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**COURT URGED TO UPHOLD LAW BARRING
SUPPORT FOR TERRORIST ORGANIZATIONS**
(Humanitarian Law Project v. Gonzales)

The Washington Legal Foundation (WLF) this week urged the U.S. Court of Appeals for the Ninth Circuit in San Francisco to uphold 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.”

In a brief filed in *Humanitarian Law Project v. Gonzales*, 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.

“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. But the 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 appealed from that decision.

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 argued 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 § 2339B does not violate the plaintiffs' First Amendment rights. WLF argued that material support provided to a terrorist organization – even material support intended to further the organization's humanitarian activities – can be prohibited because material support used to provide humanitarian activities frees up other resources and thereby permits the organization to divert those other resources to terrorism. WLF argued that it makes no difference whether the “material support” takes the form of money or takes the form of spoken or written words (such as providing training in international law so that the terrorist group can better press its case before international tribunals). In both cases, WLF argued, the donor has provided an additional resource to the organization that facilitates its core institutional mission: to conduct terrorism. Congress quite rationally determined that American national security interests would be served by cutting off all such material support, WLF argued.

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. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

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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.