

***Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal:* Hallucinogens, Religion, and the Religious Freedom Restoration Act**

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Introduction

In *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal, Et Al*,¹ the United States Supreme Court held that the Government failed at the preliminary injunction stage to carry the burden of proof expressly legislated upon them by Congress through the Religious Freedom Restoration Act² ("RFRA"). In so holding, the Court affirmed the decisions of the United States District Court for the District of New Mexico and the United States Court of Appeals for the Tenth Circuit. The Government failed to demonstrate a compelling governmental interest in barring the O Centro Espirita Beneficiente Uniao do Vegetal's ("UDV's) sacramental use of *hoasca*.³ The Court's holding indicated that the Court's decision in *Boerne v. Flores*⁴ would not be broadened to include actions where parties assert RFRA as a claim or defense against the federal government. Further, the Court's decision raises questions of whether religious practices, which involve illegal activity, will be protected where the Government fails to articulate a sufficiently compelling reason to regulate the religious practice.

¹ *Gonzales v. O Centro Beneficiente Uniao Do Vegetal, et al.*, 126 S.Ct. 1211 (2006).

² 42 U.S.C. § 2200(b).

³ *Id.* at 1225.

⁴ *Boerne v. Flores*, 117 S.Ct. 2157 (1997)

I. Factual Background

The UDV, a small Christian Spiritist sect based in the United States, with origins in the Amazon Rainforest, takes communion by drinking a sacramental tea made from leaves unique to the Amazon region of the sect's origin.⁵ This tea, *hoasca*, contains a hallucinogen, dimethyltryptamine ("DMT") that is regulated by the federal government under the Controlled Substances Act⁶ ("CSA"). The CSA is of general applicability to all United States citizens. Even though the Government recognized that the sect's use of *hoasca* is a sincere exercise of religion, the Government sought to prohibit the sect's use of the tea on the ground that the CSA bans all use of the hallucinogen contained in *hoasca*.⁷ The sect moved for a preliminary injunction to block the enforcement of the ban on their use of *hoasca*. The United States District Court for the District of New Mexico granted the preliminary injunction for the sect, prohibiting the Government from enforcing the CSA in regards to the UDV's importation and use of *hoasca*.⁸ A panel of the United States Court of Appeals for the Tenth Circuit affirmed the preliminary order, as did a majority of the Circuit sitting en banc.⁹ Both courts were unconvinced by the Government's central submission that the uniform application of the CSA was a sufficiently compelling justification that no exception should be made to accommodate the sect's use of the hallucinogen within the context of a sincere religious practice. The Government supported their central submission with evidence of the health risks attached to the use of the hallucinogen, DMT, contained in *hoasca* and the potential for

⁵ *Id.* at 1216.

⁶ 21 U.S.C. § 801 *et. seq.* (2000)

⁷ *Id.*

⁸ *Id.* at 1218.

⁹ *Id.*

diversionary use of the hallucinogen outside the sect's religious ceremonies.¹⁰ DMT is classified as a Schedule I substance under the CSA and is therefore subject to the most comprehensive restrictions, including a ban on all importation and use, excepting strictly regulated research projects.¹¹ Furthermore, it is a substance for which the Government has determined a "high potential for abuse", one that "has no currently accepted medical use" and for which there exist "a lack of accepted safety for use... under medical supervision."¹²

II. Legal Background

The juxtaposition of generally illegal activity as a central activity to a sect's exercise of a sincere religious practice is further intensified by the somewhat contentious history between the Legislature and the Judiciary in determining the limits of what is protected activity under the Free Exercise Clause of the First Amendment. Prior decisions of the Court have interpreted the Free Exercise Clause to permit the Government to burden religious practice where that burden results from a generally applicable law.¹³ The CSA is such a generally applicable law in that the regulations and provisions of the law apply equally to everyone. Under this interpretation of the Constitution, judges were not required to analyze the burden on religion to the particular person seeking redress where that burden resulted from a generally applicable law.¹⁴ The Court's established framework for evaluating claims under the Free Exercise Clause, however, was radically altered through legislation by Congress. Congress took the

¹⁰ *Id.*

¹¹ *Id.* at 1217.

