

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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CARL OLSEN, ) Case No. CVCV061635  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 KIM REYNOLDS, Governor of the ) **MOTION TO DISMISS**  
 State of Iowa, )  
 )  
 Defendant. )

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Defendant Governor Kim Reynolds moves to dismiss this action under Iowa Rule of Civil Procedure 1.421. In support, the Governor states:

1. Plaintiff Carl Olsen filed a Petition on April 5, 2021.
2. Olsen’s petition seeks a writ of mandamus commanding the Governor to apply to the federal government for “an exemption from federal drug law.” (Petition ¶ 16.) The source of this purported mandatory duty to seek an exemption, according to Olsen, is a statute the legislature passed in 2020. *See* 2020 Iowa Acts ch. 1116, § 31. But Olsen’s petition cannot proceed and must be dismissed for the following reasons.
  3. First, the petition is moot because the Iowa Department of Public Health (IDPH) *has* requested guarantees, expressly citing the relevant statute, from four federal agencies: the Centers for Medicare and Medicaid Services (CMS), the Food & Drug Administration (FDA), the Department of Education (DOE), and the Drug Enforcement Administration (DEA). (Exhibit A—CMS Letter; Exhibit B—FDA Letter; Exhibit C—DOE Letter; Exhibit D—DEA Letter.). *See Moyer v. City of Des*

*Moines*, 505 N.W.2d 191, 193 (Iowa 1993) (dismissing a mandamus claim as moot). Similarly, because IDPH requested guarantees as the statute directs, Olsen cannot demonstrate moving forward that performance of any mandatory duty “has been demanded by the plaintiff, and refused or neglected”—so mandamus should not issue. Iowa Code § 661.9 (2021).

4. Second, Olsen lacks standing because he is not personally aggrieved or adversely affected and does not plead or identify any injurious effect on a particularized personal or legal interest. Because Olsen is a private citizen attempting to obtain a writ of mandamus, the petition must “set forth that the plaintiff . . . is personally interested,” and that “the plaintiff sustains and may sustain damage by the nonperformance of [a] duty.” Iowa Code § 661.9. Olsen does not do so; his petition does not plead any “interest independent of that which he holds in common with the public at large.” *Windsor v. Polk Cty.*, 87 N.W. 704, 705 (Iowa 1901). Previous experience working or advocating on policy issues such as cannabis regulation and legalization does not establish an individualized interest. *See Dickey v. Iowa Ethics & Campaign Disclosure Bd.*, 943 N.W.2d 34, 38–39 (Iowa 2020) (concluding a judicial review petitioner’s previous campaign finance experience did not generate an individualized interest in the application of campaign finance law).

5. Third, Olsen brings the wrong action against the wrong party. Olsen contends IDPH has not acted to his satisfaction despite a statute requiring it to do so. Therefore, in practical effect, Olsen challenges agency action or inaction, meaning his exclusive remedy is judicial review under Iowa Code chapter 17A. *See Iowa Code*

§ 17A.2(2) (defining “agency action” to include “performance of any agency duty or the failure to do so”); *id.* § 17A.19 (“[T]he judicial review provisions of this chapter [17A] shall be the exclusive means by which a party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action.”); *Tindal v. Norman*, 427 N.W.2d 871, 872 (Iowa 1988) (concluding a lawsuit that “challenges the [agency]’s performance of [a] statutory duty” is a challenge to agency action under chapter 17A). And where, as here, there is another adequate remedy, Iowa Code section 661.7 also precludes the use of mandamus. *See* Iowa Code § 661.7 (“An order of mandamus shall not be issued in any case where there is a plain, speedy and adequate remedy in the ordinary course of the law.”); *cf. Iowa Indus. Comm’r v. Davis*, 286 N.W.2d 658, 661 (Iowa 1979) (rejecting authority of district court to issue a writ of certiorari in place of exclusive judicial review under section 17A.19). Moreover, Olsen brought his claim against the Governor instead of IDPH. Yet, the statutory language upon which Olsen relies plainly mentions only IDPH, not the Governor. 2020 Iowa Acts ch. 1116, § 31; *see State ex rel. Johnson v. Allen*, 569 N.W.2d 143, 148 (Iowa 1997) (“The problem with the mandamus action before us is the identity of the defendant.”).

6. Finally, to the extent the petition invokes the Iowa Constitution’s “Take Care Clause” or “Faithful Execution Clause,” article IV, section 9, either as a freestanding “claim” or as the source of a purported duty suitable for mandamus relief, it is doubtful “[w]hether claims brought directly under the Take Care Clause are even justiciable.” *Citizens for Responsibility & Ethics in Wash. v. Trump*, 302 F.

Supp. 3d 127, 130 (D.D.C. 2018); *see also Mississippi v. Johnson*, 71 U.S. 475, 499 (1866) (concluding “the duty of the President in the exercise of the power to see that the laws are faithfully executed” is “[v]ery different” from the types of duties enforceable by mandamus).

7. The Governor has contemporaneously filed a brief in support of this motion.

WHEREFORE, the Governor respectfully requests that the Court dismiss this case, assess all costs to Plaintiff, and award any other relief appropriate under the circumstances.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

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ATTORNEYS FOR DEFENDANT  
GOVERNOR KIM REYNOLDS

**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on April 29, 2021:

- |  |  |
|--|--|
| <input type="checkbox"/> U.S. Mail       | <input type="checkbox"/> FAX               |
| <input type="checkbox"/> Hand Delivery   | <input type="checkbox"/> Overnight Courier |
| <input type="checkbox"/> Federal Express | <input type="checkbox"/> Other             |
| <input checked="" type="checkbox"/> EDMS |  |

Signature: /s/ Samuel P. Langholz