Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HOLDER, ATTORNEY GENERAL, ET AL. *v.* HUMANITARIAN LAW PROJECT ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 08–1498. Argued February 23, 2010—Decided June 21, 2010*

It is a federal crime to "knowingly provid[e] material support or resources to a foreign terrorist organization." 18 U. S. C. §2339B(a)(1). The authority to designate an entity a "foreign terrorist organization" rests with the Secretary of State, and is subject to judicial review. "[T]he term 'material support or resources' means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials." §2339A(b)(1). Over the years, §2339B and the definition of "material support or resources" have been amended, *inter alia,* to clarify that a violation requires knowledge of the foreign group's designation as a terrorist organization or its commission of terrorist acts, §2339B(a)(1); and to define the terms "training," §2339A(b)(2), "expert advice or assistance," §2339A(b)(3), and "personnel," §2339B(h).

Among the entities the Secretary of State has designated "foreign terrorist organization[s]" are the Partiya Karkeran Kurdistan (PKK) and the Liberation Tigers of Tamil Eelam (LTTE), which aim to establish independent states for, respectively, Kurds in Turkey and Tamils in Sri Lanka. Although both groups engage in political and humanitarian activities, each has also committed numerous terrorist attacks, some of which have harmed American citizens. Claiming

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*Together with No. 09–89, *Humanitarian Law Project et al.* v. *Holder, Attorney General, et al.,* also on certiorari to the same court.

they wish to support those groups' lawful, nonviolent activities, two U. S. citizens and six domestic organizations (hereinafter plaintiffs) initiated this constitutional challenge to the material-support statute. The litigation has had a complicated 12-year history. Ultimately, the District Court partially enjoined the enforcement of the material-support statute against plaintiffs. After the Ninth Circuit affirmed, plaintiffs and the Government cross-petitioned for certiorari. The Court granted both petitions.

As the litigation now stands, plaintiffs challenge §2339B's prohibition on providing four types of material support—"training," "expert advice or assistance," "service," and "personnel"—asserting violations of the Fifth Amendment's Due Process Clause on the ground that the statutory terms are impermissibly vague, and violations of their First Amendment rights to freedom of speech and association. They claim that §2339B is invalid to the extent it prohibits them from engaging in certain specified activities, including training PKK members to use international law to resolve disputes peacefully; teaching PKK members to petition the United Nations and other representative bodies for relief; and engaging in political advocacy on behalf of Kurds living in Turkey and Tamils living in Sri Lanka.

Held: The material-support statute, §2339B, is constitutional as applied to the particular forms of support that plaintiffs seek to provide to foreign terrorist organizations. Pp. 8–36.

(a) This preenforcement challenge to §2339B is a justiciable Article III case or controversy. Plaintiffs face "a credible threat of prosecution" and "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." *Babbitt* v. *Farm Workers*, 442 U. S. 289, 298. P. 10.

(b) The Court cannot avoid the constitutional issues in this litigation by accepting plaintiffs' argument that the material-support statute, when applied to speech, should be interpreted to require proof that a defendant intended to further a foreign terrorist organization's illegal activities. That reading is inconsistent with §2339B's text, which prohibits "knowingly" providing material support and demonstrates that Congress chose knowledge about the organization's connection to terrorism, not specific intent to further its terrorist activities, as the necessary mental state for a violation. Plaintiffs' reading is also untenable in light of the sections immediately surrounding §2339B, which—unlike §2339B—do refer to intent to further terrorist activity. See §§2339A(a), 2339C(a)(1). Finally, there is no textual basis for plaintiffs' argument that the same language in §2339B should be read to require specific intent with regard to speech, but not with regard to other forms of material support. Pp. 10–12.

(c) As applied to plaintiffs, the material-support statute is not un-

constitutionally vague. The Ninth Circuit improperly merged plaintiffs' vagueness challenge with their First Amendment claims, holding that "training," "service," and a portion of "expert advice or assistance" were impermissibly vague because they applied to protected speech—regardless of whether those applications were clear. The Court of Appeals also contravened the rule that "[a] plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others." *Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.*, 455 U. S. 489, 495.

