

Statement of

# The Honorable Russ Feingold

United States Senator  
Wisconsin  
April 20, 2005

Statement of U.S. Senator Russ Feingold  
At the Senate Judiciary Subcommittee Hearing on  
Terrorism, Technology and Homeland Security,  
"A Review of the Material Support to Terrorism  
Prohibition Improvements Act"

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Thank you, Mr. Chairman. I am glad this hearing is focused on the very important material support issue. This is one of the provisions of the USA PATRIOT Act that has been struck down as unconstitutional, so I certainly agree it is worthy of our attention. However, I am disappointed that this hearing is focused on the expansion of the material support statute and related laws rather than also examining the problems with that statute.

As I noted last fall when the intelligence reform conference report passed the Senate, I am very concerned about the material support provision contained in that legislation. Of course, the legislation did take steps to cure the constitutional defects in the law. It responded to a federal court that ruled last year that the Section 805 of the Patriot Act, criminalizing the provision of "expert advice or assistance" to a terrorist organization, was vague and therefore violated the First Amendment.

The revised material support statute states that the law criminalizing material support to a foreign terrorist organization shall not be construed to abridge rights guaranteed by the First Amendment. It also allows an exception for providing personnel, training, or expert advice or assistance that is approved by the Secretary of State and the Attorney General. But I am not convinced that these provisions cure the constitutional flaws. Most significantly, the statute still does not have an adequate intent requirement. The statute does not require that the accused have intent to further terrorism or other unlawful acts, raising the possibility that someone could be prosecuted for providing purely humanitarian assistance, or even for encouraging a terrorist organization to use non-violent means.

Mr. Chairman, given the continuing constitutional problems with this law, we should not be eliminating the sunset or increasing the penalties for material support. We don't know yet how this new revised provision will work, or what problems might arise because of it. This hearing is a first step, and I appreciate that, but we still have much work to do.