IN THE SUPREME COURT OF IOWA

No. 21-0664

(Warren County No. SRCR031908)

STATE OF IOWA,

Plaintiff-Appellee,

vs.

PAMELA MILDRED MIDDLEKAUFF,

Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR WARREN COUNTY

THE HONORABLE KEVIN PARKER

DEFENDANT-APPELLANT PAMELA MILDRED MIDDLEKAUFF'S REPLY BRIEF

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REPLY BRIEF

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ARGUMENT

I. Ms. Middlekauff's Arizona medical marijuana card is proof of a "prescription."

An Arizona medical marijuana identification card is not recognized as a prescription under Arizona law. Arizona patients' medical marijuana is obtained at dispensaries, not at pharmacies. Dispensary marijuana does not comport with either Iowa's or Arizona's requirements for transmission, issuing, and filling "prescriptions." This Court should nonetheless find that an Arizona medical marijuana card constitutes proof of a valid "prescription" for purposes of Iowa Code 124.401(5)'s exceptive provision.

Iowa Code Chapter 124 does not define "prescription." The Pharmacy Chapter, however, defines "prescription drug" by deference to the FDA's definitions. Under the FDA's definitions, a "prescription drug" requires a doctor's authorization to purchase. The requirement of a doctor's authorization is what differentiates a "prescription drug" from a "drug." A doctor's required authorization should therefore be a "prescription" under the Pharmacy Chapter's definitions.

Ms. Middlekauff could only obtain her Arizona medical marijuana identification card after her doctor diagnosed a qualifying medical condition and recommended marijuana to treat her symptoms. That process and the

resulting marijuana card fulfilled what the United States Supreme Court has acknowledged as the purpose of requiring prescriptions:

> Viewed in its context, the prescription requirement is better understood as a provision that ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, the provision also bars doctors from peddling to patients who crave the drugs for those prohibited uses.
>
> *Gonzales v. Oregon*, 546 U.S. 243, 274–75 (2006).

Ms. Middlekauff's marijuana card was proof that she had authorization from both her doctor and the State of Arizona to obtain medical marijuana. That prescription was valid when Ms. Middlekauff followed the statutorily-prescribed procedures to obtain her medication pursuant thereto. Ms. Middlekauff therefore obtained the marijuana for which she was prosecuted directly from or pursuant to a valid prescription. The exception therefore applies.

The State suggests that the Court could apply the definitions of "prescription" and "prescription drug" contained in Iowa Code § 423.3(60)(f)-(g).[1] Pursuant to Iowa Code § 423.3(60), " '[p]rescription'

[1] The State correctly notes that Appellant overlooked these definitions' existence.

means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a practitioner." As with many statutory definitions, these definitions' application is limited by "as used in this Chapter" language. Iowa Code § 423.1 (Streamlined Sales Tax and Use Act).

The exceptive provision applies to controlled substances obtained directly from or pursuant to **either** a valid prescription **or** an order of a practitioner. Iowa Code § 124.401(5). The Court should interpret the exceptive provision "so that no part of it is rendered redundant or irrelevant." *State v. McCullah*, 787 N.W.2d 90, 94 (Iowa 2010) (*citing State v. Gonzalez*, 718 N.W.2d 304, 308 (Iowa 2006)). The meaning of "prescription" in the exceptive provision of § 124.401(5) cannot be limited to the definition of "prescription" contained in § 423.3(60) without embracing redundancy: using § 423.3(60)'s "prescription" definition would limit the exceptive provision's applicability to those patients with either a "valid order, formula, or recipe issued [. . .] by a practitioner" or an "order

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As an additional correction, Appellant withdraws the statement that "[i]f this conviction stands, Ms. Middlekauff will be placed on probation and 'required to abstain from all controlled substances.' " Appellant's Br. 61. It appears that Ms. Middlekauff completed probation rather than paying the appeal bond.

of a practitioner." The Court should avoid this redundancy by interpreting "prescription" in § 124.401(5) as "the doctor's authorization required to lawfully purchase a prescription drug product."

