IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN,	)	
	)	
Petitioner,	)	CASE NO. CV 8682
	)	
vs.	)	
	)	RESISTANCE TO
STATE OF IOWA,	)	MOTION TO DISMISS
	)	
Respondent.	)	

Pursuant to Iowa R. Civil P. 1.431(4) and 1.443(2), Carl Olsen ("Olsen" hereafter) moves to resist the State of Iowa's ("Respondent" hereafter) Motion to Dismiss.

INTRODUCTION

The Respondent argues that declaratory judgment is inappropriate because the question of whether marijuana has "accepted medical use in treatment in the United States" is a political question for the Iowa Legislature ("Legislature" hereafter) rather than a question of law. The Respondent argues that the fact of accepted medical use of marijuana in 16 States and the District of Columbia (with Congressional approval) has no relevance to the question of whether marijuana has accepted medical use in treatment "in the United States."

The Respondent argues there is no substantial, immediate and real controversy between the parties. The Respondent argues that Olsen does not have an immediate injury that a favorable judgment declaring the current classification of marijuana invalid can redress.

A CONDITION WAS SET AND HAS BEEN MET

Because the Legislature chose to condition the classification of marijuana of whether it has accepted medical use in treatment "in the United States" rather than whether it has accepted medical use in treatment "in Iowa", the fact that 16 States and the District of Columbia have accepted the medical use of marijuana are the only relevant facts. See Full Faith and Credit Clause of the U.S. Constitution; Iowa R. Civil P. 1.415; Iowa Code § 622.59. Since the condition that marijuana must have no accepted medical use in treatment "in the United States" to remain in schedule I was created by the Legislature in 1971 and still remains in effect today, the Respondent is now bound to remove marijuana from that classification because controlling facts have changed significantly since 1971. Between 1996 and 2011, a total of 16 States and the District of Columbia (with Congressional approval) have accepted the medical use of marijuana. The condition that was set has been met. Marijuana must now be removed from its current classification in schedule I as a matter of law.

THE LAW MUST BE UNIFORM

The current scheduling of marijuana violates due process because the Iowa Constitution, Article I, Section 6, requires that all laws of a general nature shall have a uniform operation. Nothing else in schedule II says it is in schedule I when it's used for non-medical purposes. The list of marijuana in two schedules is confusing. It's impossible for a substance to be in two schedules simultaneously because the criteria are not the same. This is not the usual, uniform operation of the statute as a whole. The language in schedule II, "Marijuana when used for medicinal purposes pursuant to rules of the board of pharmacy examiners" is redundant and has no meaning because all substances in schedule II must be used pursuant to rules of the board of

pharmacy. Anyone prescribing a schedule II substance has to register with the board of pharmacy and has to agree to comply with the rules of the board of pharmacy in order to obtain registration. Iowa Code § 124.302 ("Registration requirements: Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, shall obtain and maintain a biennial registration issued by the board in accordance with its rules"). It has been argued that marijuana actually has been in schedule II since 1979, just as Justice Wiggins wrote in his dissent in State v. Bonjour, 694 N.W.2d 511, at 516 (Iowa 2005):

> In 1987, the board of pharmacy examiners rescinded its rules establishing a research program into the medical use of marijuana because the legislature amended Iowa's Controlled Substances Act classifying marijuana as a Schedule II substance. [Footnote 2] Feb. 25, 1987 Iowa Admin. Bull. at 1444 (ARC 7383). The provision amending the Code classifying marijuana as a Schedule II substance provided in relevant part: "marijuana is deemed to be a Schedule II substance when used for medicinal purposes pursuant to rules of the board of pharmacy examiners." Iowa Code § 204.206(7) (1987).

Regardless of whether marijuana has actually been in schedule II since 1979, it cannot ever be in two schedules simultaneously without violating Article I, Section 6, of the Iowa Constitution. And see, Iowa Code § 124.601 ("Uniformity of interpretation: This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it"). Marijuana is not listed in two schedules in the Uniform Controlled Substances Act [found at http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ucsa94.pdf], nor is it listed in two schedules in the federal Controlled Substances Act. See 21 §§ U.S.C. 801 et seq.