The material-support statute, in its application to plaintiffs, "provide[s] a person of ordinary intelligence fair notice of what is prohibited." *United States* v. *Williams*, 553 U. S. 285, 304. The statutory terms at issue here—"training," "expert advice or assistance," "service," and "personnel"—are quite different from the sorts of terms, like "'annoying'" and "'indecent,'" that the Court has struck down for requiring "wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings." *Id.,* at 306. Congress has increased the clarity of §2339B's terms by adding narrowing definitions, and §2339B's knowledge requirement further reduces any potential for vagueness, see *Hill* v. *Colorado*, 530 U. S. 703, 732.

Although the statute may not be clear in every application, the dispositive point is that its terms are clear in their application to plaintiffs' proposed conduct. Most of the activities in which plaintiffs seek to engage readily fall within the scope of "training" and "expert advice or assistance." In fact, plaintiffs themselves have repeatedly used those terms to describe their own proposed activities. Plaintiffs' resort to hypothetical situations testing the limits of "training" and "expert advice or assistance" is beside the point because this litigation does not concern such situations. See *Scales* v. *United States*, 367 U. S. 203, 223. *Gentile* v. *State Bar of Nev.*, 501 U. S. 1030, 1049–1051, distinguished. Plaintiffs' further contention, that the statute is vague in its application to the political advocacy they wish to undertake, runs afoul of §2339B(h), which makes clear that "personnel" does not cover advocacy by those acting entirely independently of a foreign terrorist organization, and the ordinary meaning of "service," which refers to concerted activity, not independent advocacy. Context confirms that meaning: Independently advocating for a cause is different from the prohibited act of providing a service "to a foreign terrorist organization." §2339B(a)(1).

Thus, any independent advocacy in which plaintiffs wish to engage is not prohibited by §2339B. On the other hand, a person of ordinary intelligence would understand the term "service" to cover advocacy performed in coordination with, or at the direction of, a foreign terrorist organization. Plaintiffs argue that this construction of the

statute poses difficult questions of exactly how much direction or coordination is necessary for an activity to constitute a "service." Because plaintiffs have not provided any specific articulation of the degree to which *they* seek to coordinate their advocacy with the PKK and the LTTE, however, they cannot prevail in their preenforcement challenge. See *Washington State Grange* v. *Washington State Republican Party*, 552 U. S. 442, 454. Pp. 13–20.

(d) As applied to plaintiffs, the material-support statute does not violate the freedom of speech guaranteed by the First Amendment. Pp. 20–34.

(1) Both plaintiffs and the Government take extreme positions on this question. Plaintiffs claim that Congress has banned their pure political speech. That claim is unfounded because, under the material-support statute, they may say anything they wish on any topic. Section 2339B does not prohibit independent advocacy or membership in the PKK and LTTE. Rather, Congress has prohibited "material support," which most often does not take the form of speech. And when it does, the statute is carefully drawn to cover only a narrow category of speech to, under the direction of, or in coordination with foreign groups that the speaker knows to be terrorist organizations. On the other hand, the Government errs in arguing that the only thing actually at issue here is conduct, not speech, and that the correct standard of review is intermediate scrutiny, as set out in *United States* v. *O'Brien*, 391 U. S. 367, 377. That standard is not used to review a content-based regulation of speech, and §2339B regulates plaintiffs' speech to the PKK and the LTTE on the basis of its content. Even if the material-support statute generally functions as a regulation of conduct, as applied to plaintiffs the conduct triggering coverage under the statute consists of communicating a message. Thus, the Court "must [apply] a more demanding standard" than the one described in *O'Brien*. *Texas* v. *Johnson*, 491 U. S. 397, 403. Pp. 20–23.