The State notes that Chapter 155A and § 124.308 contain "procedural mechanisms of prescriptions." These provisions guide the issuance, transmission, and filling of prescriptions by practitioners in Iowa. These rules govern how Iowa physicians and pharmacists should go about writing and filling prescriptions. These rules do not narrow the definition of "prescription." Because the prescription was not issued in Iowa, Iowa's rules for prescription issuance do not apply to it. The State's assertion that Ms. Middlekauff's evidence was insufficient to support her defense because her exhibits did not comply with the Iowa Code's procedural requirements for prescriptions (Appellee's Br. 31-32) is therefore incorrect.

Because the medical marijuana card does not constitute a "prescription" under Arizona law, Arizona's rules for prescription issuance do not apply. The card was issued and the marijuana obtained under Arizona laws applicable to marijuana cards.

a. The *Burns* court's reasoning is unavailing because under Arizona law, Ms. Middlekauff's doctor – and not the Arizona government – was the entity exercising discretion in evaluating whether or not medical marijuana was the correct treatment for Ms. Middlekauff's condition.

The State contends that an Arizona medical marijuana card is not a prescription because after a doctor recommends medical marijuana to a patient, the patient must first apply for and receive a medical marijuana identification card before purchasing her medication. In the State's reasoning, these extra steps extenuate the doctor from the patient's receipt of the medication so that it is the government, not the doctor, who ultimately enables a patient's access to their medication. The State models this argument after the opinion in *Burns v. State*, 246 P.3d 283, 286 (Wyo. 2011). Because this argument was not raised at district court level, it is not preserved and should not be considered. Even had the argument been preserved, though, it would be unavailing. Wyoming's *Burns* court concluded, with no analysis to speak of, that:

> the Colorado law simply allows for a physician to certify that a patient might benefit from the use of marijuana as a medical treatment. It is then left entirely up to the patient whether to apply for a medical marijuana registry card from the State of Colorado. It is the State of Colorado that makes the final determination whether the patient qualifies for the registry card, [. . .]. Importantly, it is not

> the action of the physician that determines any potential possession of marijuana by the patient.
>
> *Burns* at 286.

The Court should eschew Wyoming's *Burns* court's reasoning because the additional steps – first a patient's application for an identification card and then the government's "final determination whether the patient qualifies for the registry card" – does not invalidate that a doctor's authorization remains but-for cause for a patient's medical marijuana access.

It is rarely a physician's action that makes the "final determination" of a patient's physical possession of any controlled substance. The physician has no control over whether or not the patient will travel to a pharmacy to fill a prescription, whether or not the patient will fill the prescription, or whether or not the pharmacy will provide the patient with access to the recommended medication.[2] Arizona's law simply adds a couple of

[2] "[A] pharmacy may decline to stock a drug because the drug requires additional paperwork or patient monitoring, has a short shelf life, may attract crime, requires simple compounding (a skill all pharmacists must learn), or falls outside the pharmacy's niche (e.g., pediatrics, diabetes, or fertility)."

Stormans, Inc. v. Wiesman, 136 S. Ct. 2433, 2437–38 (2016) (Alito, J., dissenting from denial of cert.) (citation omitted).

additional steps to the process – steps which give the government an opportunity to collect additional money and to verify that the recommendation meets the statutory requirements to enable the patient's access to medical marijuana. Assuming the patient is qualified, Arizona's government does not exercise any discretion in deciding whether or not to issue medical marijuana identification card. Because the doctor, not the government, evaluates the patient's health and makes a subjective determination of whether marijuana is an appropriate treatment, because the doctor's recommendation for marijuana is issued for the purpose of enabling a patient to obtain marijuana,[3] and because the government cannot issue a medical marijuana card without the doctor's authorization, Arizona's process does not so-far distance a practitioner from the receipt of the medication that the practitioner's authorization is not a "prescription" for purposes of § 124.401(5).

[3] *See Conant v. Walters*, 309 F.3d 629, 634 (9th Cir. 2002) (a recommendation for medical marijuana may be analogous to a prescription when "the physician intends for the patient to use it as the means for obtaining marijuana, as a prescription is used as a means for a patient to obtain a controlled substance [. . .].").

II. Federal law does not prohibit possessing marijuana pursuant to a state-sanctioned medical marijuana program and the CSA does not preempt the AMMA.

