

enactment of RFRA shows that Congress is cognizant of the problems of drug abuse and the illegal trade that serves those who abuse drugs. Where is it that Congress has said that courts are not capable of determining the difference between drug abuse and drug use that causes no harm? For the government to suggest otherwise smacks of the kind of administrative arrogance that results in unjustified and unwinnable wars of all kinds.

Since the **Leary** case in 1967, several lower courts have ruled that the drug laws prove the fact of compelling interest on their face. This Court's rulings in **City of Boerne** and **City of Indianapolis** directly contradict those cases. Therefore, citations stating that the drug laws prove compelling interest for their enforcement on their face are **Plain Error** where they are applied to a case of religious exercise under RFRA.

11. Four of the five lower court decisions under review in **Gonzales** cite **U.S. v. Brown**, 72 F.3d 134 (8th Circuit 1995) (table)(**Brown** hereafter)(attached Appendix B); **U.S. v. Greene**, 892 F.2d 453, 456-57 (6th Circuit 1989); **U.S. v. Middleton**, 690 F.2d 820, 825 (11th Circuit 1982); and **Leary v. U.S.**, 383 F.2d 851, 860-61(5th Circuit 1967).

The **O Centro** rulings cite **Brown** etc. for the proposition that the **Sherbert** and **Yoder** tests were applied to the religious use of marijuana and peyote in **Brown** and the other cases. **O Centro** implies that the government proved a compelling interest and least restrictive means of regulation as in **Sherbert** and **Yoder** in order to prohibit the religious use of marijuana and peyote in those cases.

**O Centro Espirita**, 282 F.Supp. 1236, at page 1253, cited **Brown** stating that:

"There is a second major distinction between the present case (of **O Centro Espirita**) and the cases involving claims that the principles of religious freedom reflected in the Free Exercise Clause and RFRA should be interpreted as permitting the sacramental use of marijuana. This distinction stems from the significant differences in the characteristics of the drugs at issue. Affirming a trial court's denial of a criminal defendant's request to rely on RFRA as a defense to