



Written by [Alex Newman](#) on June 23, 2010

Supreme Court Tramples Free Speech

In its zeal to support “anti-terror” rules without regard to the Constitution, the U.S. Supreme Court ruled 6-to-3 this week to uphold criminal penalties for peaceful political speech, prompting strong criticism from civil-liberties groups and humanitarian organizations.

By leaving intact a legal prohibition on providing “material support” to organizations the government disapproves of — which under the court’s ruling includes advice on how to file human-rights complaints and negotiate peace settlements — critics say the First Amendment to the U.S. Constitution has been shredded.



“We are deeply disappointed. The Supreme Court has ruled that human rights advocates, providing training and assistance in the nonviolent resolution of disputes, can be prosecuted as terrorists,” [said](#) Center for Constitutional Rights attorney David Cole. “In the name of fighting terrorism, the Court has said that the First Amendment permits Congress to make human rights advocacy and peacemaking a crime. That is wrong.”

In a [press release](#), the group expressed concern that the government could even prosecute organizations or individuals writing opinion pieces for newspapers or filing court briefs in support of an unapproved group.

The case, *Holder v. Humanitarian Law Project*, began over a decade ago when Congress passed a bill criminalizing any “material support” for “designated” terror organizations selected by the Secretary of State. Lower courts had found the statute vague and unconstitutional. But the Supreme Court disagreed.

The hearing basically revolved around a coalition of aid groups challenging the congressional authority to ban peaceful political speech. The groups wanted to continue teaching organizations on the State Department’s list of designated “foreign terrorist” groups, like the Kurdistan Workers’ Party, how to pursue their political goals through non-violent means, file claims with international bodies, settle disputes without force, and other similarly peaceful objectives.

Other plaintiffs wanted to provide humanitarian assistance in a part of Sri Lanka that had been devastated by civil war and a tsunami. But the area was ruled by the Tamil Tigers, which is also considered a terrorist group by the State Department.

And so, the Supreme Court said no. “Such support frees up other resources within the organization that may be put to violent ends,” Chief Justice John Roberts [wrote](#) in the majority opinion. The Obama administration called the statute one of the most important tools in fighting terror.

More than 80 groups are on the government’s “terrorist” list, including political parties and movements of varying persuasions, some blatantly fitting the terrorist description, others not so clearly so. And so,



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for now, any and all support for said groups — even speech — could be considered criminal and punished by years in jail, according to critics of the ruling.

“The Court’s decision confirms the extraordinary scope of the material support statute’s criminalization of speech. But it also notes that the scope of the prohibitions may not be clear in every application, and that remains the case for the many difficult questions raised at argument but dodged by today’s opinion, including whether publishing an op-ed or submitting an amicus brief in court arguing that a group does not belong on the list is a criminal act,” [said](#) CCR Senior Attorney Shayana Kadidal, who served as counsel for the Humanitarian Law Project in the case.

“The onus is now on Congress and the Obama administration to ensure that humanitarian groups may engage in human rights advocacy, training in non-violent conflict resolution, and humanitarian assistance in crisis zones without fearing criminal prosecution,” he added.

Some have speculated that even former president Jimmy Carter could now be prosecuted for his work, and he agreed that it was possible. “We are disappointed that the Supreme Court has upheld a law that inhibits the work of human rights and conflict resolution groups,” Carter [said](#). “The ‘material support law’ – which is aimed at putting an end to terrorism – actually threatens our work and the work of many other peacemaking organizations that must interact directly with groups that have engaged in violence. The vague language of the law leaves us wondering if we will be prosecuted for our work to promote peace and freedom.”

The American Civil Liberties Union also criticized the decision in a [press release](#). “Today’s decision is disappointing and inconsistent with our First Amendment position,” said Melissa Goodman, staff attorney with the ACLU National Security Project. “The government should not be in the business of criminalizing speech meant to promote peace and human rights.”

The *New York Times* also blasted the decision in an editorial, saying “the ideals of an earlier time were eroded and free speech lost” in the first case to test the limits of the First Amendment against “national security” since the attacks of September 11. Other papers also criticized the ruling.

In his [dissent](#), which he read out loud in the court room, Justice Steven Breyer raised similar concerns. “Not even the ‘serious and deadly problem’ of international terrorism can require automatic forfeiture of First Amendment rights,” he wrote.

“What is one to say about these arguments — arguments that would deny First Amendment protection to the peaceful teaching of international human rights law on the ground that a little knowledge about ‘the international legal system’ is too dangerous a thing; that an opponent’s subsequent willingness to negotiate might be faked, so let’s not teach him how to try?” Breyer added. Justices Sonia Sotomayor and Ruth Bader Ginsburg also rejected the government’s argument.

As Thomas Eddlem pointed out in an [article](#) for *The New American*, the court’s decision, reported on the front page of the *Washington Post* alongside an article about U.S. taxpayers financing the Taliban in Afghanistan, is ironic and hypocritical.

“The real irony of the front page of the *Washington Post* for June 22 is that while the United States military continues to provide financing for the same terrorist enemy [Taliban] that is killing American soldiers on an almost daily basis, the Supreme Court has ruled that private citizens cannot provide guidance for terrorist organizations (even organizations which are not threatening Americans) to turn from their paths and find non-violent ways to address their sometimes legitimate gripes in the political realm,” Eddlem wrote.



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In another attack on the decision, writer Walt Thiessen at [Nolan Chart](#) commented on the Orwellian overtones of the ruling, which, he notes, “effectively creates a new class of people: Unpersons. These are people who have the temerity to disagree with U.S. government’s designations of certain persons and groups as terrorists,” he noted. “The ruling effectively makes it a crime to attempt to make peace with such people. It eliminates, from a legal perspective, the basic human rights of anyone who disagrees with the U.S. government. In effect, such dissenters become Unpersons.”

Ralph Fertig, the president of the Humanitarian Law Project, said the group would continue its work advocating peace, “but we do so with great fear.” After reading the court ruling, he concluded that “this is a very dark day in the history of human rights.”

The federal government has already made [clear](#) who it considers the biggest “domestic terror” threat: “right-wing extremists” who support gun rights, sovereignty, the Constitution, proper border enforcement and other “right-wing” causes. So while some may agree with the court right now, this ruling could set a dangerous precedent where groups accused by the government become “indefensible,” as people cower in fear of criminal sanctions even for offering support via speech.

When the Founding Fathers wrote the [First Amendment](#) — “Congress shall make no law ... abridging the freedom of speech” — what they undoubtedly meant was that Congress literally should make no laws abridging the freedom of speech. This ruling upholds a statute which is clearly in violation of the Supreme Law of the Land, so it is to be hoped that Congress will rectify the situation now that the Supreme Court has clearly failed to do so.

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