The State claims that "federal law [. . .] prohibits possession of the drug[4] – even when pursuant to a state-sanctioned medical marijuana program." Appellee's Br. 27. If true, then the same federal law prohibits Iowa's medical cannabidiol provisions with equal force. *See* Iowa Code § 124E.2(9) (medical cannabidiol is "marijuana.") The State cannot argue that Ms. Middlekauff's conduct was federally illegal without tacitly admitting

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> It shall be unlawful for any person knowingly or intentionally to possess a controlled substance **unless such substance was obtained directly, or pursuant to a valid prescription or order**, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II.
>
> It shall be unlawful for any person knowingly or intentionally to possess any list I chemical obtained pursuant to or under authority of a registration [. . .] if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration.
>
> 21 U.S.C. § 844(a) (emphasis added).

that the State of Iowa, in enabling patients' access to cannabidiol, routinely aids and abets violations of federal law. In any event, the State cannot and did not prosecute Ms. Middlekauff under federal law.

Federal law requires legitimate medical purposes for prescriptions.[5] Federal law does not recognize any currently accepted medical use for marijuana.[6] The CSA may nonetheless allow doctors to validly prescribe marijuana under state law when state law recognizes legitimate medical purposes for marijuana. *See Raich v. Gonzales*, 500 F.3d 850, 869 (9th Cir. 2007) (Defendant Raich argued that her doctor could prescribe marijuana

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[5] "A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 C.F.R. § 1306.04.

[6] Placement on Schedule 1 requires a finding that a drug "has no currently accepted medical use in treatment in the United States." 21 U.S.C. § 812 (b)(1)(C). "Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of [. . .] [m]arihuana" is classified as a schedule I substance. 21 U.S.C. § 812 Schedule 1(c)(10); *but see Raich v. Gonzales*, 500 F.3d 850, 866 (9th Cir. 2007) ("We agree with Raich that medical and conventional wisdom that recognizes the use of marijuana for medical purposes is gaining traction in the law as well.")

under state law without running afoul of the CSA. The Ninth Circuit Court of Appeals declined to consider the merits of the argument because the issue was not raised at district court); *but see Gonzales v. Raich*, 545 U.S. 1, 27-31 (2005) ("the CSA would still impose controls beyond what is required by California law." The California law at issue in *Raich*, in contrast to the law at issue in the instant matter, allowed doctors to grant permission to use an unlimited amount of marijuana for an unlimited amount of time for " 'any other illness for which marijuana provides relief,' " which the Supreme Court reflected "is broad enough to allow even the most scrupulous doctor to conclude that some recreational uses would be therapeutic.")

Further, *United States v. Feingold*, 454 F.3d 1001 (2006), notes that a licensed practitioner may only be convicted of dispensing or distributing a controlled substance under 21 U.S.C. § 841 when he has deliberately acted "outside the usual course of professional practice." *Feingold* at 1007 (*citing United States v. Moore*, 423 U.S. 122, 124 (1975)). 21 U.S.C. § 841(b)(4) specifically contemplates small amounts of marijuana. If a physician can only be punished under 21 U.S.C. § 841(b)(4) for dispensing or distributing small amounts of marijuana "outside the usual course of professional practice," then there is apparent possibility that a physician could dispense

or distribute marijuana within his usual course of professional practice without running afoul of federal law.

To the extent that the State now argues preemption, preemption was not raised at district court[7] and the State should therefore be barred from raising it now. *State v. Rutledge*, 600 N.W.2d 324, 325 (Iowa 1999) ("Nothing is more basic in the law of appeal and error than the axiom that a party cannot sing a song to us that was not first sung in trial court.") Even if preserved, though, preemption would be unavailing. "[U]nder our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause." *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990). The federal Controlled Substances Act ("CSA") does not occupy the field, but instead "explicitly

[7] The State argued at district court level that "Iowa law follows federal law, in that unless [marijuana] has been added to a list of substances that can be prescribed, it can't be prescribed." Pretrial Conference 8:18-8:20.