¹² 21 U.S.C. § 821 (b) (1).

¹³ *Employment Div., Dept. of Human Resources of Ore. V. Smith*, 494 U.S. 872 (1990).

¹⁴ *Id.* at 883-890.

initiative to legislate the preferred judicial test, which the Court *must* apply in such cases.¹⁵

A. The Controlled Substances Act and the Peyote Exception

The Controlled Substances Act regulates the importation, manufacture, distribution, and use of psychotropic substances.¹⁶ The substances regulated by the CSA are classed into five different schedules based upon the factors of their potential for abuse, the extent to which they have accepted medical uses, and their relative safety.¹⁷ The hallucinogen DMT contained in the UDV's *hoasca* is listed in the CSA as a Schedule I substance.¹⁸ Schedule I substances are subject to the most comprehensive regulations, and their importation and use are completely banned except within the context of strictly regulated research projects.¹⁹ The CSA mandates a criminal sentence for simple possession of a Schedule I substance.²⁰ The purpose of the CSA is to protect and to promote the health and general welfare of the American people from the detrimental effect of controlled substances.²¹

The Government's contention of uniform application of the CSA is weakened by a long-standing exception for the use of peyote by the Native American Church. The hallucinogen in peyote is a Schedule I substance and subject to the same substantive regulations as the DMT in *hoasca*.²² Yet for thirty-five years, the Government has

¹⁵ 42 U.S.C. § 2200(b).

¹⁶ 21 U.S.C. § 801 *et. seq.* (2000).

¹⁷ 21 U.S.C. § 812 (b) (2000).

¹⁸ *Gonzales*, 126 S.Ct. at 1217.

¹⁹ See 21 U.S.C. §§ 823, 960 (a)(1).

²⁰ 21 U.S.C. § 844 (a).

²¹ 21 U.S.C. §801

²² 21 CFR §1307.31 (2005).

recognized a regulatory exemption for all members of recognized Indian tribes.²³ The Government's concern that the DMT in *hoasca* "has no currently accepted medical use" and "has a high potential for abuse" applies equally to the mescaline in peyote. However, both the Executive and Legislative branches have recognized an exception to the CSA for the use of peyote by the Native American Church.²⁴

In the instant case, the Government pressed for uniform application of the CSA without being able to explain or distinguish the long-standing exception for peyote use by the Native American Church. This issue of illegal drug use in the exercise of sincere religious practice is further complicated by the back and forth history between the Legislature and the Judiciary regarding the permissible limits of religious exemption from generally applicable laws.

B. The First Volley: The Supreme Court's Decision in *Smith*

The First Amendment of the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."²⁵ The First Amendment was made applicable to the states through the Fourteenth Amendment.²⁶ Numerous Supreme Court decisions have held that the right of free exercise does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that the law proscribes (prescribes) conduct that his religion prescribes (or proscribes)."²⁷

²³ 42 U.S.C. § 1996 a (b) (1) (1994).

²⁴ 21 U.S.C. § 812 (b) (1) (2000).

²⁵ U.S. Const. Amend. I

²⁶ *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

²⁷ *See Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 879 (1990)

For example, in *Employment Division, Department of Human Resources of Oregon, et al., v. Smith*, a group of Native Americans sought to have their sacramental use of peyote protected under the Free Exercise Clause.²⁸ The Oregon State criminal law, which restricted the Native Americans' use of peyote as a controlled substance, was neutral and of general applicability to all citizens of Oregon.²⁹ Respondents sought to extend the protections of the Free Exercise Clause to cover not only their religious beliefs but also their religiously motivated actions.³⁰ Specifically, respondents argued that the Court should consider the state government's prohibition on peyote under the strict scrutiny test, which would require the Government to demonstrate a compelling justification for the regulation.³¹

The Court referenced its first precedent in this area of law, *Reynolds v. United States*,³² as well as more recent decisions. As a clearly established principle, an individual is constitutionally entitled to whatever belief he chooses to hold, but the practice of that religion through physical acts may be limited by government regulation.³³ Similarly, in *United States v. Lee*,³⁴ the Court refused to find that a religious exemption was constitutionally required for a neutral, generally applicable law that compelled activity, which an individual's religion forbade. To permit individuals to govern their physical actions based upon their religious convictions, rather than the laws established by the

²⁸ 494 U.S. 872, 874 (1990).

