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P R O C E E D I N G S

THE COURT: This is Carl Olsen, Plaintiff, vs. State of Iowa, Defendant, Polk County No. CV8682. This is the time and place set for a hearing on a motion to dismiss filed by the State of Iowa. The Plaintiff appears in person pro se. The State of Iowa appears by Assistant Attorney General Scott Galenbeck.

Mr. Galenbeck.

MR. GALENBECK: May it please the Court. If I could, I'm going to try to give a little background on this case, and really we've been litigating these issues, Mr. Olsen and I, since I figured out since 2008. And I will certainly try to give the cliff notes' version or an abridged version of the history. But I do think that the history will help the Court understand how we got to the point we're at today.

The first -- excuse me, the first proceedings in the case were brought on June 28th of 2008 when Mr. Olsen filed a petition with the pharmacy board for a rescheduling of marijuana from a Schedule I, which is as the Court may know is a schedule -- it is a controlled substance schedule that allows only research and basically makes a drug unavailable for use. It does allow research in Schedule I drugs, but not -- not use. And so the petition was a petition before the pharmacy

1 board to reschedule marijuana from Schedule I to
2 controlled substance Schedule II, which under Schedule
3 II drugs are available by prescription for consumer
4 patient use.

5 The reason the petition was made to the pharmacy
6 board is because the pharmacy board makes
7 recommendations to the legislature for scheduling. And
8 I will go over this a little bit more later, but the
9 legislature is the body that actually schedules
10 controlled substances. It is all in Iowa Code Chapter
11 124. The legislature controls -- schedules the
12 controlled substances, but the pharmacy board is the
13 entity that makes recommendations about scheduling.

14 The board ultimately denied this petition for
15 rescheduling the marijuana from Schedule I to Schedule
16 II and there was a judicial review proceeding that was
17 filed and that went through -- that actual litigation,
18 which was CV7415, that went on for several years and
19 involved -- originally it was before Judge Novak.

20 Judge Novak sent the case back to the pharmacy
21 board for additional findings. The pharmacy board made
22 additional findings and then Judge Novak affirmed the
23 pharmacy board, and the pharmacy board denied the
24 petition for a -- basically a directive I guess it would
25 be. The petition sought that the board would recommend

1 the moving of marijuana from Schedule I to Schedule II.
2 The board denied that. That action was affirmed by
3 Judge Novak, and then that case was appealed to the
4 Supreme Court. The Supreme Court dismissed that appeal
5 when it became moot.

6 The judicial review ruling by Judge Novak was
7 October 30th, 2009. The Supreme Court ruling dismissing
8 the case ultimately was May 14th, 2010. So there was a
9 long history there of litigation over a request that the
10 pharmacy board recommend moving marijuana from Schedule
11 I to Schedule II. The -- that was not the end of
12 litigation however.

13 There was another -- well, let me backtrack a
14 little bit. Mr. Olsen raised this issue about the
15 usefulness of marijuana, but the board felt that there
16 were no -- there was no evidence to support any kind of
17 an adjustment to the schedules and any recommendation
18 that it might make to the legislature.

19 But after Mr. Olsen raised the issue the pharmacy
20 board independently decided that it was appropriate to
21 take evidence on the issue of the medical use of
22 marijuana and it did so, and after hearings, it
23 conducted hearings, it took evidence, it received
24 written testimony, and ultimately it voted to recommend
25 to the legislature that marijuana be moved from Schedule

1 I to Schedule II. And it was on that basis that the
2 Iowa Supreme Court dismissed the appeal that -- in
3 Mr. Olsen's first case and it was -- basically the Court
4 ruled that the appeal was moot at that point; that the
5 legislature had done what -- excuse me, the pharmacy
6 board had done what Mr. Olsen had originally requested,
7 which was make a recommendation to the legislature.

8 Now, if I can I want to pause for just a second
9 in that history to mention that at one point in that
10 first case there was a request for additional findings
11 made by the litigants, and the request for additional
12 findings was made to Judge Novak and the request was --
13 and I'm quoting from a petition for additional findings,
14 or actually it's called a motion to expand ruling, and
15 the motion was "This court should rule on Petitioner's
16 request to determine as a matter of law that marijuana
17 does have accepted medical use in treatment in the
18 United States based on the undisputed accepted medical
19 use of marijuana in 13 states."

