

Activist's high court case will test anti-terrorism law

Ralph Fertig believes the 1st Amendment protects his right to advocate for Kurds.

DAVID G. SAVAGE

Ralph Fertig hardly resembles a terrorist, but the soft-spoken 79-year-old pacifist and human rights activist from Los Angeles might well qualify as one under the government's strong anti-terrorism law.

He is the lead plaintiff in a Supreme Court case to be heard next week that will test whether speaking out on behalf of an oppressed foreign minority — represented by a group that's been deemed a terrorist organization by the U.S. — can result in a long prison term.

In 1996, Congress expanded the anti-terrorism law, imposing a prison term of up to 15 years for providing "training" or "expert advice or assistance" to a designated international terrorist group. The ban on supporting terrorists forbids sending not only money, weapons and fighters, but also charitable funds. Government lawyers say it even forbids filing a legal brief or writing an op-ed essay on behalf of a designated terrorist group.

For his part, Fertig says he wants no part of terrorism or violence, but rather the freedom to advocate for the rights of the Kurdish minority in Turkey. He is troubled that Kurds can be punished for speaking their own language or displaying their national colors. And he believes the 1st Amendment protects his right to counsel Kurdish leaders to steer

away from violence and to take their cause to the United Nations.

"I am opposed to violence. It seems crazy to me that I could go to jail for trying to persuade people to engage in nonviolence," said Fertig, a retired judge and a USC professor of social work.

The State Department has named the Kurdistan Workers Party, or the PKK, as a terrorist organization. The PKK, which seeks an independent state for the Kurds, has been accused of violent attacks on Turkish targets, including civilians.

Shortly after the PKK received the terrorist designation, the Center for Constitutional Rights in New York sued in federal court in Los Angeles on behalf of Fertig and the Humanitarian Law Project, a human rights group.

Over the years, Fertig and the Humanitarian Law Project have won a series of rulings that have shielded its members from prosecution. Last year, the U.S. 9th Circuit Court of Appeals declared parts of the anti-terrorism law vague and unconstitutional. However, the Obama administration appealed to the Supreme Court, arguing that these rulings undercut "a vital part of the nation's effort to fight international terrorism."

The Supreme Court case is called Holder vs. Humanitarian Law Project.

"In fact, all of the [Humanitarian Law Project's] proposed activities fall squarely within the ordinary meaning" of the law's ban on supporting a terrorist group, said U.S. Solicitor

General Elena Kagan. "Congress has banned a broad range of material support [to terrorists], regardless of whether the support is ostensibly given to assist supposedly lawful activities."

In her brief, Kagan offered one concession. Fertig may "act independently to advocate" for the Kurds, so long as he does not work with Kurdish leaders, she said.

Georgetown University law professor David Cole, who represents Fertig, thinks the court's recent free-speech ruling on campaign funding bolsters his case. Both involve "pure speech addressing political issues," he said.

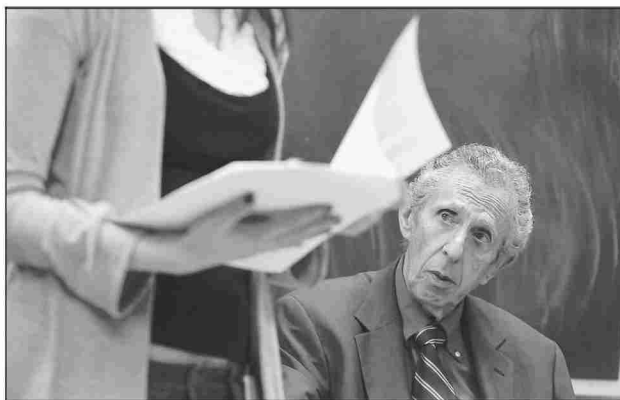
"The court has never upheld a law that criminalizes pure speech advocating only lawful, peaceable activity," he added.

Nonviolent protest is not new for Fertig. He went to the South as a "freedom rider" in 1961, joining other civil rights activists on behalf of African Americans seeking the right to travel freely on interstate buses. He was arrested, then badly beaten by white cellmates. "When I went to jail in Alabama for violating the Jim Crow laws, they charged me with disturbing the peace," he said.

Fertig, who will mark his 80th birthday a day after Tuesday's Supreme Court argument, was asked what he will do if he loses. "I would continue to speak for the rights of the Kurds," he said. "And if I'm arrested, it would not be the first time."

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GARY FRIEDMAN Los Angeles Times

PLAINTIFF: Ralph Fertig is a retired judge and a USC professor. "I am opposed to violence," he says.