²⁹ *Id.* at 874.

³⁰ *Id.* at 878.

³¹ *Sherbert v. Verner*, 374 U.S. 398 (1963).

³² *Reynolds v. United States*, 98 U.S. 145 (1878)

³³ *Id.*

³⁴ 455 U.S. 252 (1982) (rejecting a free exercise challenge to Social Security taxes based on Amish faith).

government, would "permit every citizen to become a law unto himself."³⁵ Such a legal standard would contradict both "constitutional tradition and common sense."³⁶

In *Smith*, the respondents argued that the Court should analyze proposed religious exemptions to generally applicable laws under the balancing test outlined in *Sherbert*.³⁷ Application of the *Sherbert* test would have placed the burden on the government to demonstrate a compelling governmental interest for the prohibition if that prohibition substantially burdens a religious practice. The government would also be required to demonstrate that the chosen means of regulation is the most narrowly tailored to achieve that compelling purpose.³⁸ Accordingly, the Court "declined to breath life into the *Sherbert* test" such that respondent's peyote use would be exempted from a neutral, generally applicable criminal prohibition.³⁹ The Court further concluded that application of the *Sherbert* test in cases where "the conduct is 'central' to the individual's religion" would prove unworkable.⁴⁰

The Court acknowledged that the application of strict scrutiny to laws burdening religion might not appear to be such a great leap when considered in view of its familiar use in other fields, such as race and speech content.⁴¹ The Court was clear in the reason for its refusal to apply the *Sherbert* test to claims based solely in the Free Exercise Claims without the implication of other constitutional issues: "What [strict scrutiny] produces in those other fields - equality of treatment and unrestricted flow of contending speech - are

³⁵ *Reynolds* 98 U.S. at 166-167.

³⁶ *Smith*, 494 U.S. at 885.

³⁷ *Smith*, 494 U.S. at 882-83.

³⁸ *Id.* at 883.

³⁹ *Id.* at 884.

⁴⁰ *Id.* at 886.

⁴¹ *Id.* at 885.

constitutional norms; what it would produce here- a private right to ignore generally applicable laws - is a constitutional anomaly."⁴²

The Court stated that application of the *Sherbert* test to exempt religiously motivated conduct from laws of general applicability would stray from the vast majority of precedent.⁴³ Citing a previous decision, the Court stated that the government's ability to enforce generally applicable laws restricting socially harmful conduct, such as the use of controlled substances, "cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development."⁴⁴

C. Congress' Response: *The Religious Freedom Restoration Act*

Three years following the Court's decision in *Smith*, Congress responded by enacting the Religious Freedom Restoration Act of 1993.⁴⁵ The brevity of the Act in no way lessens its impact. In seven short sections, the Legislature informed the Judiciary how best to adjudicate cases involving the free exercise of religion. Congress' negative reaction to the Court's decision in *Smith* was clearly articulated by the Act's title, designated as "[a]n Act to protect the free exercise of religion."⁴⁶ In a few succinct lines, Congress overrode the core holding in *Smith*. The Court's holding that "neutral, generally applicable laws may be applied to religious practices even when not supported by compelling governmental interest"⁴⁷, was interpreted by Congress to "virtually eliminate

⁴² *Id.* at 885-886.

⁴³ *Id.* at 884.

⁴⁴ *Id.* at 883 (citing *Lyng v. Northwest Indian Cemetery Protective Assn.* 485 U.S. 439, 451 (1988))

⁴⁵ 42 U.S.C. § 2000bb (1993).

