

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>CARL OLSEN, Petitioner,</p> <p>vs.</p> <p>STATE OF IOWA, Respondent.</p>	<p>No. CVCV062566</p> <p>MOTION FOR LEAVE TO AMEND PETITION FOR DECLARATORY JUDGMENT</p>
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COMES NOW Petitioner Carl Olsen, through counsel, Colin Murphy, pursuant to Iowa Rule of Civil Procedure 1.402(4), and for the Motion for Leave to Amend Petition for Declaratory Judgment states:

1. Iowa Rule of Civil Procedure 1.402(4) provides that a pleading can be amended by leave of court.
2. Petitioner seeks leave to amend the Petition for Declaratory Judgment to reflect the proper Respondent, the Iowa Department of Public Health, which is the agency that issues medical cannabidiol registration cards in Iowa.
3. Petitioner also seeks leave to amend the petition to include facts regarding his application for a registration card and the lack of response from the Department.
4. Petitioner further seeks leave to amend the petition to revise his prayer for relief.
5. A copy of the proposed First Amended Petition for Declaratory Judgment is attached as Exhibit 1.
6. Rule 1.402(4) provides leave to amend shall be freely given when justice requires it.

WHEREFORE, Petitioner respectfully requests this Court to enter an order allowing the filing of his First Amended Petition for Declaratory Judgment and service upon the Iowa Department of Public Health.

Respectfully submitted,

By: /s/ Colin Murphy AT0005567

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Original filed.

Copy to counsel via EDMS.

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN, Petitioner, vs. IOWA DEPARTMENT OF PUBLIC HEALTH, Respondent.	No. CVCV062566 FIRST AMENDED PETITION FOR DECLARATORY JUDGMENT
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COMES NOW Petitioner Carl Olsen, through counsel, Colin Murphy, and for the First Amended Petition for Declaratory Judgment states:

PARTIES

1. Petitioner, Carl Olsen, ("**Olsen**"), is a resident of Polk County, Iowa.
2. Respondent is the Iowa Department of Public Health ("**Department**").

JURISDICTION AND VENUE

3. The court has jurisdiction over this matter pursuant to Iowa Code § 602.6101 (2021).
4. Venue is proper pursuant to Iowa Code § 616.3(2) (2021) because this matter arises in Polk County.

DECLARATORY RELIEF

5. This declaratory action is based on Olsen's constitutional right to the free exercise of religion under both the First Amendment and article 1, section 3 of the Iowa Constitution to purchase medical cannabidiol products from licensed Iowa dispensaries under Iowa Code chapter 124E, possess and use the same and enjoy any affirmative defenses available, including those in chapters 124 and 453B.



FACTUAL ALLEGATIONS

6. In 2014, the State enacts Iowa Code Chapter 124D (2014), 2014 Iowa Acts Chapter 1125. This act provides an exemption for non-psychoactive cannabinoids found in the plant *Cannabis sativa L.* or *Cannabis indica* or any other preparation that is essentially free from plant material and has a tetrahydrocannabinol (“THC”) level of no more than three percent. *See* Iowa Code § 124D.2(1) (2014). These marijuana extracts are to be obtained from an out-of-state source. *See id.* § 124D.6(1)(b) (2014).

7. In 2017, the State repeals chapter 124D by enacting Iowa Code Chapter 124E. 2017 Iowa Acts Chapter 162. This act provides for the manufacture, distribution, retail sales of the marijuana extracts in Iowa. *See* Iowa Code § 124E.2(6) (2017). These marijuana extracts are to be obtained from an out-of-state source, if not available in Iowa. *See id.* § 124E.12 (2017). Retail sales begin on December 1, 2018.

8. In 2020, the State removes the three percent cap on THC. Iowa Code § 124E.2(6) (2020). The law now allows 4.5 grams of THC every 90 days. *See id.* § 124E.9(14). The limit can be increased by a health care practitioner. *Id.* § 124E.9(15)(b).

9. Olsen is a member of the Ethiopian Zion Coptic Church.

10. The sacramental, non-drug use of cannabis in bona fide religious worship is one of Olsen’s sincerely held religious beliefs.

11. Olsen stopped using cannabis as a sacrament following the decision in *Employment Div. v. Smith*, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990), and wishes now to resume his religious practice in a manner consistent with the secular use of cannabis extracts permitted under chapters 124, 124E and 453B.

12. On November 24, 2021 Olsen submitted an application fee in the amount of \$100 and filed an application for a registration card with the Department pursuant to Iowa Code section 124E.4(1)(3).

13. Olsen's receipt provides that a response can be expected within seven (7) business days.

14. Olsen requested an update regarding the status of his application on December 6, 15 and 27, 2021, but has received no response from the Department.

LIMITED RELIGIOUS EXEMPTION

15. Olsen hereby incorporates the previous allegations as though they were fully set forth herein.

16. The First Amendment provides: "[c]ongress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" U.S. Const. amend. I.

17. The First Amendment is applicable to the states through the Due Process clause of the Fourteenth Amendment.

18. The Iowa Constitution similarly provides: "[t]he general assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" Iowa Const. art. 1, § 3.

19. The Free Exercise Clauses prohibit a state from enforcing a regulatory law that is neither neutral nor generally applicable. *See Mitchell County v. Zimmerman*, 810 N.W.2d 1 (Iowa 2012) (noting a regulatory law may lack sufficient generally applicability when it contains exceptions that undermine its purpose).

20. Iowa Code chapter 124 is not neutral toward religion because it contains a religious exemption for peyote. *See Iowa Code § 124.204(8)* (2021) ("[n]othing in

[Chapter 124] shall apply to peyote when used in bona fide religious ceremonies of the Native American Church.”) The peyote exemption was enacted in 1967, which immediately followed the federal religious exemption created by administrative regulation in 1966 and carried over into the federal Controlled Substance Act of 1970. See 54 Fed. Reg. 4679 (1966); 21 C.F.R. § 166.3(c)(3) (1968); currently codified at 21 C.F.R. § 1307.31.

21. Iowa Code chapters 124 and 453B are no longer generally applicable with respect to marijuana as a result of the secular exemption carved out for medical cannabidiol in chapter 124E.

22. Olsen’s sincerely held religious belief in the sacramental use of cannabis is at least equal to the secular use of cannabis extract permitted under chapters 124, 124E and 453B.

WHEREFORE, Olsen respectfully requests this Court to enter a judgment that declares:

- (1) The Department shall consider Olsen’s religious use of cannabis as a qualifying condition under Iowa Code section 124E.2(2) and, thereafter, respond to Olsen’s application for a registration card.

Respectfully submitted,

By: /s/ Colin Murphy AT0005567

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