(2) The parties agree that the Government's interest in combating terrorism is an urgent objective of the highest order, but plaintiffs argue that this objective does not justify prohibiting their speech, which they say will advance only the legitimate activities of the PKK and LTTE. Whether foreign terrorist organizations meaningfully segregate support of their legitimate activities from support of terrorism is an empirical question. Congress rejected plaintiffs' position on that question when it enacted §2339B, finding that "foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct." §301(a), 110 Stat. 1247, note following §2339B. The record confirms that Congress was justified in rejecting plaintiffs' view. The

PKK and the LTTE are deadly groups. It is not difficult to conclude, as Congress did, that the taint of their violent activities is so great that working in coordination with them or at their command legitimizes and furthers their terrorist means. Moreover, material support meant to promote peaceable, lawful conduct can be diverted to advance terrorism in multiple ways. The record shows that designated foreign terrorist organizations do not maintain organizational firewalls between social, political, and terrorist operations, or financial firewalls between funds raised for humanitarian activities and those used to carry out terrorist attacks. Providing material support in any form would also undermine cooperative international efforts to prevent terrorism and strain the United States' relationships with its allies, including those that are defending themselves against violent insurgencies waged by foreign terrorist groups. Pp. 23–28.

(3) The Court does not rely exclusively on its own factual inferences drawn from the record evidence, but considers the Executive Branch's stated view that the experience and analysis of Government agencies charged with combating terrorism strongly support Congress's finding that all contributions to foreign terrorist organizations—even those for seemingly benign purposes—further those groups' terrorist activities. That evaluation of the facts, like Congress's assessment, is entitled to deference, given the sensitive national security and foreign relations interests at stake. The Court does not defer to the Government's reading of the First Amendment. But respect for the Government's factual conclusions is appropriate in light of the courts' lack of expertise with respect to national security and foreign affairs, and the reality that efforts to confront terrorist threats occur in an area where information can be difficult to obtain, the impact of certain conduct can be difficult to assess, and conclusions must often be based on informed judgment rather than concrete evidence. The Court also finds it significant that Congress has been conscious of its own responsibility to consider how its actions may implicate constitutional concerns. Most importantly, Congress has avoided any restriction on independent advocacy, or indeed any activities not directed to, coordinated with, or controlled by foreign terrorist groups. Given the sensitive interests in national security and foreign affairs at stake, the political branches have adequately substantiated their determination that prohibiting material support in the form of training, expert advice, personnel, and services to foreign terrorist groups serves the Government's interest in preventing terrorism, even if those providing the support mean to promote only the groups' nonviolent ends.

As to the particular speech plaintiffs propose to undertake, it is wholly foreseeable that directly training the PKK on how to use in-

ternational law to resolve disputes would provide that group with information and techniques that it could use as part of a broader strategy to promote terrorism, and to threaten, manipulate, and disrupt. Teaching the PKK to petition international bodies for relief also could help the PKK obtain funding it would redirect to its violent activities. Plaintiffs' proposals to engage in political advocacy on behalf of Kurds and Tamils, in turn, are phrased so generally that they cannot prevail in this preenforcement challenge. The Court does not decide whether any future applications of the material-support statute to speech or advocacy will survive First Amendment scrutiny. It simply holds that §2339B does not violate the freedom of speech as applied to the particular types of support these plaintiffs seek to provide. Pp. 28–34.

(e) Nor does the material-support statute violate plaintiffs' First Amendment freedom of association. Plaintiffs argue that the statute criminalizes the mere fact of their associating with the PKK and the LTTE, and thereby runs afoul of this Court's precedents. The Ninth Circuit correctly rejected this claim because §2339B does not penalize mere association, but prohibits the act of giving foreign terrorist groups material support. Any burden on plaintiffs' freedom of association caused by preventing them from supporting designated foreign terrorist organizations, but not other groups, is justified for the same reasons the Court rejects their free speech challenge. Pp. 34–35.

552 F. 3d 916, affirmed in part, reversed in part, and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. BREYER, J., filed a dissenting opinion, in which GINSBURG and SOTOMAYOR, JJ., joined.