20 And that's the same -- that's the same issue
21 that's being presented today. And just yesterday -- and
22 I apologize for not getting this into my original
23 motion, but just yesterday when I decided I needed a
24 refresher course on this case that's been going on since
25 2008, I looked at a ruling by Judge Novak in response to

1 that motion to expand ruling and Judge Novak wrote "As
2 to paragraph C," which is the paragraph that I just read
3 to you --

4 THE COURT: And this was in CV7415?

5 MR. GALENBECK: Yes, that's correct, Your Honor.
6 "As to paragraph C, this court rules --" excuse me,
7 "that it does not believe that it can determine as a
8 matter of law that marijuana does have accepted medical
9 use in treatment in the United States based upon the
10 medical use of marijuana in 13 states, and therefore
11 fails to satisfy the criteria for listing in Schedule I
12 of Iowa's Controlled Substance Act." Excuse me.

13 And if I may, I would like to give you a copy of
14 this ruling, Judge. I gave Mr. Olsen a copy and of
15 course I've got a copy, and I took the liberty of
16 putting a little red check right next to that paragraph.
17 So my notion is that -- and as I said, I just realized
18 this yesterday, that we have -- that Judge Novak may
19 have already ruled on precisely the issue that is
20 presented. And I would be happy to provide additional
21 briefing on res judicata preclusion concepts, excuse me
22 again, if the Court would like that.

23 So the board -- I'm going back to the pharmacy
24 board now. The pharmacy board ultimately recommended
25 moving marijuana from Schedule I to Schedule II, and

1 that resulted in dismissal at the Supreme Court level of
2 Mr. Olsen's appeal.

3 There was also a -- in another case, this is
4 CV8156, there was a petition for mandamus filed, and
5 that is -- that case was before Judge Hanson. Judge
6 Hanson dismissed the petition for writ of mandamus, and
7 that petition sought additional findings from the
8 pharmacy board relating to its recommendation that
9 marijuana be moved from Schedule I to Schedule II.

10 As I said, that motion -- excuse me, that
11 petition was denied, so there were no additional
12 findings.

13 Before the pharmacy board there was also a
14 petition for rule making which asked that rule -- that
15 petition sought -- asked the board to adopt rules for
16 the use of marijuana. That was denied. And there was
17 also a petition for a declaratory ruling that was filed
18 before the pharmacy board, and that was denied.

19 And that brings us up to -- and that was denied
20 in March of 2011. That brings us to this current case
21 which is now -- seeks a declaration from this court, not
22 -- the pharmacy board is out of this now. And it seeks
23 a declaration from this court that marijuana has a
24 medical use and that that is a matter of law.

25 And I really rely on in analyzing the request, I

1 just really rely upon the conclusion of Mr. Olsen at the
2 end of his petition where he says that he -- he
3 petitions the court to declare that marijuana has
4 accepted medical use in treatment in the United States
5 as a matter of law.

6 And I'd like to -- this won't take me very long
7 -- I'd just like to address two things about the
8 request. As I mentioned, the request has actually
9 already been the subject of an order from the district
10 court.

11 I'd also like to address the fact that the
12 efficacy of marijuana is not a matter of law. It's
13 actually a factual matter and has been treated as such,
14 and also that a declaratory order at this point would be
15 inappropriate and would likely violate the separation of
16 powers doctrine.

17 So the State's motion to dismiss is -- dismiss,
18 in addition to being based upon the res judicata
19 concept, is based on the fact that mari' -- the use of
20 marijuana and its usefulness as a medical treatment is
21 not a matter of law.

22 What Mr. Olsen is referring to is the fact that
23 16 states throughout the United States have adopted
24 legislation allowing some medical use of marijuana.
25 That's 16 states.

1 What I always mention to Mr. Olsen and to the
2 courts and to the pharmacy board is that there are 34
3 states that have not adopted laws allowing medical use
4 of marijuana. And the status of the federal law is such
5 that marijuana, although marijuana laws are not being
6 rigorously enforced right now, in terms of what the law
7 is in the United States, the use of marijuana is
8 generally prohibited with very few exceptions.