THE PHARMACY BOARD'S ROLE

There is no political question here, because this is not a petition for judicial review. As accurately stated in the Respondent's Motion to Dismiss, at page 4, the Board's recommendation

does not serve to establish that marijuana has accepted medical use in treatment "in the United States", as a matter of law. Olsen is not challenging the Legislature's lack of attention to the expert medical opinion of the Iowa Board of Pharmacy ("Board" hereafter) during the 2011 legislative session. The Board's unanimous ruling in February of 2010 that marijuana should be removed from schedule I of the Iowa Uniform Controlled Substances Act ("Act" hereafter) is not relevant to this action. The Board's ruling is not binding on the Legislature and is not offered here for anything but its persuasive value. As of today, the Legislature has not adopted the Board's recommendation, nor has the Legislature addressed the fact that marijuana's classification has become obsolete due to its accepted medical use in treatment "in the United States" by virtue of 16 States enacting legislation accepting the medical use of marijuana.

See this court's Ruling on Petition for Judicial Review in McMahon v. Board of Pharmacy, No. CV 7415 (April 21, 2009), at page 3, explaining that marijuana cannot be classified under schedule I if it has accepted medical use in treatment "in the United States":

> Petitioners argued before the Board that marijuana no longer meets the criteria for classification as a Schedule I controlled substance because marijuana now has accepted medical use in treatment in the United States. In support of their argument, Petitioners cited to the laws of other states that have now authorized the use of marijuana for medicinal purposes. The Board addressed Petitioners' argument and request for reclassification in its final order by explaining:
>
> > While neither accepting or rejecting Olsen's assertion that the medicinal value of marijuana is established by legislation adopted in other states, the Board notes that before recommending to the Iowa legislature that marijuana be moved from schedule I to schedule II, the Board would also need to make a finding that marijuana lacks a high potential for abuse. *See* Iowa Code 124.203 (2007). There exists no basis for such a finding in the record before the Board, as Olsen's submission offers no evidence or information on marijuana's potential for abuse. Absent such evidence or information, Olsen's request must be denied.
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> (Order, p. 2).

> Section 124.203 of the Iowa Code requires that any controlled substance have (1) a high potential for abuse, **and** (2) no accepted medical use in treatment in the United States before it may be classified under Schedule I. Because the Code imposes both criteria as a prerequisite to Schedule I classification, the failure to meet either would require recommendation to the legislature for removal or rescheduling. *See id*. As such, the Board's statement that it "would also need to make a finding that marijuana lacks a high potential for abuse" before it could recommend to the legislature that marijuana be moved from Schedule I to Schedule II is based upon an erroneous interpretation of law.

In 1971, when the Act was created, the Legislature authorized the Board to sound an alarm. The Board's responsibility is to let the Legislature know if any changes in the classification of controlled substances are needed. Obviously, the Legislature can ignore the alarm, but this court cannot ignore the constitutional question of law presented here.

The Respondent correctly points out that "efficacy of marijuana as medicine is not a matter of law" (see page 2 of Respondent's Motion to Dismiss). The Board has no control or authority over the fact that marijuana has been accepted for medical use in treatment in 16 States as evidenced by 16 State laws defining marijuana as medicine. Whether marijuana has accepted medical use in any state is not a question of marijuana's medical efficacy, it's a matter of reading state statutes. The Full Faith and Credit Clause of the United States Constitution and the Iowa Court Rules both require Respondent to acknowledge the statutes of other states on their face value. Although the Legislature does not have to listen to the Iowa Board of Pharmacy's expert medical opinion, law controls, not science. The Respondent can ignore the science, but not the law. The law requires that marijuana be removed from schedule I, even if the Board had found that marijuana had no medical efficacy whatsoever.

OLSEN'S INJURY

The Respondent claims the incorrect classification of marijuana can be ignored as long as nobody is injured by it. Misclassification of marijuana in Iowa as a substance having no accepted medical use in treatment "in the United States" violates Olsen's liberty and due process protections guaranteed by the Iowa Constitution, Article I, §§ 1, 6, and 9.

