

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>CARL OLSEN, Petitioner,</p> <p>vs.</p> <p>STATE OF IOWA, Respondent.</p>	<p>No. _____</p> <p><i>PETITION FOR DECLARATORY JUDGMENT</i></p>
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COMES NOW Petitioner, Carl Olsen, through counsel, Colin Murphy, and for the Petition for Declaratory Judgment states:

PARTIES

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

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.

LIMITED RELIGIOUS EXEMPTION

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

13. 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.

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

15. 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.

16. 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).

17. 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.

18. 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.

19. 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) He has a lawful right to purchase, possess and use for bona fide religious purposes medical cannabidiol obtained from a licensed Iowa dispensary and such rights are coextensive with any future amendments to chapter 124E;
- (2) He can raise affirmative defenses under chapters 124, 124E and 453B to any prosecution for possession of marijuana or failure to affix a drug tax stamp;
- (3) He has a right to exceed the 4.5 gram per 90 day limit by providing the Iowa Department of Public Health with written certification of his religious use and needs; and
- (4) Any other relief that the district court deems just and appropriate under the circumstances.

Respectfully submitted,

By: /s/ Colin Murphy AT0005567

GOURLEY REHKEMPER LINDHOLM, P.L.C.

440 Fairway, Suite 210

West Des Moines, Iowa 50266

T: (515) 226-0500

F: (515) 244-2914

E-mail: ccmurphy@grllaw.com

ATTORNEY FOR PETITIONER

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