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Protecting the few ensures religious liberty for the many

What must the government do to protect the “free exercise” of religion? Baptists are rarely forced to contemplate that question since the law has generally developed in ways that avoid conflict with practices of the Christian majority. Yet Baptists who know their history recognize that when anyone’s religious liberty is denied, everyone’s religious liberty is threatened. That concern explains one reason for the BJC’s involvement in the case of *O Centro Espirita Beneficente Uniao Do Vegetal vs. Gonzalez*, heard by the Supreme Court in November.



Tim O'Brien of PBS' "Religion & Ethics NewsWeekly" interviews BJC General Counsel Hollyn Hollman about the UDV case at the U.S. Supreme Court.

The case is about the federal government’s attempt to prohibit a small church from practicing its religion, which involves the central sacrament of ingesting tea that is ritually prepared from two plants. The church (UDV) follows religious teachings from a religion native to Brazil. The chemical DMT results from the preparation of the tea, known by its

Portuguese name “*hoasca*,” and is on a list of chemicals regulated by the Controlled Substances Act.

The UDV church has about 150 members in the United States. It sued the government under the Religious Freedom Restoration Act (RFRA) to stop it from using the Controlled Substances Act against them after the government confiscated the church’s plants and records. Despite the small number of adherents of the UDV church in America, the case has the potential for a much greater impact on the continuing vitality of RFRA.

This is the first RFRA case to reach the Supreme Court since the 1997 *City of Boerne* case invalidated its application to state laws. RFRA, which was supported by a broad coalition of religious and civil liberties organizations with the leadership of the BJC, requires that the federal government have a compelling interest, exercised by the least restrictive means, when it substantially burdens religion. The federal statute is seen as an essential protection for religion in light of the Supreme Court’s 1990 *Smith* decision interpreting the Free Exercise Clause.

In the UDV case, the government argues that it has a compelling interest in the “uniform application” of the drug laws. In other words: the Controlled Substances Act cannot allow exceptions based upon religious

beliefs. That analysis, if adopted by the Court, would sharply limit RFRA. RFRA was specifically designed to make it hard for government to impinge on the free exercise of religion without a good, specific reason. The government’s position would allow the federal government to be excused from making the proper statutory showing. As 10th Circuit Judge Michael McConnell explained in the case below, “Congress’ general conclusion that DMT is dangerous in the abstract does not establish that the government has a compelling interest in prohibiting the consumption of *hoasca* under the conditions presented in this case.”

In an *amicus* brief written by Professor Thomas C. Berg of the University of St. Thomas School of Law and attorneys at the law firm of Winston and Strawn, the BJC joined other organizations to defend the proper statutory interpretation of RFRA and its goal of protecting religious liberty. The brief argues that by design RFRA requires the federal government to demonstrate a compelling interest in restricting the UDV’s use of *hoasca* in particular, not the use of *hoasca* or other drugs generally. The statute requires that the government demonstrate its interest with case-specific facts, not reliance on general Congressional findings about the dangers of controlled substances.

When Congress passed RFRA, it recognized that many times general laws incidentally and unintentionally harm religion. RFRA was intended to guard against such harms. The BJC’s brief argues that the government cannot avoid its burden under RFRA by asserting that the drug laws can bear no exemptions. To satisfy the compelling interest test, the government must show a serious harm, based on specific evidence rather than speculation or conclusory statements.

In the courts below, the government has failed to make such a showing and UDV has prevailed. Questions from the bench at oral argument indicated skepticism from several justices about the government’s sweeping theory. Still, the context of federal drug laws and international treaty obligations relating to them make this case a challenging one. While religious conflicts dealing with such laws are relatively rare, the Court’s approach and decision is likely to have consequences far beyond UDV, extending to the full range of religious practices that at times must rely on the statutory protections for religious freedom.

The case provides another example of how religious liberty for any one of us is tied to our willingness to fight for religious liberty for everyone.