

## ARGUMENT

On February 21, 2006, the United States Supreme Court (hereinafter “the Supreme Court”) unanimously decided *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. ---, 163 L.Ed.2d 1017, 2006 U.S. LEXIS 1815 (2006) (hereinafter “*Gonzales v. UDV*”), all eight justices joining in Chief Justice Roberts’s opinion. This case provided the Supreme Court with its seminal opportunity to interpret and apply the federal Religious Freedom Restoration Act (hereinafter “the federal RFRA”). Because the Government had conceded that the application of the federal Controlled Substances Act “would (1) substantially burden (2) a sincere (3) religious exercise,” the Supreme Court had no occasion to address that aspect of the federal RFRA. *See id.*, 546 U.S. ---, 163 L.Ed.2d at 1030, 2006 U.S. LEXIS at 21. Instead, it focused almost exclusively upon the task of assessing the statutory burden placed upon the Government to “demonstrate” whether “applying the Controlled Substances Act in [that] case was the least restrictive means of advancing [any] compelling governmental interest.” *See id.*, 546 U.S. ---, 163 L.Ed.2d at 1028, 2006 U.S. LEXIS at 16-17.

In like manner in this case, the Idaho Department of Transportation (“the State of Idaho”) has not contested whether Mr. Lawrence D. Lewis’s (“Mr. Lewis”) sincere religious beliefs and practices have been substantially burdened by the Idaho Code Section 49-306(2) requirement that Mr. Lewis identify himself with a Social Security Number

(“SSN”) in order to obtain a driver’s license. *See* Respondent’s Brief (“Resp. Br.”), pp. 2-4. Accordingly, the State of Idaho has limited its defense under Chapter 4, Title 73, Idaho Code (“the Idaho RFRA”<sup>1</sup>) to the claim that “Idaho Code Section 49-306(2) furthers a compelling government interest” and “is the least restrictive means of accomplishing a compelling state interest.” *See* Resp. Br., pp. 12-18. Thus, the RFRA issue in this case, like the one in *Gonzales v. UDV*, is whether the State of Idaho has carried its statutory burden to “demonstrate” that the Idaho Code Section 49-306(2)(a) requirement that an applicant for a driver’s license identify himself by a (“SSN”) is “essential” to a “compelling governmental interest,” and the least restrictive means to achieve that interest. *See* Appellant’s Reply Brief (“App. Reply Br.”), pp. 5-19.

As shown in Part I below, the substantive rules contained in, and the findings and purposes of, the federal and Idaho RFRA’s are substantially the same. As shown in Part II below, the *Gonzales v. UDV* opinion convincingly and authoritatively demonstrates that the State of Idaho has failed in this case to meet its burden under Idaho Code Section 73-402 to demonstrate that the substantial burden placed upon Mr. Lewis’s free exercise of religion is justified by a “compelling governmental interest.”

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<sup>1</sup> Although this chapter of Title 73 of the Idaho Code is not expressly identified as the Religious Freedom Restoration Act, Paragraph 3 of the Statement of Purpose (RS 09829C1) attached to Senate Bill No. 1394, Legislature of the State of Idaho, Fifty-fifth Legislature, Second Regular Session (2000) on file with the Legislative Services Office, Idaho State Legislature refers to the enacted bill as Idaho’s “own RFRA.”

**I. THE FEDERAL AND IDAHO RELIGIOUS FREEDOM RESTORATION ACTS CONTAIN SUBSTANTIALLY SIMILAR RULES SUPPORTED BY SUBSTANTIALLY IDENTICAL LEGISLATIVE FINDINGS AND PURPOSES.**

**A. Although Strikingly Similar, the Idaho RFRA Imposes An Even Higher Standard of Protection of the Free Exercise of Religion Than Does the Federal RFRA.**

The federal and Idaho RFRA's contain strikingly similar rules protecting religious freedom. The federal RFRA reads:

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except ... only if it **demonstrates** that application of the burden **to the person** — (1) is in furtherance of a **compelling governmental interest**; and (2) is the least restrictive means of furthering that compelling governmental interest. [42 U.S.C. Section 2000bb-1(a) and (b). (emphasis added).]