9 So I would not characterize and I do not think it
10 is appropriate to characterize it as a matter of law
11 that marijuana has a medical use.

12 The pharmacy board chose to treat this matter as
13 a factual concern. Is there evidence, is there -- was
14 there testimony, is there support for the concept that
15 medical -- that marijuana can be used in a medical
16 context? And they determined, the pharmacy board
17 determined that there is usefulness of marijuana, as a
18 factual matter usefulness for medical purposes. But
19 that's a matter of fact, it is not as a matter of law.

20 The other issue that I wanted to present to the
21 Court is really this separation of powers problem and
22 the whole concept of how a petition for a declaratory
23 order should be used, and I've cited several cases to
24 the Court in my brief. I think that it's clear that --
25 that -- and that's the reason I gave the background on

1 this case, is to make it clear that an order from this
2 court declaring that marijuana has a medical use as a
3 matter of law would not resolve a controversy. It would
4 not resolve a legal controversy. It might resolve a
5 controversy as far as Mr. Olsen is concerned, but it is
6 not a legal controversy as to whether marijuana has a
7 medical use because the legislature under Iowa Code
8 Chapter 124 has the absolute right to declare what will
9 or will not be listed on controlled substance schedules.

10 Thus no matter what this court determines about
11 the medical use of marijuana, that is not going to alter
12 what the legislature does, chooses to do or chooses not
13 to do with regard to scheduling of marijuana.

14 And even perhaps more importantly, an order from
15 this court declaring that marijuana had a medical use
16 would look to be an interference with the appropriate
17 role of the legislature in making a determination as to
18 medical use of marijuana or the determination of the use
19 of marijuana is absolutely prohibited. And that's where
20 it stands right now in Iowa. Marijuana is a Schedule I
21 controlled substance.

22 So if the Court would -- were to provide a -- an
23 order in response to Mr. Olsen's request, that would
24 appear to be a violation, I believe it would appear to
25 the average person and to the legislature as an

1 intrusion upon the legislature's ability and right to
2 make law in the State of Iowa.

3 And so just by way of conclusion, I believe that
4 a finding from this court, a declaratory order from this
5 court that marijuana has a medical use, the -- first of
6 all, Judge Novak has already declined to issue that
7 order, so the issue is res judicata.

8 Secondly, there is an issue presented to the
9 Court that characterized as a matter of law that's
10 actually a matter of fact, and that's whether marijuana
11 has a medical use.

12 And lastly I believe any order of this court, any
13 declaratory order of this court that supported
14 Mr. Olsen's point of view would be a -- would appear to
15 be in the eyes of the public and in the eyes of the
16 legislature, to be a violation of the separation of
17 powers doctrine. Thank you.

18 THE COURT: Thank you, Mr. Galenbeck.

19 Mr. Olsen.

20 MR. OLSEN: Well, the question of whether
21 marijuana has medical utility is a question of fact,
22 it's not a question of science. And that has been
23 determined by the board of pharmacy and they've ruled on
24 it and they ruled unanimously that it is. But that
25 isn't the question that I presented to them. The

1 question I presented to them is does it have accepted
2 medical use in treatment in the United States as a
3 matter of law, not at as a matter of science.

4 And the first ruling I got from them said well,
5 we don't take a position on that either way. We're not
6 gonna take a position on that. And now they've kind of
7 moved to a position, well, it would have to be 50
8 states; 16 states isn't enough, 34 say no, so it has to
9 be 50. And I'm saying "in" means some, not all. So
10 that's my argument basically.

11 The ruling from Judge Novak that Scott referred
12 to was a ruling in a petition for judicial review of an
13 agency ruling, and the judge made that ruling in the
14 context of a petition for judicial review. It wasn't
15 before the Court as a lawsuit against the State of Iowa;
16 it was a lawsuit against the pharmacy board specifically
17 under Chapter -- was it 19, sorry, administrative?

18 MR. GALENBECK: 17A.

19 MR. OLSEN: 17A. And so when the Supreme Court
20 dismissed that case -- would you like a copy of the
21 Supreme Court ruling?

