



Religious Freedom Restoration Act: An Overview of *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*

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Summary

On February 21, 2006, the Supreme Court issued an opinion in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal* (UDV), a case addressing the use of an hallucinogenic tea in the context of religious ceremonies conducted by a religious sect in New Mexico. In its decision, the Court determined that under the Religious Freedom Restoration Act (RFRA), the federal government could not prohibit the sect's use of the tea absent a compelling government interest in doing so, and that the federal government had failed to establish a compelling interest. This report provides an overview of RFRA and the *O Centro Espirita* case.

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Religious Freedom Restoration Act

The genesis of the Religious Freedom Restoration Act (RFRA) lies in the Supreme Court's decision in *Employment Division, Oregon Department of Human Resources v. Smith*.¹ In that case, decided in 1990, the Court narrowed the scope of the Free Exercise Clause of the First Amendment, which provides that "Congress shall make no law ... prohibiting the free exercise [of religion]."² The specific issue before the Court in *Smith* was whether two Native Americans who had been fired from their jobs as drug counselors after they were discovered to have ingested peyote in a ritual of the Native American Church were eligible for state unemployment benefits. The Court determined that they were not, and in so doing also altered the standard of review generally used for free exercise cases.

Before *Smith*, the Court had generally applied a strict scrutiny test to government action that allegedly burdened the exercise of religion.³ That test required the government to show that an action burdening religion served a compelling government interest and that no less burdensome course of action was feasible. If the government could not so demonstrate, the test required that the religious practice be exempted from the government regulation or prohibition at issue.

In *Smith*, the Court abandoned the strict scrutiny test and held that religiously neutral laws may be uniformly applied to all persons without regard to any burden or prohibition placed on their exercise of religion. The Free Exercise Clause, the Court said, never "relieves an individual of the obligation to comply with a 'valid and neutral law of general applicability' on the ground the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)."⁴ In the case at hand, that new standard meant that the Free Exercise Clause mandated no religious exemption from Oregon's drug laws for Native American use of peyote in a sacramental ceremony and, consequently, no eligibility for unemployment benefits of the two Native Americans who lost their jobs because of their participation in such a ceremony. More generally, the Court asserted that the question of whether religious practices ought to be accommodated by government was a matter to be resolved by the political process and not by the courts, although it admitted that "leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in...."⁵

In 1993, Congress enacted the Religious Freedom Restoration Act (RFRA) to restore the compelling interest test set forth in earlier cases in all circumstances where the freedom of religious exercise is being burdened and to provide a claim for relief when the government substantially burdens the religious exercise. Thus, RFRA granted government the right to substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is (1) in furtherance of a compelling governmental interest and (2) the least restrictive means of furthering that compelling governmental interest.⁶

¹ 494 U.S. 872 (1990).

² U.S. Const. Amend. 1.

³ See *Sherbert v. Verner*, 374 U.S. 398 (1963); *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

⁴ 494 U.S. at 879.

⁵ *Id.* at 890.

⁶ In *City of Boerne v. Flores*, the Supreme Court determined that RFRA was unconstitutional as it applied to the actions of state governments. 521 U.S. 507 (1997). For a discussion of the *Boerne* case, see CRS Report 97-795, *The Religious Freedom Restoration Act: Its Rise, Fall, and Current Status*, by (name redacted).

Gonzales v. O Centro Espirita

O Centro Espirita Beneficente Uniao do Vegetal (UDV) is a religious sect with origins in the Amazon Rainforest in which members of the church receive communion by drinking a sacramental tea containing a hallucinogen (*hoasca*) regulated under the Controlled Substances Act by the federal government. In 1999, federal agents seized a shipment of *hoasca* from Brazil that was to be used in UDV ceremonies. The church challenged the seizure and requested a preliminary injunction to prevent the further seizure of *hoasca* or the arrest of any UDV members using the drug. The complaint alleged that the application of the Controlled Substances Act to the church's sacramental use of *hoasca* violated RFRA. At a hearing on the preliminary injunction, the government conceded that the application of the Controlled Substances Act would substantially burden a sincere exercise of religion by the UDV, but argued that there was no RFRA violation because the application of the Controlled Substances Act was "the least restrictive means of advancing three compelling governmental interests: protecting the health and safety of UDV members, preventing the diversion of *hoasca* from the church to recreational users, and complying with the 1971 United Nations Convention on Psychotropic Substances, a treaty signed by the United States and implemented by the [Controlled Substances] Act."⁷

