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## **COURT URGED TO UPHOLD LAW BARRING SUPPORT FOR TERRORIST ORGANIZATIONS**

*(Holder v. Humanitarian Law Project)*

The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to overturn an appeals court decision that struck down a portion of a federal anti-terrorism statute that makes it a crime to provide “material support” to any group that has been designated by the State Department as a “foreign terrorist organization.”

In a brief filed in *Holder v. Humanitarian Law Project*, WLF argued 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. WLF argued 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.

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 filing WLF’s brief. “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 are groups and individuals who wish 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”

do 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. Both sides petitioned for review, and in September the U.S. Supreme Court agreed to hear both petitions.

In its brief, WLF argued that § 2339B is not impermissibly vague (in violation of the Fifth Amendment's Due Process Clause) because it provides people of ordinary intelligence with a reasonable opportunity to understand what conduct it prohibits. WLF argued that Congress's intent was clear: to bar virtually all significant direct support of designated terrorist groups. WLF asserted that the plaintiffs' real objection is that they disagree with Congress's decision, not that Congress has failed to specify what actions are prohibited. WLF also argued that the statute does not violate the First Amendment because it is content-neutral: Congress's only purpose in adopting the statute was to stop material aid from reaching terrorist groups, and it did not care what message Americans may wish to convey to those groups.

WLF and its clients also 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.

WLF noted that § 2339B leaves Americans with ample alternative opportunities to express their views on relevant issues. WLF 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 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.

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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](http://www.wlf.org).