When challenged as violating an individual's constitutional rights, the Act must pass constitutional muster. Marbury v. Madison, 5 U.S. 137, 177 (1803) ("It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it") (cited in *Des Moines Register and Tribune v. Dwyer*, 542 N.W.2d 491, at 496). In the case cited by the Respondent, Klouda v. Sixth Judicial District, 642 N.W.2d 255, 260 (Iowa 2002), the Iowa Supreme Court nullified an act of the Legislature which violated the constitutional rights of an individual while articulating the standard by which legislative acts must be judged:

> Because statutes are cloaked with a strong presumption of constitutionality, a party challenging a statute carries a heavy burden of rebutting this presumption. *Channon v. United Parcel Serv., Inc.*, 629 N.W.2d 835, 852 (Iowa 2001). A party who challenges a statute must negate every reasonable basis upon which we could hold the statute constitutional. *Id*. In addition, the party must show beyond a reasonable doubt that a statute violates the constitution. *Johnston v. Veterans' Plaza Auth.*, 535 N.W.2d 131, 132 (Iowa 1995).

The injury to Olsen's rights stems from his sincerely held religious beliefs. Iowa Constitution, Article I, § 3.

Olsen's religious beliefs, like those of his co-petitioners (Dr. Alan Koslow, Ladd Huffman, and Robert Manke), include the belief that marijuana is medicine. In State v. Olsen, 315 N.W.2d 1, 7 (Iowa 1982), Olsen testified marijuana is "meat" (referring to Genesis 1:29-30) and "for the healing of the nations" (referring to Revelation 22:2) in his religion. The Iowa

Supreme Court told Olsen that his constitutional right to practice his religion had been superseded by the Board:

> We assume, without deciding, that the religion practiced by Olsen is one which is protected by the free exercise clause and that Olsen's belief in the marijuana sacrament is "sincere and central" to the religion. *Tribe, supra* § 14.11, at 859-61. Once these requisites are met, and a person has demonstrated that state action has interfered with the exercise of the religious belief, [footnote omitted] the State bears the burden of proving that interest is outweighed by a compelling state interest. *See Wisconsin v. Yoder*, 406 U.S. at 236, 92 S. Ct. at 1543, 32 L. Ed. 2d at 37.
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> The state board of pharmacy examiners, the agency which administers the regulatory provisions of chapter 204, by its recommendations to the legislature has determined that marijuana has a "potential for abuse." *See* § 204.401(1), (2), The Code.

State v. Olsen, 315 N.W.2d at page 8. And see, State v. Olsen, 355 N.W.2d 61 (Iowa 1984) (unpublished) [found at http://www.ethiopianzioncopticchurch.org/Cases/1984_iowa.pdf] ("Olsen is a member and priest of the Ethiopian Zion Coptic Church. Testimony at his trial revealed the bona fide nature of this religious organization and the sacramental use of marijuana within it."):

> This court dealt at length with Olsen's first amendment claim in *State v. Olsen*, 315 N.W.2d 1, 7-9 (Iowa 1982), a case involving this defendant but based on a different automobile stop and arrest. We find no reason to retreat from our holding there that "[a] compelling state interest sufficient to override Olsen's free exercise clause argument is demonstrated in this case."
>
> . . .
>
> Olsen now contends we must make an independent finding of a compelling state interest rather than defer to the legislature's decision to regulate marijuana.

State v. Olsen, 355 N.W.2d 61 (Slip Op., July 18, 1984).

These rulings from the Iowa Supreme Court demonstrate that Olsen's injury is both permanent and irreparable. Montana v. United States, 440 U.S. 147, 163 (1979) ("Unreflective invocation of collateral estoppel against parties with an ongoing interest in constitutional issues

could freeze doctrine in areas of the law where responsiveness to changing patterns of conduct or social mores is critical"). Olsen v. Mukasey, 541 F.3d 827, 831 (8th Cir. 2008) ("Collateral estoppel does not apply if controlling facts or legal principles have changed significantly since Olsen's prior judgments," citing, *Montana v. United States*, 440 U.S. 147, 155, 99 S. Ct. 970, 59 L. Ed. 2d 210 (1979)).

