

**June 21, 2010**

SUPREME COURT UPHOLDS LAW BARRING SUPPORT FOR TERRORISTS

(Holder v. Humanitarian Law Project)

The U.S. Supreme Court today upheld a portion of the USA Patriot Act that makes it a crime to provide “material support” to any group that has been designated by the Attorney General as a “foreign terrorist organization.”

The Court’s decision in *Holder v. Humanitarian Law Project* was a victory for the Washington Legal Foundation (WLF), which filed a brief urging the Court to reverse an appeals court decision that had struck down key portions of the law. The Court agreed with WLF that the statute is not impermissibly vague and does not violate the First Amendment rights of individuals who wish to support humanitarian work conducted by terrorist groups. The Court held that the First Amendment does not prevent Congress from barring actions taken to aid terrorist groups simply because the actions may have an expressive component, when it does so based on a reasonable conclusion that the actions are likely to promote the groups’ terrorist goals.

WLF filed its brief on behalf of four retired generals and admirals: Major General John D. Altenburg, Jr., U.S. Army (Ret.); Rear Admiral James J. Carey, U.S. Navy (Ret.), Rear Admiral Steven B. Kantrowitz, U.S. Navy (Ret.); and Brigadier General Thomas L. Hemingway, U.S. Air Force (Ret.). WLF also filed on behalf of three organizations: the Jewish Institute for National Security Affairs, the National Defense Committee (which works on behalf of veterans) and the Allied Educational Foundation.

“Congress has determined that international terrorism ‘threatens the vital interests of the United States’ and that direct material support to international terrorist groups facilitates their terrorism,” said WLF Chief Counsel Richard Samp after the Supreme Court’s decision. “Courts have no business second-guessing determinations of the elected branches of government on such vital national security issues,” Samp said.

The law in question, 18 U.S.C. § 2339B, makes it a felony knowingly to provide “material support or resources” to groups designated as “foreign terrorist

organizations.” The law was adopted in 1996 and was strengthened by the USA Patriot Act in 2001 and by other legislation in 2004. Two groups that have been designated by the Attorney General as terrorist organizations are the PKK (a terrorist group fighting for Kurdish independence from Turkey) and the LTTE (a terrorist group fighting for Tamil independence from Sri Lanka). The plaintiffs were groups and individuals who wished to provide support for the PKK and the LTTE. Represented by the Center for Constitutional Rights, they filed suit against the law in federal district court in Los Angeles.

The district court struck down portions of the law as impermissibly vague, finding that some of the terms used to describe what constitutes “material support or resources” did not provide individuals with clear guidance regarding the scope of the law. The Ninth Circuit affirmed. But the appeals court rejected the plaintiffs’ First Amendment challenge, finding that the law did not interfere with the plaintiffs’ right to express their support for activities not involving terrorism. The Supreme Court’s decision unanimously rejected the void-for-vagueness challenge and upheld, by a 6-3 vote, the Ninth Circuit’s rejection of the plaintiffs’ First Amendment claims.

In their brief urging that the law be upheld in its entirety, WLF and its clients argued that the appeals court decision opened the door to activities that Congress has determined pose a threat to vital American interests. Noting that al-Qaeda is among the groups designated by the federal government as a “foreign terrorist organization,” WLF argued that there is no such thing as “good” aid to such groups (*e.g.*, aid ostensibly earmarked for terrorist group’s humanitarian activities). WLF argued that when aid is provided for a terrorist group’s humanitarian activities, that frees up resources that the group can then re-allocate to its terrorist activities.

The Supreme Court agreed with WLF that aid to terrorist groups is “fungible.” It held that § 2339B leaves Americans with ample alternative opportunities to express their views on relevant issues. The Court noted that speech left unregulated by § 2339B includes expressions of support for a terrorist organization; independent advocacy in support of the organization; and dialogue with the organization so long as the dialogue does not take the form of “material support,” as that term is defined in § 2339B. The Court held that the statute’s content-based restrictions on speech were subject to searching First Amendment review but that the statute’s speech restrictions (*e.g.*, restrictions on training on how to advance the terrorist group’s “humanitarian” goals) were justified in light of Congress’s reasonable determination that any such speech could further the group’s terrorist goals.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a considerable portion of its resources to promoting America's national security. WLF also filed a brief in the case when it was before the appeals court.

* * *

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302.

A copy of WLF's brief is posted on its web site, www.wlf.org.