22 THE COURT: That'd be great.

23 MR. OLSEN: When they dismissed the case they
24 never ruled on the merits of that issue, they just said
25 the case was moot. And so I've never gotten an

1 opportunity to even file an appeal on that issue, and so
2 if the Court -- if you find that this is res judicata,
3 then at least I could appeal. And so I'm here today --
4 and I'm not embarrassed to be here because I'm going to
5 get a ruling that -- and if I don't like the ruling, I
6 can appeal it to the Iowa Supreme Court and they are not
7 going to dismiss it as moot, they're going to rule on my
8 issue. So I don't feel that decision is res judicata
9 because of the context that it was made in.

10 THE COURT: Hasn't the pharmacy board already
11 made the determination that you're asking the Court to
12 make?

13 MR. OLSEN: No. No, the board of pharmacy said
14 they refused to decide whether "in the United States"
15 means in California. They said we're going to decide
16 whether it has medical use, period. They said we don't
17 care about this additional language "in the United
18 States, that doesn't have any significance to us. All
19 we wanna know is does it have medical use."

20 THE COURT: And they concluded it did?

21 MR. OLSEN: They concluded it did, which is not
22 relevant at all. They could have said it doesn't and it
23 wouldn't have changed my argument in the least. Sixteen
24 states have determined that it does. The Iowa law says
25 it can't be in Schedule I if it has accepted medical use

1 in the United States. It doesn't say "in Iowa," which
2 means the Iowa Board of Pharmacy can't make a decision
3 on science to answer the question. Science doesn't
4 answer that question. The science was obviously looked
5 at in those 16 states and they felt that it showed that
6 it had medical use.

7 Even the Iowa Board of Pharmacy thought it had
8 medical use. But the question is not whether the Iowa
9 Board of Pharmacy thinks it has medical use, the
10 question is whether 16 states in the United States have
11 enacted laws defining it as medicine. And that's
12 something the Court can take judicial notice of, and
13 that's something that the Full Faith and Credit Clause
14 of the U.S. Constitution requires for us to recognize
15 that the law in another state says what it says and
16 means what it says. And that's the question here. It's
17 simply a legal question; it is not a science question.

18 It is not a question of whether the board of
19 pharmacy did their job right or not. They did a
20 spectacular job. I was impressed. I didn't even -- you
21 know, they kept saying "Well, Mr. Olsen, you won't show
22 us any science," and I said "Of course not, I don't have
23 a science argument." And so finally they got frustrated
24 and just said "Well, we are just going to do it on our
25 own." And I was ready for that because I knew that

1 could happen and so I got medical experts from all over
2 the planet to come and we won that argument.

3 But that wasn't the argument that I made. They
4 wanted to know that and I don't blame them, and I was
5 ready for that.

6 THE COURT: Mr. Galenbeck, I think one of the
7 arguments he makes is that a declaratory judgment
8 proceeding is not an appropriate proceeding in which to
9 raise esoteric issues, that there is no existing issue
10 that exists between the parties.

11 If for example you had been charged with
12 possessing marijuana and your claim was that you were
13 using it for medical purposes, then perhaps there would
14 be a controversy in which the Court could -- could rule
15 on the issue of whether or not as a matter of law
16 marijuana is properly a Schedule I controlled substance.
17 Am I --

18 MR. GALENBECK: Yeah.

19 THE COURT: -- paraphrasing your argument?

20 MR. GALENBECK: Sure.

21 THE COURT: A portion of it anyway?

22 Do you have a response to that?

23 MR. OLSEN: Yes, I have an ongoing religious
24 injury to my religion. In my religion marijuana is a
25 sacrament and a medicine, and the Supreme Court of Iowa

1 denied my religious claim saying that they found my
2 claim was a bona fide religious claim and that the State
3 had an overriding compelling interest as demonstrated by
4 the Iowa Board of Pharmacy and left me the only option
5 of ever getting my religious freedom to challenge the
6 board of pharmacy's evaluation of the science on medical
7 marijuana.

8 THE COURT: And I -- your petition is 17 pages or
9 something like that, and I've not read the entire thing
10 in a great deal of detail, but do you set forth that
11 religious claim in your petition as being the basis --

12 MR. OLSEN: No, I set forth that religious claim
13 as a response to his challenge on my standing.

14 As far as the religious claim goes, he addressed
15 that in the pharmacy board rulings in great detail, and
16 so it is no surprise to Mr. Galenbeck. Mr. Galenbeck
17 went down to the symposium from the National Association
18 of Boards of Pharmacy and did a half an hour
19 presentation on my life's story to the National
20 Association of Boards of Pharmacy, so he is familiar
21 with all of this.