The State's claim at district court that Iowa defers to a federally-sanctioned list of substances that can affirmatively be prescribed is not the same as the State's appellate argument that federal law preempts valid medical marijuana prescriptions under state law. The former claim is preserved but was not argued in the State's appellate brief; the latter claim is not preserved but was argued in the State's appellate brief.

contemplates a role for the States in regulating controlled substances." *Gonzales v. Oregon*, 546 U.S. 243, 243 (2006) (*citing* 21 U.S.C § 903).

> **No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field** in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.
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> 21 U.S.C. § 903 (emphasis added).

Only a conflict preventing the CSA and the Arizona Medical Marijuana Act ("AMMA") from consistently standing together would result in the CSA preempting the AMMA. *See Powers v. McCullough*, 258 Iowa 738, 744, 140 N.W.2d 378, 382 (1966) ("The term 'direct conflict' means hostile encounter, contradictory, repugnant, so irreconcilably inconsistent, each with the other, as to make one actually inoperable in the face of the other.")

The federal government's inaction against the physicians and patients who recommend and obtain medical marijuana pursuant to authorizations prescribed by state laws has eroded the argument that the CSA precludes finding valid medical purposes under state laws:

> [T]he case for federal pre-emption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there is between them. [. . .]
>
> Since December 2014, congressional appropriations riders have prohibited the use of any [Department of Justice] funds that prevent states with medical marijuana programs ... from implementing their state medical marijuana laws.
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> *Hager v. M & K Constr.*, A.3d 137, 149 (N.J. App. Div. 2020) (internal citations omitted) (internal quotation marks omitted).

The State has not demonstrated how recognition of "legitimate medical purposes" under state law is fundamentally at odds with federal provisions. As the Supreme Court of Arizona observed:

> The manifest purpose of the CSA was to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances. A state law stands as an obstacle to a federal law [i]f the purpose of the [federal law] cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect. The state-law immunity AMMA provides does not frustrate the CSA's goals of conquering drug abuse or controlling drug traffic. [. . .] [T]he people of Arizona chose to part ways with Congress only regarding the scope of acceptable medical use of marijuana.

> *Reed-Kaliher v. Hoggatt*, 347 P.3d 136, 141–42 (2015) (internal citations and quotation marks omitted).

Federal law does not recognize a legitimate medical purpose for marijuana, but Arizona law does – and when Ms. Middlekauff was charged in 2019, Iowa law did too.

The Iowa legislature and former governor Terry Brandstad "agree[d] that there may be medicinal benefits for certain diseases treated by cannabidiol." 2017 H.F. 524 p. 1. In 2019, marijuana was listed as a "Schedule I" substance in Iowa law – "except as otherwise provided by rules of the board for medicinal purposes." Iowa Code § 124.204(4)(m) (2019).[8]

The State of Iowa authorizes medical cannabidiol for patients with debilitating medical conditions. *See generally* Iowa Code Chapter 124E

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[8] Marijuana should not have been listed in Iowa's Schedule I in 2019 at all. Placement in Schedule I requires that a substance has both "high potential for abuse" and "no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision." Iowa Code § 124.203.

It is facially contradictory to state that marijuana has **no** accepted medical uses or **cannot** safely be used for treatment under supervision "except [. . .] for medicinal purposes." Perhaps the legislature noted the contradiction because the 2021 version of Iowa Code § 124.204(4)(m) simply lists "marijuana" without excepting medicinal purposes. At the time Ms. Middlekauff was charged, though, the Iowa Code explicitly recognized that there could be "medicinal purposes" for marijuana.

(Medical Cannabidiol Act). Medical cannabidiol is marijuana. Iowa Code § 124E.2(9). Iowa, in authorizing the use of a marijuana derivative for specified medical conditions and in statutorily acknowledging "medicinal purposes" for which marijuana would not be considered a Schedule I drug, surrendered the opportunity to claim that there is no recognized medical use for marijuana.

III. Ms. Middlekauff's testimony appropriately established the applicability of her affirmative defense.

Ms. Middlekauff testified that her orthopedic surgeon referred her to another doctor, Dr. O'Brien, for a medical marijuana prescription to treat the chronic pain arising from her diagnosed osteoarthritis. (Trial Tr. 69:11-69:19). Upon receiving a copy of Dr. O'Brien's recommendation, the State of Arizona issued a medical marijuana ID card to Ms. Middlekauff.

