

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

CARL ERIC OLSEN,	*	
Plaintiff,	*	Case No. 4-07-cv-000023
vs.	*	
ALBERTO R. GONZALES, Attorney General of the United States, KAREN TANDY, Administrator of the United States Drug Enforcement Administration, THOMAS MILLER, Attorney General of Iowa, JOHN SARCONI, Attorney of Polk County, Iowa, DENNIS ANDERSON, Sheriff of Polk County, Iowa, all in their official capacities,	*	ATTORNEY GENERAL THOMAS MILLER'S MOTION TO DISMISS
Defendants.	*	

Thomas Miller, Attorney General of the State of Iowa, by and through undersigned counsel and pursuant to Fed. R. Civ. P. 12(b)(6), moves to dismiss all claims against him, stating in support thereof:

1. This lawsuit, for declaratory and injunctive relief, is premised on plaintiff's assertion that any state or federal prohibition of the use or possession of marijuana cannot be constitutionally applied to him because such a prohibition would burden his religious beliefs. Claims are also made under the Religious Freedom Restoration Act of 1993 (RFRA) and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), as well as various treaties and state law provisions.

2. Attorney General Miller, who is sued solely in his official capacity, is a defendant by virtue of the fact that he is statutorily charged with the enforcement of state law. No claims are made against him by virtue of any alleged deficiencies in federal law.

3. For the following reasons, this lawsuit fails to state, against Attorney General Miller, any claim on which relief can be granted:

- a. The constitutional claims made by plaintiff have been rejected by, among other courts, the Eighth Circuit Court of Appeals and the Iowa Supreme Court;
- b. neither the RFRA nor the RLUIPA apply under the facts of this case, and, even if they did apply, they would not, as a matter of law, affect the validity of any prohibition of the use, possession or sale of marijuana since such statutory prohibitions are the least restrictive means of addressing a compelling state interest;
- c. Attorney General Miller, as the alter ego of the state of Iowa, is immune, by virtue of the Eleventh Amendment, from any claims for declaratory or injunctive relief arising under state law;
- d. the various treaties referred to by plaintiff do not confer standing on him to assert a violation thereof, and, in any event, do not, as a matter of law, imply the invalidity of any state law prohibiting the use, sale or possession of marijuana.

WHEREFORE, Attorney General Miller requests that all claims brought against him be dismissed, that this Court refuse to declare the state law at issue here invalid

either as applied to plaintiff or on its face, that this Court assess the costs of this action against plaintiff, and that this Court award any such additional relief as it believes just and equitable.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

JEFFREY C. PETERZALEK
Deputy Attorney General

/s/ MARK HUNACEK

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Proof of Service

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner o February 7, 2007.

<input type="checkbox"/> U.S. Mail	<input checked="" type="checkbox"/> FAX
<input checked="" type="checkbox"/> Hand Delivery	<input checked="" type="checkbox"/> Overnight Courier
<input checked="" type="checkbox"/> Federal Express	<input checked="" type="checkbox"/> Other
<input checked="" type="checkbox"/> Electronically	

Signature: /s/ Mark Hunacek