⁴⁶ *Id.*

⁴⁷ *Boerne v. Flores*, 521 U.S. 507, 514 (1997)

the requirement that the government justify burdens on religious exercise imposed by laws neutral to religion."⁴⁸

Congress sought to legislatively correct the anticipated impact of the Court's decision in *Smith*, stating that the purpose of RFRA was to restore "the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) ... and to guarantee its application to *all* cases where free exercise of religion is substantially burdened."⁴⁹ The Act sought to provide a claim or defense for individuals when their exercise of religion has been substantially burdened by government regulation.⁵⁰ Congress instructed that "Standing to assert a claim or defense under this section shall be governed by the general rules of standing under Article III of the Constitution."⁵¹

The Congressional findings outlined in support of the Act include affirmations that the framers of the Constitution recognized: 1) the free exercise of religion as an unalienable right through the drafting of the First Amendment; 2) laws neutral toward religion may still burden religious exercise; 3) and that governments should not, without compelling justification, substantially burden religious exercise.⁵² The term *government* was broadly defined to include, "a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, a State, or a subdivision of a State."⁵³ Further, Congress extended the Act's application to all "Federal and State law ... whether statutory or otherwise, and whether adopted before or after the enactment of this Act."⁵⁴

⁴⁸ 42 U.S.C. § 2000bb (1993).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ 42 U.S.C. § 2000bb-1 (1993).

⁵² *Id.*

⁵³ 42 U.S.C. § 2000bb-2 (1993).

⁵⁴ 42 U.S.C. § 2000bb-3 (1993).

The Religious Freedom Restoration Act created a general prohibition against restrictions substantially burdening the free exercise of religion, except where the government could demonstrate that "application of the burden to the person [not generally] is in furtherance of a compelling governmental interest; and it is the least restrictive means of furthering that compelling governmental interest."⁵⁵ This is the same legal standard the Court declined to apply in *Smith*.

D. Partial Invalidation: Supreme Court's Response to RFRA in *Boerne*

Four years following the enactment of RFRA, the Court was presented with the opportunity to determine how it would apply the legal standard legislated by Congress. The opportunity arose in *Boerne v. Flores*, where a decision by local zoning authorities denied a building permit to a local church.⁵⁶ The permit denial was challenged under the RFRA.⁵⁷ The subsequent litigation centered on the RFRA and its constitutionality.⁵⁸ The Court began by reiterating the facts and holding of *Smith*, underlining its reasons for refusing to apply the *Sherbert* test to that case, and noting that numerous members of Congress had criticized the Court's reasoning in *Smith* and that disagreement had led to the enactment of the RFRA.⁵⁹

The Court articulated once again that the application of the *Sherbert* test would have resulted in an "anomaly in the law, a constitutional right to ignore neutral laws of general applicability."⁶⁰ It underlined the difficulty inherent in judicial determination of whether

⁵⁵ 42 U.S.C. § 2000bb-1 (1993).

⁵⁶ 521 U.S. 507 (1997).

⁵⁷ 42 U.S.C. § 2000bb *et seq.* (1993).

⁵⁸ *Boerne*, 521 U.S. at 512.

⁵⁹ *Id.* at 514-15.

⁶⁰ *Id.* at 513.

a particular restricted practice is central to an individual's religion. This obligation "to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigant's interpretations of their creeds," is one not within the judicial orbit of knowledge.⁶¹

Recognizing that the most far-reaching provisions of the RFRA, those which applied against the States, were enacted by Congress under the enforcement power of the Fourteenth Amendment,⁶² the Court begins its analysis of the Act's constitutionality with Section Five of the Fourteenth Amendment.⁶³ The Court's discussion of Congress' disputed ability to apply the RFRA to the States under the Fourteenth Amendment begins with a quote from *Marbury v. Madison*, the seminal case on the enumeration and separation of powers.⁶⁴ The Court acknowledged that Section Five of the Fourteenth Amendment is "a positive grant of legislative power" to Congress.⁶⁵ The Court cautions, however, that "[a]s broad as the congressional enforcement power is, it is not unlimited."⁶⁶ Congress' enforcement power under Section Five may only be used to enforce the provision of the Fourteenth Amendment, not to alter their meaning.⁶⁷ Accordingly, Congress does not have the power to decree the substance of the Fourteenth Amendment's restrictions on the States.⁶⁸ The Court is clear that Congress has been

⁶¹ *Id.*

⁶² U.S. Const. 14th Am.