The district court found that the government had failed to "demonstrate a compelling interest justifying what it acknowledged was a substantial burden on the UDV's sincere religious exercise."⁸ The court entered a preliminary injunction prohibiting the government from enforcing the Controlled Substances Act with respect to the UDV's importation and use of *hoasca*. The injunction required the church to import *hoasca* pursuant to federal permits, to restrict control of the church's supply of *hoasca* to persons of church authority, and to warn members of the dangers of *hoasca*. The government appealed the issuance of the injunction, and a panel of the United States Court of Appeals for the Tenth Circuit affirmed, as did a majority of the Circuit sitting en banc.⁹ The government appealed to the Supreme Court.

In making its appeal, the government put forth three arguments challenging the lower court's decision. First, it challenged the preliminary injunction itself, alleging that the court used the wrong test for determining whether a preliminary injunction was proper. Second, it argued that enforcement of the Controlled Substances Act precluded any type of waiver for UDV. Third, it argued that compliance with the United Nations Convention on Psychotropic Substances also prevented it from allowing UDV to use *hoasca*, a substance covered under the convention.

Preliminary Injunction Standard

The government did not challenge the district court's factual findings or its conclusion that the evidence presented at the hearing regarding health risks and risk of diversion was "in equipoise" and "virtually balanced."¹⁰ Rather, the government challenged the district court's determination

⁷ *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 126 S. Ct. 1211 (2006).

⁸ *O Centro Espirita Beneficente Uniao do Vegetal v. Ashcroft*, 282 F. Supp. 2d 1236, 1255 (D. N.M. 2002).

⁹ 342 F. 3d 1170 (10th Cir. 2003); 389 F. 3d 973 (10th Cir. 2004).

¹⁰ *Gonzales*, 126 S. Ct. at 1218. At the hearing on the preliminary injunction, the district court heard evidence from both parties on the health risks of *hoasca* and the potential for diversion from the church.

The government presented evidence to the effect that use of *hoasca*, or DMT more generally, can cause psychotic reactions, cardiac irregularities, and adverse drug interactions. The UDV countered by citing studies documenting the safety of its sacramental use of *hoasca* and presenting evidence (continued...)

that evidence “in equipoise” was sufficient for issuing a preliminary injunction against enforcement of the Controlled Substances Act.¹¹ On appeal, the government noted “the well-established principle that the party seeking pretrial relief bears the burden of demonstrating a likelihood of success on the merits.”¹² The government argued that a “mere tie in the evidentiary record” was insufficient for issuing a preliminary injunction.¹³ Along with a majority of the en banc Court of Appeals, the Supreme Court rejected this argument, finding that the government “failed to demonstrate that the application of the burden to the UDV would, more likely than not, be justified by the asserted compelling interest.”¹⁴ The Court also rejected the government’s contention that the UDV bore the burden of disproving the asserted compelling interests at the hearing on the preliminary injunction, citing another recent case which held that “respondents must be deemed likely to prevail unless the government has shown that respondents’ proposed less restrictive alternatives are less effective than [enforcing the Act].”¹⁵ The Court stated that “Congress’ express decision to legislate the compelling interest test indicates that RFRA challenges should be adjudicated in the same manner as constitutionally mandated applications of the test, including at the preliminary injunction stage.”¹⁶

Enforcement of the Controlled Substances Act

The government also challenged the district court’s determination that it failed to articulate a compelling governmental interest to justify its burden on the UDV’s religious practices by arguing that the Controlled Substances Act “precludes any consideration of individualized exceptions such as [those] sought by the UDV.”¹⁷ The Supreme Court summarized the government’s position, saying that “under the government’s view, there is no need to assess the particulars of the UDV’s use or weigh the impact of an exemption for that specific use, because the Controlled Substances Act serves a compelling purpose and simply admits of no exceptions.”¹⁸ However, the Court rejected the government’s assertion that Congress’s classification of *hoasca* as a Schedule I substance “relieves the government of the obligation to shoulder its burden under RFRA.”¹⁹ The Court noted that the Controlled Substances Act authorizes the Attorney General to “waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety,” and that an exception has been made for the religious use of peyote by the Native

(...continued)

that minimized the likelihood of the health risks raised by the government. With respect to diversion, the government pointed to a general rise in the illicit use of hallucinogens and cited interest in the illegal use of DMT and *hoasca* in particular; the UDV emphasized the thinness of any market for *hoasca*, the relatively small amounts of the substance imported by the church, and the absence of any diversion problem in the past. 126 S. Ct. at 1218.