The Respondent exempts the sacramental use of the schedule I controlled substance peyote by members of the Native American Church. See Iowa Code § 124.204(4)(p) ("Peyote, except as otherwise provided in subsection 8"); Iowa Code § 124.204(8) ("*Peyote*. Nothing in this chapter shall apply to peyote when used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church shall register, maintain appropriate records of receipts and disbursements of peyote, and otherwise comply with all applicable requirements of this chapter and rules adopted pursuant thereto").

The Board has not adopted any rules regulating the religious use of peyote in the State of Iowa, which means that the use of the schedule I controlled substance, peyote, is completely unregulated in the State of Iowa. See Employment Division v. Smith, 494 U.S. 872, 884 (1990), citing *Bowen v. Roy*, 476 U.S. 693 (1986) ("where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason. *Bowen v. Roy*, supra, at 708"). When Olsen inquired about obtaining a similar exemption for his church, the Executive Director of the Iowa Board of Pharmacy responded by saying, "Peyote use has been subjected to the scrutiny of the legislature and found deserving of a statutory exemption." Email from Lloyd K. Jessen, dated Monday, November 23, 2009 [found at http://www.ethiopianzioncopticchurch.org/Documents/ibpe_foia_20091123.pdf].

In 1986, when Olsen received a similar response from the U.S. Drug Enforcement Administration ("DEA" hereafter), the U.S. Court of Appeals required the DEA to accept Olsen's petition for a religious exemption. See Olsen v. DEA, 878 F.2d 1458, 1461 (D.C. Cir. 1989) ("The DEA's contention that Congress directed the Administrator automatically to turn away all churches save one opens a grave constitutional question. 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").

Jessen sent Olsen another email later that day, "As I tried to explain to you in my previous e-mail, the Board is not empowered to grant, allow, approve, or *recommend* the use of a controlled substance **for religious purposes** unless so directed by state statue" (emphasis added). Email from Lloyd K. Jessen, dated Monday, November 23, 2009.

The Board has a duty to "*recommend* to the general assembly any deletions from, or revisions in the schedules of substances" (emphasis added). See Iowa Code § 124.201(1). Laws must be "neutral toward religion" and "generally applicable" to withstand strict constitutional scrutiny. See Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 537 (1993), citing *Employment Division v. Smith*, 494 U.S. at 884, citing *Bowen v. Roy*, 476 U.S. at 708 (in circumstances in which individualized exemptions from a general requirement are available, the government "may not refuse to extend that system to cases of 'religious hardship' without compelling reason.").

The misclassification of marijuana has an impact Olsen's religious freedom and gives Olsen cause to seek redress. The remedy sought here, striking the offensive language from the Iowa Code (thereby removing marijuana from schedule I), will cure Olsen's injury by removing the obstacle preventing Olsen from practicing his religion.

Olsen realizes that federal law also prohibits him from practicing his religion, but Olsen has been granted permission to intervene in the federal marijuana rescheduling petition, In re Coalition for Rescheduling Cannabis, No. 11-5121, in the U.S. Court of Appeals for the District of Columbia [found at http://petition.iowamedicalmarijuana.org/pdf/usca_11_5121_20110712.pdf] and Olsen is one of the original petitioners in that case. See Olsen's motion to intervene [found at http://petition.iowamedicalmarijuana.org/pdf/usca_11_5121_20110606.pdf] and Olsen's response to the petition [found at http://petition.iowamedicalmarijuana.org/pdf/usca_11_5121_20110723.pdf].

HISTORY OF MARIJUANA'S CLASSIFICATION IN IOWA

A detailed summary of marijuana's classification in Iowa can be found in the dissenting opinion of Justice Wiggins in State v. Bonjour, 694 N.W.2d 511, 515-18 (Iowa 2005).

A. 1971.

In 1971, the Iowa legislature adopted and enacted the Uniform Controlled Substances Act and classified marijuana as a substance having "no accepted medical use in treatment in the United States" (because, at that time, marijuana had no accepted medical use in treatment anywhere in the United States). 1971 Iowa Acts, 64th General Assembly, Session 1, Chapter 148, July 1, 1971.

B. 1979.

In 1979, while continuing to classify marijuana as a substance having "no accepted medical use in treatment in the United States" the Iowa legislature amended the classification of marijuana, as follows:

Sec. 12. Section two hundred four point two hundred four (204.204), subsection four (4), paragraphs j and q, Code 1979, are amended to read as follows:

j. Marijuana, exececpt as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes.

q. Tetrahydrocannabinols, except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes.