⁶³ *Id.* at 516.

⁶⁴ "powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." *Marbury v. Madison*, 1 Cranch 137, 176 (1803).

⁶⁵ *Boerne* at 517. (*citing* *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966)).

⁶⁶ *Id.* at 518-19. (*citing* *Oregon v. Mitchell*, 400 U.S. 112, 128 (1970)).

⁶⁷ *Id.* at 519.

⁶⁸ *Id.*

given the power "to enforce, not the power to determine what constitutes a constitutional violation. Congress may not enforce a right by changing what that right is."⁶⁹

The Court underscored this distinction with a discussion of the text and passage of the Fourteenth Amendment, emphasizing the Amendment's purpose not to disturb the distribution of powers between the Legislative branch and the Judiciary.⁷⁰ If Congress had the ability to define its own powers by altering the meaning of the Fourteenth Amendment, then the Constitution would no longer be the supreme law of the land.⁷¹ As was first articulated in *Marbury v. Madison*, "The Constitution is either a superior, paramount law ... or it is on level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it."⁷² Therefore, the Court held that RFRA contradicts "vital principles necessary to maintain separation of powers and the federal balance."⁷³ The Court would go on in its next decision to analyze the RFRA's application against the federal government in *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal*.

III. The Court's Rationale

In *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal*, 126 S.Ct. 1211, the Court, with little discussion, accepted and applied the *Sherbert* test as legislated by Congress in the Religious Freedom Restoration Act ("RFRA").⁷⁴ The Court recounted

⁶⁹ *Id.*

⁷⁰ *Id.* at 520-25.

⁷¹ *Id.* at 529.

⁷² 5 U.S. 137, 177 (1803).

⁷³ *Boerne*, 521 U.S. at 536.

⁷⁴ 42 U.S.C. § 2000bb (1993).

briefly the history, legislative and judicial, which had led to the instant case.⁷⁵ The Court referenced its earlier holding in *Smith*, which held that the Constitution did not require judges to assess the substantiality of the burdens placed upon religious exercise by generally applicable laws on a case-by-case basis.⁷⁶ Putting that aside, the Court recognized Congress' response in the RFRA, which now requires that the Court analyze the burden on religious exercise to the particular person.⁷⁷ Accordingly, the Court thoroughly applied the *Sherbert* compelling interest test and required that the Government demonstrate that its burden on the religious exercises of the UDV church is "in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest."⁷⁸ In applying this test, the Court relied heavily upon the findings of the District Court in response the UDV's motion for a preliminary injunction against application of the Controlled Substances Act to its sacramental use of *hoasca*.⁷⁹

The Government conceded that the Controlled Substances Act ("CSA") would substantially burden the UDV's sincere religious exercise. The Government argued, however, that the CSA 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."⁸⁰ The Government offered evidence that the use of *hoasca* can result in psychotic reactions, cardiac irregularities,

⁷⁵ *Gonzales*, 126 S.Ct. at 1216.

⁷⁶ *Id.*

⁷⁷ 42 U.S.C. § 2000bb-1(a) (1993).

⁷⁸ *Gonzales*, 126 S.Ct. at 1217-18.

⁷⁹ *Id.* at 1217.