22 And the Supreme Court has already ruled that my
23 religious claim is a bona fide religious claim.

24 THE COURT: In what context?

25 MR. OLSEN: Criminal case.

1 THE COURT: In a criminal case?

2 MR. OLSEN: Yeah. So how many times -- should I
3 go get arrested again? And I have a co-plaintiff here,
4 Bob Manke, who is a patient, who has family in Oregon,
5 and when he lives in Oregon he has a valid medical
6 marijuana card from the State of Oregon. He can't use
7 marijuana here in Iowa. It's currently classified as
8 having no medical use which gives him absolutely no
9 rights at all.

10 Now I'm arguing for him, and I'm not an attorney
11 and, you know, this is inappropriate.

12 THE COURT: And neither is he a named party to
13 this proceeding.

14 MR. OLSEN: He's filed a motion to join and you
15 haven't ruled on it so yeah, he's not a named party yet.

16 THE COURT: Okay.

17 MR. OLSEN: That's correct.

18 THE COURT: Okay.

19 MR. OLSEN: So I will just leave it at that. But
20 I do have people trying to join who filed motions that
21 are still pending before the Court who have standing in
22 a more direct medical context.

23 My argument is that this is medicine and I have a
24 right to facilitate its distribution to people. I've
25 been arrested for doing that directly, and the only

1 option I have open to me is to do it indirectly by
2 bringing the issue before the Court and doing everything
3 I can legally without getting myself arrested again.
4 And if a Court ever tells me I need to go get arrested
5 again, then I'll -- I'll -- I'll contemplate that.

6 THE COURT: I'm not likely to do that, Mr. Olsen.

7 MR. OLSEN: Right.

8 THE COURT: Do you have a response to the res
9 judicata argument that the State raised this morning for
10 the first time?

11 MR. OLSEN: Yeah, the two arguments. One is that
12 I never got a meaningful chance to appeal from that, and
13 the other one is the context was a petition for judicial
14 review. It wasn't a a petition for declaratory order.

15 The question before the Court today is can the
16 Iowa Legislature classify -- I mean the whole thing is
17 -- is -- Scott is saying that I'm being -- asking the
18 Court to be disrespectful to the legislature and rule
19 something that's contrary to something they wrote.
20 Well, it's not contrary. The legislature wrote this
21 law. They picked the language. They said there was a
22 condition on Schedule I. They said anything in that
23 schedule must have no accepted medical use in treatment
24 in the United States or it doesn't fit that
25 classification.

1 Well, that has happened. Over the last 16 years
2 16 states have done that. The legislature wrote that in
3 there as a condition. This is not being disrespectful
4 to them. It's simply saying how in the heck when
5 something has accepted medical use in the United States
6 is it supposed to magically somehow come out of Schedule
7 I? It's the condition. And the board of pharmacy has
8 the obligation to make a recommendation. They've done
9 that, but it doesn't solve the injury. The injury is
10 that it's still in Schedule I, and if the legislature
11 decides to just not do anything, which is what they are
12 doing right now, they didn't -- the bill was pending
13 before the legislature, Senate Study Bill 1016, and the
14 legislature did not act on it. The chairman of the
15 subcommittee didn't even introduce it. It just -- they
16 just ignored it, and I'm saying that's fine, but it
17 doesn't change the condition they wrote in 1970 in that
18 the last time they reviewed it in *State vs. Bonjour*, the
19 last time the Iowa Supreme Court went over this in
20 detail, the scheduling, they said the legislature, the
21 last time they looked at the classification was 1991.

22 Well, 1996 is when states started enacting these
23 laws. Since then there's never been a review by the
24 legislature of the classification. Well, that
25 classification has gone out of -- I mean it is not valid

1 anymore, and that's what I'm asking the Court to do is
2 simply do what the legislature said and make that law
3 true. It says marijuana can't be in Schedule I.