The parallel provision in the Idaho RFRA provides even greater protection for the free exercise of religion:

[G]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability [except] only if it **demonstrates** that application of the burden **to the person** is both: (a) **Essential** to further a **compelling governmental interest**; (b) The least restrictive means of furthering that compelling governmental interest. [Idaho Code Section 73-402(2) and (3) (emphasis added).]

Additionally, the federal and Idaho RFRA's contain strikingly similar definitions of the burdens placed upon their respective governments to "demonstrate" that a government's interest is sufficient to override a substantial burden upon a persons' free exercise of religion. The federal RFRA states that "'demonstrates' means meets the

**burdens** of going forward with the **evidence** and of **persuasion.**” 42 U.S.C. Section 2000bb-2(3) (emphasis added). In keeping with its higher standard of religious liberty protection, the Idaho RFRA states an even higher standard, providing that “[d]emonstrates means meets the **burdens** of going forward with **evidence**, and **persuasion** under the standard of **clear and convincing evidence.**” Idaho Code, Section 73-401(1) (emphasis added).

**B. The Legislative Findings and Purposes of the Two RFRA’s Are Substantially Identical.**

“Recognizing free exercise of religion as an unalienable right,” the United States Congress based its RFRA upon the findings, *inter alia*, that “[g]overnments should not substantially burden religious exercise without compelling justification” and “the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.” *See* 42 U.S.C. Section 2000bb(a)(1), (3) and (5). In like manner, “recogniz[ing] the free exercise of religion,” the Idaho State Legislature enacted its “own RFRA,” basing it upon the findings, *inter alia*, that “[g]overnments should not substantially burden religious exercise without compelling justification” and “[t]he compelling interest test, as set forth in the federal cases of *Wisconsin v. Yoder*, (1972) and *Sherbert v. Verner*, 374 U.S. 398, (1963) is a workable test for striking sensible balances between religious liberty and competing government interests.” *See* Senate Bill

No. 1394, Statement of Purpose, Paragraph 3, and Section 1, Paragraphs (1), (3) and (5), Legislature of the State of Idaho, Fifty-fifth Legislature, Second Regular Session (2000) (italics added).

In the federal RFRA, Congress stated its purpose to be “(1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened....” *See* 42 U.S.C. Section 2000bb(b)(1) (italics added). Likewise, the 2000 Idaho State Legislature stated the purpose of the Idaho RFRA “to reestablish [the United States Supreme Court’s pre-1990 ‘compelling interest test’] which the courts must use to determine whether a person’s religious belief should be accommodated when a government action or regulation restricts his or her religious practice.” *See* Statement of Purpose, Paragraphs 1 and 2, and Section 1(6), Senate Bill No. 1394, Legislature of the State of Idaho, Fifty-fifth Legislature, Second Regular Session (2000), on file with the Legislative Services Office, Idaho State Legislature.

**II. THE UNITED STATES SUPREME COURT’S INTERPRETATION AND APPLICATION OF THE FEDERAL RFRA IN *GONZALES V. UDV* AUTHORITATIVELY AND CONVINCINGLY SHOWS THAT THE STATE OF IDAHO HAS FAILED TO MEET ITS IDAHO RFRA BURDEN IN THIS CASE.**

**A. The State of Idaho Has Failed to Demonstrate by Clear and Convincing Evidence A Compelling Governmental Interest to Place a Substantial Burden Upon Mr. Lewis’s Religious Practice Essential to Child Welfare or Highway Safety.**

As is true of the federal RFRA — as found by the Supreme Court in *Gonzales v. UDV* — the Idaho RFRA has placed the burden of demonstrating a compelling government interest upon the State of Idaho. *Compare* 42 U.S.C. Sections 2000bb-2(3) and 2000bb-1(b) and *Gonzales v. UDV*, 546 U.S. ---, 163 L.Ed.2d at 1030-31, 2006 U.S. LEXIS at 21-24 *with* Idaho Code Sections 73-401(1) and 73-402(3). Indeed, the Idaho RFRA expressly places a burden of “clear and convincing evidence” of such a compelling governmental interest, whereas the federal RFRA appears to only require that the existence of such a compelling governmental interest be “more likely than not.” *Compare* Idaho Code Section 73-401(1) *with* 42 U.S.C. Section 2000bb-2(3) and *Gonzales v. UDV*, 546 U.S. ---, 163 L.Ed.2d at 1030, 2006 U.S. LEXIS at 21-22.