⁸⁰ *Id.* at 1217-18.

and adverse drug reactions.⁸¹ In countering the Government's evidence of alleged health risks, the UDV offered evidence of studies demonstrating the safety of *hoasca* for its sacramental use.⁸² Supporting the alleged risk of *hoasca* being diverted to non-sacramental uses, the Government offered evidence of a general rise in the illicit use of hallucinogens, in particular a rise in the use of DMT and *hoasca*.⁸³ In response, the UDV emphasized the small amounts of *hoasca* used by the church, the absence of a diversionary problem in the past, and the relatively small market for *hoasca*.⁸⁴

The district court found the evidence on the health risks of *hoasca* to be "in equipoise" and the evidence on a potential diversionary problem to be equally balanced, such that the Government had not demonstrated a sufficiently compelling interest for its application of the CSA to sacramental use of *hoasca*. Therefore, the district court granted the UDV's motion for preliminary injunction.⁸⁵ In examination of the briefs submitted by the parties, the Supreme Court found that by not challenging the district court's factual findings or that the evidence on these findings was equally balanced, the Government conceded the UDV's prima facie case under the RFRA.⁸⁶ the burden placed by the RFRA on the Government to demonstrate a compelling interest in regulating *hoasca* is equal to that of the strict scrutiny test under the First Amendment.⁸⁷ Therefore, the Court reasoned that even at the preliminary injunction stage, Congress' express legislation of the

⁸¹ *Id.* at 1218.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 1218-19.

⁸⁷ *Id.* at 1220.

compelling interest test indicates that challenges brought under the RFRA should be adjudicated in the same manner as "constitutionally mandated application of the test."⁸⁸

The Supreme Court rejected the Government's argument that the CSA is a law of general application and not open to exceptions, particularly for Schedule I substances such as the DMT in *hoasca*.⁸⁹ This argument was undercut by the long-standing exception for the religious use of peyote by the Native American Church, which is also a Schedule I substance under the CSA.⁹⁰ Further, Congress had purposefully created the possibility of judicial exceptions to generally applicable laws in enacting the RFRA, and had instructed the courts to apply the strict scrutiny test.⁹¹

Throughout the opinion, the Court relies on the text of the RFRA and the intent behind it as a basis to reject each of the Government's arguments. The Court faithfully applied the strict scrutiny test, as legislated by Congress. The Court acknowledged at the end of the opinion that the task assigned by Congress is not an easy one, and that the Court will have to grapple with the difficulties of the *Sherbert* test outlined in *Smith*.⁹²

IV. Implications

Following the Court's decision in *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal*⁹³, the question is raised of what sort of sincere religious practices will be exempted from generally applicable laws. In his concurrence in *Boerne*, Justice Stevens expressed concern for the possible results of the RFRA's application, stating that

⁸⁸ *Id.*

⁸⁹ *Id.* at 1220-22.

⁹⁰ *Id.* at 1222.

⁹¹ *Id.*

⁹² *Id.* at 1125.

⁹³ *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal*, 126 S.Ct. 1211 (2006).

the statute "has provided the Church with a legal weapon that no atheist or agnostic can obtain."⁹⁴ The result from the use of this legal weapon is a "governmental preference for religion, as opposed to irreligion, [which] is forbidden by the First Amendment."⁹⁵ The burden is on the government and the presumption is in favor of the religious practice, even if that sincere religious practice would be illegal if preformed by an atheist. Should an individual, not a practicing member of the UDV, wish to drink *hoasca* that individual is subject to criminal prosecution. However, members of the sect are exempted from criminal prosecution and are permitted to regularly use a substance which is banned for the general public. Exemptions fringe sectarian groups, such as the UDV, from generally applicable laws could potentially devalue the protections of religious freedom afforded to mainstream religious groups.

With its decision in *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal et al*⁹⁶, the Court has accepted the strict scrutiny test which it had rejected in *Sherbert*. The Court points out that the Government lost in this case because of the heightened legal burden that it placed upon itself under the RFRA.⁹⁷ Whether this opinion represents begrudging acquiescence or whole-hearted acceptance of the RFRA, the Court has committed itself to applying strict scrutiny to these cases as mandated by Congress. In the future, the government will have to overcome a strong legal burden when a generally applicable law substantially burdens a sincere religious practice.

⁹⁴ *Boerne* 537 (citing *Wallace v. Jaffree*, 472 U.S. 38, 52-55 (1985))

⁹⁵ *Id.*

⁹⁶ 126 S.Ct. 1211 (2006).

⁹⁷ *Gonzales*, 126 S.Ct. at 1225.