The State argues that Ms. Middlekauff did not sufficiently establish her doctor's credentials. Appellee's Br. p. 32-33. While a defendant bears the burden of establishing the applicability of an affirmative defense (*State v. Moorhead*, 308 N.W.2d 60, 63 (Iowa 1981) (*citing State v. Morris*, 227 N.W.2d 150, 154 (Iowa 1975)), the defendant is only obligated to produce enough evidence to make it apparent that the defense is applicable.

Moorehead at 64 (*quoting State v. Lamar*, 210 N.W.2d 600, 606 (Iowa 1973)).

Ms. Middlekauff's trial testimony established that Ms. Middlekauff, Ms. Middlekauff's orthopedic surgeon, and the State of Arizona all regarded Dr. O'Brien as a doctor qualified and competent to diagnose Ms. Middlekauff and to recommend an appropriate treatment for Ms. Middlekauff's symptoms. If the State had the inclination to contest Dr. O'Brien's qualifications, they had and waived the opportunity to do so.

Ms. Middlekauff provided adequate evidence to establish the applicability of her defense. The State thereafter was obligated to (but did not) assume the burden to disprove the defense beyond a reasonable doubt. *State v. Gibbs*, 239 N.W.2d 866, 869 (Iowa 1976).

IV. Additional policy considerations

If this Court declines to treat Ms. Middlekauff's medical marijuana card as a "prescription" for purposes of the exceptive provision in Iowa Code § 124.401(5), then every medical marijuana patient traveling from one state to another should give Iowa a wide berth. The State's preferred interpretation of "prescription" will criminalize more than other states' traveling patients, though – such a narrow interpretation will subject Iowa's

medical cannabidiol patients to OWI prosecutions if they so much as press the "remote start" button to warm their spouse's car engine on a winter morning.

A person who operates a motor vehicle "[w]hile any amount of a controlled substance is present in the person" commits the offense of Operating While Intoxicated. Iowa Code § 321J.2. Simply starting a car's engine constitutes "operating" the car. *Munson v. Iowa Dep't of Transp*., *Motor Vehicle Div*., 513 N.W.2d 722, 725 (Iowa 1994). Even the non-impairing metabolites of marijuana subject an operator to OWI prosecution. *State v. Childs*, 898 N.W.2d 177, 184 (Iowa 2017). Those non-impairing metabolites can persist at length in patients' bodies.[9]

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[9] "Metabolites from marijuana can be retained in a person's system for days or weeks. A person who has consumed marijuana thus has no fair notice as to when he or she may legally drive a car. It may be a day, weeks, months, or even years." *State v. Childs*, 898 N.W.2d 177, 198 (Iowa 2017) (Appel, J.) (dissenting).

Because THC is stored in fat cells, a patient who uses cannabidiol routinely could accumulate a great deal of THC in their bodies. An Iowa cannabidiol patient could discontinue their medication, test negative for THC metabolites, and assume that they were legally allowed to drive again. Subsequent food deprivation could theoretically cause enough metabolites to re-enter the patient's blood/urine to trigger an OWI prosecution without the patient having had any basis to anticipate a positive test result.

See, e.g., Gunasekaran N, Long LE, Dawson BL, et al. Reintoxication: the release of fat-stored delta(9)-tetrahydrocannabinol (THC) into blood is

Iowa's medical cannabidiol patients are specifically exempted from prosecution for illegal possession of marijuana. Iowa Code § 124E.12(4)(b). Cannabidiol patients are therefore not dependent on the exceptive provision to protect them from Ms. Middlekauff's situation. Chapter 124E does not, however, have any special provision to exempt Iowa cannabidiol patients from conviction for Operating While Intoxicated under Iowa Code § 321J.2.