¹¹ *Id.*

¹² *Id.* at 1219, *citations omitted*.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*, citing *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004). The Court stated that the reasoning established in *Ashcroft* applied in the present case, even though the government failed to meet the first prong of the compelling interest test and did not reach the least restrictive means prong.

¹⁶ *Id.* at 1220.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 1211.

American Church and all members of every recognized Indian Tribe.²⁰ The Court found that “[i]f such use is permitted ... for thousands of Native Americans practicing their faith, it is difficult to see how [the government] can preclude any consideration of a similar exception for the 130 or so American members of the UDV who want to practice theirs.”²¹

The Court held that the peyote exemption not only undermined the government’s contention that the Act admits no exceptions under RFRA, but that it also found that the government failed to provide evidence of how such an exemption has “undercut” the government’s ability to enforce the law with respect to nonreligious uses.²² The Court rejected the government’s reliance on other cases where the Court found that the government had a compelling interest in the uniform application of a particular program, finding that in this case the government’s claim was not based on the administration of a statutory program, but rather on “slippery-slope concerns that could be invoked in response to an RFRA claim for an exception to a generally applicable law.”²³ In so doing, the Court stated that “RFRA operates by mandating consideration, under the compelling interest test, of exceptions to ‘rule[s] of general applicability,’” and noted that it had recently reaffirmed “the feasibility of case-by-case consideration of religious exemptions to generally applicable rules.”²⁴

Convention on Psychotropic Substances

With respect to its obligation to comply with the United Nations Convention on Psychotropic Substances, the Court also rejected the government’s contention that compliance with the treaty itself was enough to justify the burden on the UDV’s religious exercises.²⁵ In so doing, the Court stated that it did “not doubt the validity of [the government’s] interests [in complying with the treaty], any more than [it] doubt[ed] the general interest in promoting public health and safety by enforcing the Controlled Substances Act, but under RFRA invocation of such general interests, standing alone, is not enough.”²⁶

Conclusion

The Court proceeded to affirm the judgment of the United State Court of Appeals for the Tenth Circuit and remanded the case for further proceedings. Presumably, the remand leaves open the possibility that the government could at some point establish a compelling interest that justifies the burden on the UDV. It should also be noted that the Court did not address the constitutionality

²⁰ *Id.*, citing 21 U.S.C. 822(d). *See* 21 C.F.R. 1307.31. The government argued that the existence of a congressionally mandated exemption from the Controlled Substances Act did not mean that the Act was subject to judicially mandated exemptions. The Court countered that argument by noting that RFRA “plainly contemplates that *courts* would recognize exceptions—that is how the law works.” 126 S. Ct. at 1222.

²¹ *Id.* The Court also rejected the government’s argument that the use of peyote is allowed because of the “unique relationship” between the United States and the tribes, noting that the government never explained what about that relationship justifies the different treatment of the tribes versus the UDV.

²² *Id.*

²³ *Id.* at 1223.

²⁴ *Id.*, citing *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

²⁵ 126 S. Ct. at 1224.

²⁶ *Id.* at 1225.

of RFRA as it applies to the federal government, as this was not a question presented to it on appeal.

The potential impact of the Court's decision is uncertain because the Court focused on the importance of a case-by-case approach with respect to religious exemptions from generally applicable rules. The Court's decision does not establish a broad precedent for religious exemptions from criminal statutes. It does, however, appear to establish a precedent with respect to the type of evidence that must be presented by the government to establish a compelling interest. The Court made it clear that the government could not establish a compelling interest in simply enforcing an existing statute; there must be some other justification for the burden on religious expression.

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