As the Supreme Court ruled in *Gonzales v. UDV*, however, even the lower burden fixed by the federal RFRA requires that the federal Government “demonstrate that the compelling interest test is satisfied through application of the challenged law ‘**to the person**’ — the particular claimant whose sincere exercise of religion is being substantially burdened.” *Id.*, 546 U.S. ---, 163 L.Ed.2d at 1031, 2006 U.S. LEXIS at 25 (emphasis added). Thus, the Supreme Court **rejected** the federal Government’s “categorical”

contention that, because of the dangerousness of the drug at issue, and because the drug was classified under Schedule I of the Controlled Substances Act — which allowed no exceptions — the Government had satisfied the federal RFRA compelling governmental interest standard without regard to the “particulars of the UDV’s use or [without regard] to the impact of an exemption for that specific use.” *Id.*, 546 U.S. ---, 163 L.Ed.2d at 1031, 2006 U.S. LEXIS at 25. According to *Gonzales v. UVD*, the federal “RFRA, and the strict scrutiny test it adopted, contemplated an inquiry more focused than the Government’s categorical approach” (*id.*), the statute having adopted the Supreme Court’s more particularized approach in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972):

In each of those cases, this Court looked beyond the broadly formulated interests justifying the general applicability of government mandates and scrutinized the asserted harm of granting specific exemptions to particular religious claimants. [*Gonzales v. UDV*, 546 U.S. ---, 163 L.Ed.2d at 1031, 2006 U.S. LEXIS at 25-26.]

Thus, the Supreme Court ruled that the federal RFRA required the federal Government to demonstrate with particularity how its generalized interests would be specifically impeded by the granting of an exemption to the **individual religious claimant** before the court. *Id.*, 546 U.S. ---163 L.Ed.2d at 1031-32, 2006 U.S. LEXIS at 25-27.

As is true of the federal RFRA, the Idaho RFRA has expressly adopted “the compelling interest test, as set forth in **the federal cases of *Wisconsin v. Yoder* ... and**

*Sherbert v. Verner* [as the] workable test for striking sensible balances between religious liberty and competing government interests.” Senate Bill No. 1394, Section 1(6), Legislature of the State of Idaho, Fifty-fifth Legislature, Second Regular Session - 2000 (Legislative Services Office, Idaho State Legislature) (emphasis and italics added). Thus, the Idaho RFRA has tied its “compelling governmental interest” standard to the authoritative interpretation and application of that standard by the Supreme Court.

As in *Gonzales v. UDV*, the State of Idaho has attempted to justify the substantial burden placed upon Mr. Lewis’s free exercise of religion by a similar “categorical approach,”<sup>2</sup> asserting that its interests in “support of its children” and “the health, safety and welfare of the traveling public” are “compelling governmental interests.” See Resp. Br., pp. 14-16. But the language of the Idaho RFRA, like the text of the federal RFRA, requires more than such a generalized claim. Compare Idaho Code Section 73-402(3)(a) (“Government may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden **to the person** is [e]ssential to further a compelling governmental interest (emphasis added).”) with 42 U.S.C. Section 2000bb-2(3) (“Government may substantially burden a person’s free exercise of religion only if it demonstrates that application of the burden **to the person** ... is in furtherance of a compelling governmental interest (emphasis added).”)

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<sup>2</sup> See *Gonzales v. UDV*, 163 L.Ed.2d at 1031.

