

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>CARL OLSEN, Petitioner,</p> <p>vs.</p> <p>IOWA DEPARTMENT OF PUBLIC HEALTH, Respondent.</p>	<p>No. CVCV062566</p> <p><i>RESISTANCE TO MOTION TO DISMISS AMENDED PETITION</i></p>
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COMES NOW Petitioner Carl Olsen, through counsel, Colin Murphy, and for the Resistance to Motion to Dismiss Amended Petition states:

1. Sovereign immunity is not a bar to equitable actions that do not involve money damages or judicial review.
2. Iowa's Uniform Controlled Substances Act, Iowa Code Chapter 124, is not neutral toward religion because it contains a peyote exception for the bona fide religious ceremonies of the Native American Church. *See* Iowa Code § 124.204(8) (2021). "A statutory exemption authorized for one church alone, and for which no other church may qualify, presents a 'denominational preference' not easily reconciled with the establishment clause." *See Olsen v. Drug Enforcement Admin.*, 878 F.2d 1458, 1461 (D.C. Cir. 1989).
3. Chapter 124 is not generally applicable because it prohibits religious conduct while permitting secular conduct under Chapter 124E that undermines the State's asserted interests, *i.e.*, risk of diversion and risk to public health, in a similar way.
4. If a law fails the general applicability test, then it must advance "interests of the highest order" and must be "narrowly tailored in pursuit of those interests."

See Mitchell County v. Zimmerman, 810 N.W.2d 1, 16 (Iowa 2012) (citations omitted).

5. Petitioner's brief is filed contemporaneously with this resistance.

WHEREFORE, Olsen respectfully requests the district court deny the Motion to Dismiss.

Respectfully submitted,

By: /s/ Colin Murphy AT0005567

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