Sec. 13. Section two hundred four point two hundred four (204.204), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. This section does not apply to marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol when utilized for medicinal purposes pursuant to rules of the state board of pharmacy examiners.

Sec. 14. Section two hundred four point two hundred six (204.206), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. Marijuana, tetrahydrocannabinol and chemical derivatives of tetrahydrocannabinol shall be deemed to be schedule two (II) substances, but only when used for medicinal purposes pursuant to rules of the board of pharmacy examiners.

1979 Iowa Act, 68th General Assembly, Session 1, Chapter 9, July 1, 1979 [found at http://www.iowamedicalmarijuana.org/pdfs/sf487.pdf].

C. 1987 and 1990.

In 1987, and again in 1990, the Iowa legislature made changes to the law, but maintained the listing of marijuana in schedule II "when used for medicinal purposes pursuant to rules of the board of pharmacy examiners". See Bonjour, 694 N.W.2d at 516 (Wiggins, J., dissenting).

D. 1997.

In 1997, the Iowa District Court for Black Hawk County in State v. Helmers, No. FECR047575 (Aug. 13, 1997), held that Iowa Code §§ 124.203, 124.204, 124.205, and 124.206 specifically allows marijuana to be used for medical purposes in Iowa ("What all of this means is that, if the board of pharmacy examiners really concludes marijuana to have no medicinal value, as alleged by the assistant county attorney, the board has an unqualified duty to recommend that the general assembly delete it from Schedule II and revise Schedule I so that it is not excluded

even when utilized for medicinal purposes. See Sections 124.203, 124.205, (The Code 1997)") [found at http://www.iowamedicalmarijuana.org/documents/pdfs/helmers_19970813.pdf].

E. 2005.

In 2005, the Iowa Supreme Court rejected the defense of medical necessity for possession of marijuana, noting that the Board had not adopted any rules regulating the medical use of marijuana (as mentioned earlier, the Board has also not adopted any rules regulating the religious use of peyote). State v. Bonjour, 694 N.W.2d 511, 514 (2005):

> As the law stands now, manufacturing marijuana is prohibited and marijuana has no recognized medicinal value. The issue in this case is not whether the legislature has "acted to preclude the defense by a clear and deliberate choice," *Commw. v. Hutchins*, 410 Mass. 726, 575 N.E.2d 741, 744 (Mass. 1991). It has not. What it has done, however, is to clearly and deliberately decide what the procedure shall be for making that determination. That procedure is to defer to the Board of Pharmacy Examiners, which is far better equipped than this court--and the legislature, for that matter--to make critical decisions regarding the medical effectiveness of marijuana use and the conditions, if any, it may be used to treat. The board has not done so, and we, by legislative directive, must wait until it does.

Without a declaratory ruling from this court, medical users cannot make an affirmative defense in Iowa that their use of marijuana is life-saving and necessary. Bonjour, 694 N.W.2d at 511 ("one could say that marijuana might have been lifesaving in this particular case"). The misclassification of marijuana gives religious and medical users cause to seek redress. The remedy sought here, striking the constitutionally offensive language from the Iowa Code (removing marijuana from schedule I), will relieve the injury.

MEDICAL USE OF MARIJUANA IN THE UNITED STATES

In Olsen's Petition for Declaratory Judgment, Olsen explains that the Legislature chose very specific language in classifying marijuana as a substance with no accepted medical use in

treatment “in the United States” and authorized the Board as the agency entrusted with notifying the Legislature when changes to the classifications of controlled substances are required.

In 2008, Olsen notified the Board that marijuana no longer met the statutory requirement that it have no accepted medical use in treatment “in the United States”, but the Board responded by saying that several state laws accepting the medical use of marijuana was not listed as one of the 8 factors in Iowa Code § 124.201(1)(a)-(h), treating the issue as a question of medical fact rather than a question of law. The board narrowly interpreted the grant of authority given to the Board by the Legislature, and yet, after 4 months of public hearings and taking both testimony and scientific evidence, the board concluded that even under the 8 factors in Iowa Code § 124.201(1)(a)-(h), marijuana, does indeed, as a matter of medical efficacy, have accepted medical use.

