243, 275 (2006).

Iowa Attorney General Miller has already determined that the solely intrastate parts of Iowa Code Chapter 124E are consistent with federal law. See the attachment to Exhibit #2, “AG tells agency to halt part of Iowa’s medical marijuana law,” Des Moines Register, September 10, 2017.

In 1981, Assistant U.S. Attorney General Theodore Olson stated that the peyote exemption proves federal drug law vests the authority in the federal executive branch to recognize exemptions. See Exhibit #1 at page 408:

The legislative history supports your agency’s existing exemption for the use of peyote in the religious ceremonies of the NAC. In the case of the 1965 Amendments, the House proposed to exempt the bona fide religious use of peyote; the

Senate dropped the exemption, not because it opposed the religious use of peyote but because it believed that specific reference to peyote would unnecessarily interfere with the discretion which Congress intended to vest in the administrative agency to determine which substances were to be brought under control of the bill.

Assistant U.S. Attorney General Theodore Olson also stated that the peyote exemption does not have a religious purpose. See Exhibit #1 at page 418 (“The exemption should not be viewed as having a religious purpose”).

TIMELINE AND DESCRIPTION OF EXHIBITS IN THE APPENDIX

September 23, 2019

Exhibit #13 – Iowa Attorney General Tom Miller’s letter to the leadership of the U.S. House and U.S. Senate leadership requesting new federal legislation that recognizes state authority to determine legitimate use of cannabis.

October 7, 2019

Exhibit #14 – Minutes from the August 2, 2019, meeting of the Medical Cannabidiol Board and Petitioner’s Presentation requesting that the Iowa Department of Public Health determine if the activity authorized by Iowa Code Chapter 124E can be reconciled with current federal law without the need for further federal legislation.

Thank you!

Signed this 14th day of October, 2019.

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cc: Lucas Nelson, MedPharm, Iowa Representative Pat Grassley
 Senator Rich Taylor Representative Jarad Klein
 Senator Brad Zaun
 Senator Jack Whitver
 Senator Charles Schneider

Appendix

Supplemental Exhibits

October 14, 2019

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