4 And plus, they added a bunch of Mickey Mouse
5 language saying that it's in Schedule II if the board
6 were to promulgate rules. And the board has said well,
7 we can't do that because we can't move something from
8 one schedule to another. We only have the power to make
9 a recommendation. So we can't move it to Schedule II by
10 making a rule.

11 But if you look in the statute after the word
12 "marijuana" in Schedule I and after the word "marijuana"
13 in Schedule II, what is that -- what is marijuana --
14 what is marijuana doing in both Schedule I and Schedule
15 II? And it says it's medicine if it's used for
16 medicine, but it's not if it's not.

17 Like we have cocaine in Schedule II. When it's
18 used for medicine, it's medicine. When it's not used
19 for medicine, it's a crime. It's just illegal. It
20 doesn't suddenly become Schedule I.

21 So how can this scheme that has everything in one
22 classification except for marijuana, how can that be
23 uniform when the Constitution of Iowa says the laws have
24 to be uniform? Well, that's not the scheme of this act
25 to put something in two different schedules at the same

1 time. That's not how anything else in the whole entire
2 act is handled. So there's an obvious thing that sticks
3 out right there and if Scott wants to say what the
4 public would think or the legislature would think, they
5 would agree with me. That's abnormal. That's unusual.

6 THE COURT: Anything further?

7 MR. OLSEN: No.

8 THE COURT: Okay.

9 MR. OLSEN: Thank you.

10 THE COURT: Thank you very much.

11 MR. OLSEN: You're welcome.

12 THE COURT: Mr. Galenbeck, I do note that there
13 was a -- actually there have been a couple of motions to
14 join in this proceeding, one by Dr. Alan Koslow, one by
15 George McMahon, one by Robert Manke. Would that make
16 any difference --

17 MR. GALENBECK: No.

18 THE COURT: -- in my ruling if those folks were
19 allowed to join in this proceeding?

20 MR. GALENBECK: I have no objection to them being
21 joined, Your Honor. They -- although in -- I was
22 thinking in terms of timing, I think they all had notice
23 of today's hearing.

24 THE COURT: And Mr. Manke --

25 MR. GALENBECK: And Mr. Manke is here.

1 THE COURT: -- is here.

2 MR. GALENBECK: Yeah, and Mr. -- and George --

3 MR. OLSEN: George said he was too ill to be
4 here, but he has also moved to withdraw.

5 MR. GALENBECK: Okay. There are lots of filings.

6 MR. OLSEN: And Ladd said he was too -- too ill
7 to be here. And Dr. Koslow is at work and said he just
8 couldn't get away from work this morning. He's a
9 surgeon.

10 THE COURT: I see that. But your position is
11 even if they were currently party plaintiffs to this
12 proceeding, that that would not make any difference?

13 MR. GALENBECK: Would not make any difference to
14 my case.

15 THE COURT: Okay.

16 MR. GALENBECK: And may I just add a brief
17 response?

18 THE COURT: You may.

19 MR. GALENBECK: Mr. Olsen really has expressed
20 his frustration with the fact that the legislature has
21 refused to act, and he expressed his admiration for the
22 pharmacy board. The pharmacy board recommended a
23 change, but the law in -- and they followed the law,
24 which is -- their section on recommending changes is
25 Iowa Code Section 124.203. They made their

1 recommendation, but the legislature has done nothing.
2 And as Mr. Olsen said, the bill didn't even get out of
3 committee or get to the floor.

4 MR. OLSEN: Didn't even get into committee.

5 MR. GALENBECK: Didn't even get into the
6 committee. So that's my point. My point is that this
7 is up to the legislature to do what it wants to do. It
8 writes the schedules, the pharmacy board doesn't write
9 the schedules, and there's no promise anywhere in Iowa
10 Code Chapter 124 that the legislature is going to write
11 the schedules in any certain way.

12 There are guidelines for the board's
13 recommendations. There are extensive guidelines for
14 what the board is supposed to make its recommendation
15 on. But once that recommendation is made, it's solely
16 up to the legislature to decide what it wants to do, and
17 it has chosen to do nothing in this case, and it has
18 certainly not chosen to move marijuana from Schedule I
19 to Schedule II, and for that reason we have no
20 controversy that can be resolved by an order of this
21 Court.