If a cannabidiol patient with a non-impairing marijuana metabolite in their system resulting from their lawful and state-sanctioned use of Iowa cannabidiol so much as starts their spouse's car to warm it up on a winter morning, that patient is subject to prosecution for operating while intoxicated – unless "prescription" is given a broad meaning. A patient does not violate § 321J.2 when they have a drug in their system that was

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enhanced by food deprivation or ACTH exposure. *Br J Pharmacol*. 2009;158(5):1330-1337. doi:10.1111/j.1476-5381.2009.00399.x Accessed online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2782342/ (internal citations omitted):

> Interestingly, there have been anecdotal forensic reports of anomalously high levels of THC in post-mortem blood samples of victims of traumatic death such as drowning. We have also received recent anecdotal forensic reports of high THC levels in the blood of ex-cannabis users who have lost significant body weight immediately prior to test sampling.

prescribed to them and "taken under the prescription and in accordance with the directions of a medical practitioner [. . .]." Iowa Code § 321J.2(11). The OWI statute is meant to meant to "promote public safety by removing dangerous drivers from the highways." *Bearinger v. Iowa Dep't of Transp*., 844 N.W.2d 104, 107 (Iowa 2014) (*quoting State v. Vogel*, 548 N.W.2d 584, 587 (Iowa 1996)). Patients using their prescription medications as directed by their physicians are exempted from OWI prosecution because such patients "are not a danger." *State v. Childs*, 898 N.W.2d 177, 199 (Iowa 2017).

Under the definition of "prescription" that the State advances, Iowa's 7,323 medical cannabidiol patients[10] are criminals each time they drive (or even start a car engine) within some unspecified time – perhaps weeks or years – of taking a medication that was deemed appropriate by their doctors *and authorized by the State of Iowa*. But Iowa's cannabidiol patients, who may have used their medication as directed by their physicians hours or weeks before driving, are not a danger. It is difficult to imagine how

[10] Iowa Department of Public Health. Iowa Medical Cannabidiol Program Update. October, 2021. https://idph.iowa.gov/Portals/1/userfiles/234/Files/2021_10%20%28Oct%29%20Monthly%20Website%20Program%20Update.pdf

someone might seriously argue that a patient driving perhaps days or weeks after using the cannabidiol recommended by their doctor is per se more dangerous on the road than a patient driving after taking prescription pain medications or benzodiazepines, particularly when in the former situation, the metabolites that persist at length are the metabolites which do not cause intoxication or impairment. After all, as the State asserts, cannabidiol has "negligible psychoactive components" which "lower[s] the attendant risks of misuse" of cannabidiol. Appellee's Br. 63. The reasoning that applies to the "prescription-drug defense" to § 321J.2 therefore applies with equal force to patients whose prescriptions come in labeled yellow bottles and to patients whose cannabidiol access was legally enabled by their physician's formal recommendation coupled with the Iowa legislature's approval.

CONCLUSION

Under Iowa law, a valid prescription or doctor's order immunizes a patient against prosecution under Iowa Code § 124.401(5). By deference to the FDA's definition, Iowa law treats substances intended for use in the treatment of disease as "drugs" and drugs that "require[] a doctor's authorization to purchase" as "prescription drug products." Because a doctor's authorization is what differentiates a "drug" from a "prescription

drug," this Court should acknowledge a doctor's recommendation for marijuana as a "prescription" for purposes of Iowa Code 124.401(5)'s exceptive provision when the doctor intends for the patient to use that recommendation to access a controlled substance and when the law expressly allows patients' access to that controlled substance only when recommended by a doctor to treat a specified diagnosis.

Under Arizona law, Ms. Middlekauff was only able purchase marijuana after her doctor had examined her, diagnosed a qualifying medical condition, and recommended marijuana to treat her condition. Arizona's laws made medical marijuana in the state of Arizona a "prescription drug" under the definition in Iowa's Pharmacy Chapter.

The documents enabling a patient to purchase a prescription drug evince a prescription. Ms. Middlekauff's medical marijuana identification card issued by the State of Arizona, predicated on Dr. O'Brien's certification, enabled Ms. Middlekauff to lawfully purchase a prescription drug. The documents therefore constituted suitable evidence of a "prescription" for purposes of Iowa Code § 124.401(5). Because Ms. Middlekauff's identification card was valid when and where Ms.

Middlekauff used it to obtain her medication, the exceptive provision should apply.

CERTIFICATE OF FILING AND SERVICE

I, Katherine R. Sears, hereby certify that I have filed this Brief by the EDMS filing system on December 8, 2021.

I further certify that I served a copy of this brief upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Defendant-Appellant.

/s/ *Katherine Sears*
AT0013374