Hence, consistent with the Supreme Court’s reading of 42 U.S.C. Section 2000bb-2(3) in *Gonzales v. UDV*, 546 U.S. ---, 163 L.Ed.2d at 1031, 2006 U.S. LEXIS at 25-27, this Court ought to read the identical text in the Idaho RFRA to require the State of Idaho to “demonstrate” that it has a “compelling governmental interest” to substantially burden Mr. Lewis’s free exercise of religion claim not to be identified by a SSN in making application for, or otherwise with regard to obtaining, a driver’s license. Moreover, this Court should require the State of Idaho to show by “**clear and convincing evidence**” that it is “**essential**” that Mr. Lewis conform to the Idaho Code Section 49-306(2)’s requirement that he “state” an SSN on his application for a driver’s license, or otherwise identify himself by an SSN, in order for the State of Idaho to protect its allegedly “compelling” interests in child support and public safety upon the state’s roads and highways. *See* Idaho Code Sections 73-401(1) and 73-402(3)(a). As pointed out in Mr. Lewis’s Reply Brief, the State of Idaho has utterly failed to meet its statutory burden in this case. *See* App. Reply Br., pp. 12-16.

**B. On This Record The State’s Interest in Complying with the Federal Mandate Contained in 42 U.S.C. Section 666(a) (13) Does Not Meet the Idaho RFRA’s Compelling Governmental Interest Requirement.**

In *Gonzales v. UDV*, the Government attempted to meet the compelling governmental interest requirement of the federal RFRA by “assert[ing] an interest in compliance with the 1971 United Nations Convention on Psychotropic Substances,”

contending that it “has a compelling interest in meeting its international obligations by complying with the Convention.” *Id.*, 546 U.S. ---, 163 L.Ed.2d at 1036, 2006 U.S. LEXIS at 37. The Supreme Court rejected this claim on the ground that “the Government did not even *submit* any evidence addressing the international consequences of granting any exemption for the UDV,” noting that “under RFRA invocation of ... general interests, standing alone, is not enough.” *Id.*, 546 U.S. ---, 163 L.Ed.2d at 1036, 2006 U.S. LEXIS at 39 (Italics original).

In like manner, in this case the State of Idaho has attempted to meet the compelling governmental interest requirement of the Idaho RFRA, claiming that it has a “compelling state interest in complying with [the] federal law[.]” that requires a state to “record” on a driver’s license application the SSN of a license applicant. *See* Resp. Br., pp. 13-14. *See also* 42 U.S.C. Section 666(a)(13). Just as was the case with the federal government in *Gonzales v. UDV*, the State of Idaho did not “**submit** any evidence addressing the ... consequences of granting an exemption for [Mr. Lewis],” having assumed that “invocation of [the state’s] general interests, standing alone is enough.” *Compare Gonzales v. UDV*, 546 U.S. ---, 163 L.Ed.2d at 1036, 2006 U.S. LEXIS at 39 *with* Resp. Br., pp. 13-14, 15, and 17.

But such a generalized interest cannot satisfy the Idaho RFRA requirement that the State have a compelling interest in “substantially burden[ing]” Mr. Lewis religious

conscience and practice, as provided for in Idaho Code Section 73-402(3)(a).

Additionally, as Mr. Lewis pointed out in his Reply Brief the federal mandate requiring the recording of an SSN on a driver's license application is not absolute, but is subject to a procedure whereby the State of Idaho may obtain an exemption. *See* App. Reply Br., pp. 5-6. As the Supreme Court pointed out in *Gonzales v. UDV*, the presence of authority to "waive" what would otherwise be mandated by federal statute reinforces the conclusion that the Government has not met its statutory "obligation to shoulder its burden under [the federal] RFRA" that it has a compelling governmental interest to place a substantial burden upon a person's religious practice. *See Id.*, 546 U.S. ---, 163 L.Ed.2d at 1032-33, 2006 U.S. LEXIS at 28-29.

### **III. CONCLUSION**

For the additional reasons stated herein, and for the reasons stated in his opening and reply briefs, Mr. Lewis respectfully requests this Court to reverse the District Court's Decision on Judicial Review and remand this case to the District Court with the specific instructions set forth in Mr. Lewis's Reply Brief.

Respectfully submitted,

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