22 And as I said, the other issue is that a
23 declaratory order, depending on the way it would be
24 written of course, but it could be perceived as a
25 violation of separation of powers. Thank you.

1 THE COURT: Thank you very much.

2 Mr. Olsen, anything further?

3 MR. OLSEN: I could have brought this case
4 without bringing my issue to the board of pharmacy, and
5 then we wouldn't have a study bill pending in the
6 legislature that they would have had the opportunity to
7 ignore, so none of that is relevant to my argument.

8 The only reason I went to the board of pharmacy
9 is I thought well, courts like to see issues flushed
10 out. They like to see a lot of context; they don't want
11 to just see something come in a vacuum. And I thought
12 I'm just going to throw this legal argument at the board
13 of pharmacy and see how they react to it. I didn't know
14 I was going to hit the jackpot, and that they were going
15 to rule on the science and say marijuana is medicine. I
16 didn't know they would do that.

17 I thought they would just ignore me and send me
18 off to court to appeal and that I could tell the Court,
19 yeah, I did, I tried to bring it to them and they said
20 it wasn't their issue and so here I am.

21 So the fact that the legislature has refused to
22 act on the pharmacy board's recommendation is not
23 relevant to my argument at all. My argument is based on
24 that statutory language. To me that has meaning. If it
25 says marijuana can't be in Schedule I if it has accepted

1 medical use in the United States, then that's what it
2 means, and that's my argument.

3 And the only reason I went to the board of
4 pharmacy was just I thought well, they are going to have
5 to say something. They can't -- you know, if I file
6 this with them and ask them to make a ruling on the law,
7 they could have told the legislature we think this is
8 illegal, but they chose not to do that.

9 Instead they decided to look at the science and
10 they found the same thing that the other 16 states have
11 found. But that's just not relevant to my argument. I
12 could have brought this originally.

13 And when Scott was -- the first hearing we had
14 before Judge Novak, Scott said you can't bring that
15 argument in the context of a petition for judicial
16 review, you need to file that as an original action.
17 And then later we got this ruling from Judge Novak
18 apparently addressing the issue.

19 But when Scott first heard it he said that's not
20 appropriate for judicial review, and I -- I think he's
21 right. I think that was correct. I don't think it was
22 an appropriate issue for judicial review. The board of
23 pharmacy refused to rule on it. We did ask the judge to
24 rule on it as a matter of law. Definitely we did. And
25 he said no, I'm not gonna do that.

1 But it was in the context of a petition for
2 judicial review, and the issue in such an action is
3 whether the board acted within the authority vested by
4 the legislature. And the issue here of whether
5 marijuana is misclassified as a matter of law is
6 something they didn't address and it wasn't properly
7 before the Court in a petition for judicial review
8 because the agency never addressed it, so it wasn't -- I
9 mean we argued that they should have addressed it, but
10 does that mean that we were right? Should they have
11 addressed it just because we said they should have? I
12 mean yeah, we did. We said they should have addressed
13 it, so -- but I don't feel there is any res judicata
14 issue there.

15 THE COURT: Again, Mr. Galenbeck, you do not have
16 any objection to the joinder in this proceeding by the
17 individuals who have filed motions to join?

18 MR. GALENBECK: No, I don't, Your Honor.

19 THE COURT: Okay. Mr. Manke, you're the only
20 person here today that has apparently filed the motion
21 to join. Anything you'd like to add on the record, sir?

22 MR. ROBERT MANKE: Yes, sir, there sure is. The
23 first thing I would like to do is tell everybody I
24 appreciate your time because I know this is costing the
25 county money.

1 I presented to the Iowa Board of Pharmacy a legal
2 document that's very relevant and central to this whole
3 thing. I presented to the board of pharmacy something
4 that was a legal document I personally obtained from the
5 State board. This is a medical document from a medical
6 doctor who gave me a very formal and not free Oregon
7 recommendation that I treat my ongoing horrible
8 illnesses with marijuana. And, sir, they don't fix
9 everything, pot doesn't fix everything, but it sure
10 makes a big difference.

11 In addition to that document that I provided to
12 the Iowa Board of Pharmacy, I didn't just go to the
13 doctor. I was also required by Oregon state law to go
14 to an Oregon state building with the paperwork from the
15 doctor and submit this to the State of Oregon for the
16 purpose of obtaining a medical marijuana relief
17 document.

