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Major U.S. Charities, Foundations and Constitutional Rights Groups Urge Appeals Court to Require Knowledge of Terror Ties for Criminal Conviction of Material Support

WASHINGTON, D.C. (October 27, 2010.)—Late yesterday, 20 diverse U.S. organizations filed a friend-of-the-court brief in the U.S. Court of Appeals for the Fifth Circuit arguing that individuals may not be convicted under a statute barring “material support” to “designated terrorist groups” if they have not knowingly supported any designated terrorist group. Under the lower court’s ruling, a charity that carefully checks all government lists of “designated terrorists” and avoids supporting any of them may still be convicted, if the government later shows that, unbeknownst to the donor, its grantee was connected to another designated group. The case, U.S. v el Mezain et al, involves the 2008 convictions of leaders of the now-defunct Holy Land Foundation on a variety of charges.

The brief limited its arguments to the charges involving support to non-designated groups, because if upheld, the lower court’s decision would render thousands of foundations and charities in the United States vulnerable to criminal prosecution. It was filed by a broad range of foundations, charities, peace groups and constitutional rights organizations, including the 1750-member Council on Foundations, The Carter Center (founded by former President Jimmy Carter), the Rockefeller Brothers Fund, Christian Peacemaker Teams, and Grassroots International. The Dallas-based Holy Land Foundation and its leaders were convicted of aiding five local charities in the West Bank and Gaza that are not on any government lists of terrorist organizations, but which the prosecution said were controlled by Hamas, which is listed.

The brief said the trial judge “relied upon an erroneous and dangerously expansive interpretation of the material-support statute. That interpretation, if upheld on appeal, would jeopardize the legitimate work of countless foundations and charities throughout the United States.” It goes on to argue that “the judge’s jury charge violates fundamental due process principles requiring fair notice of what conduct is prohibited” as well as the plain meaning of the statute.

The following may be attributed to signatory organizations:

Peter Weiss, Chair of the Board of the Samuel Rubin Foundation, said “While by far the greatest part of American charity is spent domestically, international giving is also an essential part of US philanthropy. If the decision being appealed is allowed to stand in its present form it will plunge foundations and other donors into a morass of uncertainty from which they may be able to extricate themselves only at the expense of drastically reducing their international giving.”

Richard M. Walden, President of Operation USA, a 31 year-old disaster relief organization, said, “Our concerns about the misuse and misinterpretation of the USA Patriot Act have been borne out in the Holy Land case. This prosecution puts well-intentioned NGOs at risk both in the field and here at home.”

Sharon Bradford Franklin, Constitution Project Senior Counsel said, “The Constitution Project is deeply concerned that under the trial court’s legal theory, even when charities do their homework and only donate to groups that are not included on the list of foreign terrorist organizations, they can be convicted of violating the material support statute.”

The brief was filed by Prof. David Cole of Georgetown University Law Center and J. Craig Jett of Burleson, Pate & Gibson in Dallas. It is available online at http://www.charityandsecurity.org/system/files/Charities_Amicus_Brief.pdf

Organizations signing the brief are:

American Friends Service Committee
The Atlantic Philanthropies
The Carter Center
Christian Peacemaker Teams
The Constitution Project
Council on Foundations
Fund for Constitutional Government
Global Greengrants Fund
Grantmakers Without Borders
Grassroots International
The Humanitarian Law Project
Islamic Relief USA
The Nathan Cummings Foundation
OperationUSA
Peace Appeal Foundation
Rockefeller Brothers Fund
The Rutherford Institute
Samuel Rubin Foundation
Tikva Grassroots Empowerment Fund
Urgent Action Fund for Women's Human Rights

- For background information on the Holy Land Foundation case see:
http://www.charityandsecurity.org/news/Conviction_Holy_Land_Raises_Questions_Concerns_Nonprofits
- http://www.charityandsecurity.org/news/Heavy_Sentences_Holy_Land_Trial_Chilling_Message_NGOs
- http://www.charityandsecurity.org/news/HLF_Appeal_Reveals_Gaps_Law