The Legislature could have chosen to require that marijuana have accepted medical use “in Iowa” as a condition of retaining it in schedule I, but the Legislature specifically chose to condition the retention of marijuana in schedule I on whether it has accepted medical use “in the United States”.

“In the United States” does not mean *everywhere* in the United States as the Respondent suggests on page 3 of Respondent’s Motion to Dismiss. Respondent’s absurd suggestion would mean marijuana could have accepted medical use in 49 states, but have no accepted medical use “in the United States” until Iowa becomes the 50th state to accept it. The Legislature could have just as easily written “in Iowa” rather than “in the United States” in crafting the statute to accomplish the same result. It’s obvious that “in the United States” does not mean “in Iowa”, nor does it mean *everywhere* in the United States. The Legislature intended the meaning of “in the United States” to mean *anywhere* in the United States, the same meaning it has under federal

law, because that is how the federal courts have interpreted the same language in the federal Controlled Substances Act. While admitting that the language "in the United States" comes directly from the federal Controlled Substances Act (Respondent's Motion to Dismiss, at page 6) and claiming that Olsen cited no authority in support of his position, Respondent ignores the fact Olsen did cite federal judicial interpretations of that same language in Grinspoon v. DEA, 828 F.2d 881 (1st Cir. 1987) ("Congress did not intend 'accepted medical use in treatment in the United States' to require a finding of recognized medical use in every state"); Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 936, 939 (D.C. Cir. 1991) ("[n]either the statute nor its legislative history precisely defines the term 'currently accepted medical use'; . . ."); and Gonzales v. Oregon, 546 U.S. 243, 258 (2006) ("The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.")

Accepted medical use of marijuana in treatment "in the United States" is determined by State laws, because the language is the same under both federal and Iowa controlled substances acts and the language comes from the federal Controlled Substances Act. See 21 § U.S.C. 812(b).

DECLARATORY JUDGMENT WILL REDRESS THE INJURY

The penalties in Iowa Code § 124.401 require that marijuana be a controlled substance. The effect of declaratory judgment striking marijuana from schedule I will leave marijuana unscheduled, making it legal for both religious and medical use. The remaining language in Iowa Code 124.206(7)(a), would make marijuana a schedule II controlled substance if the Iowa

Board of Pharmacy adopted any rules making it legal for medical use. See Bonjour, 694 N.W.2d at 513 ("The defendant does not contend, and we do not believe, that the Board of Pharmacy Examiners has adopted any rules that would make marijuana use legal"). Because the Iowa Board of Pharmacy has not adopted any rules making medical use of marijuana legal, in effect, marijuana would immediately be unscheduled and legal for the petitioners to use as they see fit. This would not be an unusual result, because the majority of the 16 States that currently accept the medical use of marijuana allow it to be grown by medical patients. These 16 State laws are consistent with the DEA Chief Administrative Law Judge's finding in DEA Docket No. 86-22 (Sept. 6, 1988), "Marijuana, in its natural form, is one of the safest therapeutically active substances known to man" [found at http://www.iowamedicalmarijuana.org/pdfs/young.pdf] (Olsen requests the court take judicial notice that his name is listed on the cover of this ruling).

CONCLUSION

For the foregoing reasons Olsen respectfully requests that the Respondent's Motion to Dismiss be denied.

CARL OLSEN

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CARL OLSEN
130 E. Aurora Ave.
Des Moines, IA 50313-3654
515-288-5798 home phone
515-343-9933 cell phone

Copy to:

Scott Galenbeck
Iowa Assistant Attorney General
1305 E. Walnut Street
Des Moines IA 50319

George McMahon
902 4th Street
Livermore, IA 50558

Ladd Huffman
210 S. 2nd Street
Calumet, IA 51009

Robert Manke
1603 10th Street
Nevada, IA 50201

Alan Koslow
2716 Jordan Grove
West Des Moines, IA 50265-6462

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon each of the parties in the above entitled cause by enclosing the same in an envelope addressed to each such party at their respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelopes in a United States Post Office depository in Des Moines, Iowa on the 8th day of August, 2011.

____
CARL OLSEN