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Justices uphold law criminalizing 'material support' for terrorist groups

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The U.S. Supreme Court on Monday upheld the federal law criminalizing "material support" for designated terrorist groups, rejecting complaints that the law is so vague that it would stifle political speech by groups with peaceful intent.

The 6-3 decision was a major victory for government prosecutors, who frequently use the statute as a weapon to neutralize individuals with suspected ties to terrorist groups. In most war-on-terror cases the Supreme Court has ruled on since the Sept. 11, 2001, attacks, the government has not fared nearly as well.

The decision may also be a boost for Solicitor General Elena Kagan, who defended the statute at oral argument Feb. 23. Her Senate confirmation hearing for a seat on the Supreme Court begins on June 28.

The law, which has roots in the 1996 Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), was challenged by human rights groups that fear prosecution for peaceful training and education efforts they conduct to defuse disputes that can lead to terrorism.

The plaintiffs in the case were the Humanitarian Law Project, its president Ralph Fertig, and others seeking to aid the Kurdistan Workers Party, which advocates establishing a Kurdish state in Turkey, and the Tamil Tigers, which seeks creation of an independent Tamil state in Sri Lanka. Both were designated as terrorist groups under the law by Secretary of State Madeleine Albright in 1997.

"This is a very dark day in the history of human rights," said Fertig after reading the decision. He said his group will continue its peaceful advocacy work, "but we do so with great fear."

Georgetown University Law Center professor David Cole, who argued for the groups and individuals challenging the law, said the ruling was also a major departure from Supreme Court First Amendment doctrine, marking the first time that the Court has found a statute restricting speech to satisfy the demanding "strict scrutiny" standard.

"The Court has declared that the First Amendment permits the government to make peace advocacy a crime," Cole said. "There is no evidence in the case that teaching human rights furthers terrorism."

Chief Justice John Roberts Jr. author of the decision, gave strong deference to "the considered judgment" of Congress and the executive branch that even benign support for groups with terrorist aims helps their violent activities.

For example, Roberts said, planned training for the Kurdistan group on techniques of peaceful dispute resolution could aid its terrorist goals by "buying time to recover short-term setbacks, lulling opponents into complacency, and ultimately preparing for renewed attacks." He added, "A foreign terrorist organization introduced to the structures of the international legal system might use the information to threaten, manipulate, and disrupt."

The **Washington Legal Foundation**, which has long supported the law, applauded the Court's ruling. "There is no such thing as 'good' aid to a terrorist group, because all aid is fungible," said the foundation's chief counsel Richard Samp.

The majority opinion did criticize the government for arguing that only conduct, and not speech, was at issue in the case. And Roberts did say the law does not restrict "independent advocacy" that is not coordinated with the designated groups.

But Cole said that would still enable the government to prosecute groups filing a court brief in support of a

designated organization, and might even allow for prosecution of former President Jimmy Carter for his peacemaking efforts. In monitoring the elections in Lebanon and Palestine, Carter has met with groups such as Hamas and Hezbollah to encourage fair elections.

The litigation resolved by the high court has a long history. The initial challenge was brought soon after AEDPA was passed. After the law was found unconstitutionally vague in 1998, Congress amended it to clarify or expand its provisions, including in the 2001 USA Patriot Act, which added "expert advice or assistance" to the list of prohibited activities. The law was amended again in 2004, but each time it has been changed, judges have struck down parts of the law.

The latest ruling by the U.S. Court of Appeals for the 9th Circuit found the law was not overbroad, but provisions barring "training" and "expert advice or assistance" were unconstitutionally vague and could cover constitutionally protected advocacy.

After summarizing his decision from the bench on Monday, Roberts said Justice Stephen Breyer would read from his "thoughtful" dissent — a rare compliment for a dissent.

Breyer, who was joined by justices Ruth Bader Ginsburg and Sonia Sotomayor, said the government had not fulfilled its obligation to demonstrate how the restrictions on training and advocacy serve its "compelling interest" in combatting terrorism.

Breyer said he recognizes that the executive and legislative branches have primary authority on national security and foreign affairs. "Nonetheless, this Court has also made clear that authority and expertise in these matters do not automatically trump the Court's own obligation to secure the protection the Constitution grants to individuals."

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