18 The State of Oregon gave to me a medical
19 marijuana document. I don't know how much more plain it
20 could be, and that's partly why I gave this thing,
21 submitted it to the board of pharmacy.

22 Medical marijuana being legal in other states is
23 a fact of law, period. I don't see how any digression
24 can help anything reduce that to something
25 insignificant. It is a fact. I was medically examined

1 by a doctor and I was passed through the process of
2 state government and issued a legal document that allows
3 me to grow, possess, smoke and eat marijuana.

4 And, sir, it helps. Pot doesn't fix everything.
5 This morning I renewed a script for very powerful
6 narcotic drugs that I take. As I explained to
7 Mr. Galenbeck, I could get three times that, that script
8 size. I don't want this poisonous dope in me. It
9 wrecks my liver, it ruins my bowels, it's bad on my
10 lungs. Pot doesn't do that stuff. It's drastically
11 safer for me.

12 My retired federal registered nurse wife
13 accompanied me to Oregon. She was the third shift
14 relief nursing coordinator at the vet's hospital here in
15 town. She's been indoctrinated with the federal view.

16 Before her eyes she watched me kick morphine
17 because I had access to pot, sir. I was able to get off
18 the morphine. I didn't have the horrible things that
19 you see on The Untouchables where some morphine addict
20 like I was rides around in agony and sweats and pukes
21 and screams and hollers and just goes through living
22 hell. I didn't have any of that.

23 Marijuana is medicine, and that's why I'm here.
24 I have been arrested for this, growing three pot plants.
25 The prosecutor in the matter agreed it was medical pot,

1 and that's exactly what it was.

2 Okay. I have been denied this effective, safe
3 alternative, this option, because of this horrible
4 Schedule I.

5 It's been mentioned here this morning that
6 Schedule I doesn't totally block research. Pretty much
7 it does, too. Yes, it does block research. We badly --
8 we patients badly need marijuana to be removed from this
9 destructive book burning Schedule I. It's blocked a
10 huge amount of scientific study. It's directly in our
11 pathway and I need this court to help me.

12 I was very pleased to find the pharmacy board was
13 open to this. I hope to God you can help me. I'm not
14 making this up. This isn't about getting high, sir.
15 This is about stopping severe nausea. I take -- I get
16 all the pills they've got to get -- I go to the doctor
17 and just name them and they'll work with me.

18 I have multiple fused vertebrae, I have
19 Harrington rods. This stuff is in the material that I
20 submitted to the Iowa Board of Pharmacy and I urge you
21 to see some of this.

22 And in addition to that you'll also see that I
23 served the board of pharmacy this legal document that
24 just definitively proves that medical marijuana is a
25 fact in the United States. I couldn't get it if it

1 wasn't. I don't know what else I can tell you.

2 Can I answer any other questions?

3 THE COURT: I don't believe so.

4 MR. ROBERT MANKE: Thank you for your time.

5 THE COURT: Thank you, Mr. Manke.

6 MR. ROBERT MANKE: Okay.

7 THE COURT: Mr. Galenbeck, any final word?

8 MR. GALENBECK: Nothing further, Judge. Thank
9 you.

10 THE COURT: Okay. All right. Thank you,
11 gentlemen. I will take this under advisement. I will
12 look at it carefully.

13 MR. OLSEN: Thank you.

14 (Record closed at 9:50 a.m.)

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN, LADD]	
HUFFMAN, ALAN KOSLOW]	
and ROBERT MANKE,]	CV8682
]	
Petitioners,]	TRANSCRIPT OF
]	PROCEEDINGS
vs.]	
]	
STATE OF IOWA,]	
]	
Respondent.]	

I, Jeffrey S. Laust, Certified Shorthand Reporter and Registered Professional Reporter, do hereby certify that at the time and place as indicated on Page 1, I took in shorthand the testimony presented, and later reduced to typewriting the foregoing typewritten pages, and that said transcript is a true and accurate record of the notes so taken by me to the best of my ability.

Dated this 15th day of October, 2011.

Jeffrey S. Laust, CSR/RPR