IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
-vs-	)	12 CR 10985
	)	
BRIAN CHURCH	)	
JARED CHASE	)	
BREBT BETTERLY	)	

DEFENDANTS' JOINT MOTION TO DISMISS COUNTS ONE, TWO, THREE, AND SIX OF THE ABOVE ENTITLED INDICTMENT WHICH ARE BASED UPON THE UNCONSTITUTIONALLY VAGUE STATUTORY DEFINITION OF "TERRORISM" AND "TERRORIST ACT"

Now come the defendants, BRIAN CHURCH, JARED CHASE and BRENT BETTERLY, by their respective undersigned counsel, and pursuant to 725 ILCS 5/114-1(8), and the Due Process Clause of the Fifth Amendment to the U.S. Constitution and Article 1, Sec. 2 and 8 of the Illinois Constitution, respectfully move to dismiss Counts 1, 2, 3 and 6 of the above-entitled indictment, as each of these counts are based on the impermissibly vague Illinois statutory definitions of "terrorism" contained in 720 ILCS 5/29D-14.9(a), and of "terrorist act" defined in 720 ILCS 5/29D-10(L). The defendants assert that these counts, which incorporate the statutory definition of terrorism as "intent to intimidate or coerce a significant portion of a civilian population," are unconstitutionally vague on its face, as well as when applied to the specific facts of the case at bar. In addition, the defendants state that the enumerated acts defining a "terrorist act," fail to require that such acts violate state or federal law, and thus improperly encompass lawful conduct.

The defendants also claim that the State improperly exploited these unconstitutionally vague terms to bring these highly inflammatory "terrorism" charges in order to prejudice the defendants, discredit the anti-NATO demonstrators, and justify the enormous costs of the

security tactics of the Chicago police during the NATO summit. In support of this motion, the defendants state the following, and submit an accompanying memorandum of law.

1. On June 13, 2012, an eleven-count indictment against the defendants, Brian Church, Jared Chase and Brent Betterly was returned by a Cook County grand jury and filed with the Clerk of the Court.

2. Count One charged the defendants with providing "material support for terrorism," under 720 ILCS 5/29D-29.9(a), relying upon the statutory definition of "terrorism" contained in 720 ILCS 5/29D-14.9(A), and of a "terrorist act," defined in 720 ILCS 5/29D-10(L)(1).

3. Count Two charged the defendants with "conspiracy to commit terrorism" as defined by 720 ILCS 5/29D-14.9(A).

4. Counts Three and Six charged the defendants with possession of an incendiary device with the intent to "commit the offense of terrorism."

5. 720 ILCS 5/29D-14.9(A) defines terrorism as "intent to intimidate or coerce a significant portion of a civilian population."

6. The statutory definition of terrorism is unconstitutionally vague.

7. Specifically, the use of the terms intent to "intimidate or coerce" without requiring the element of force or violence, and without excluding First Amendment activities or civil disobedience, impermissibly allows for the criminalization of constitutionally protected conduct, and encompasses arguably minor law violations not reasonably related to achieve the purported purpose of the statute. *See, e.g., People v. Madrigal*, 241 Ill. 2d 463, 469 (2011).

8. In addition, the phrases "significant portion" and "civilian population" are not readily definable, lack ordinary and popularly understood meanings, and are also unconstitutionally vague.

9. Further, the definition of "terrorist act" or "act of terrorism," set forth in 720 ILCS 29D-10(L), which contains the enumeration of nine acts (1-9), compounds the statute's constitutional vagueness, as the acts listed are not specified to be illegal under State or Federal law, and therefore could encompass lawful conduct.

10. The Illinois statutory definition of "terrorism" fails to provide a "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices," *People v. Jihan*, 127 Ill. 2d. 379, 385 (1989), and fails to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly." *Graynard v. City of Rockford*, 408 U.S. 104, 108 (1972); *see also*, *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999).

11. The defendants assert that the statutory definition of "terrorism" is so vague and standard-less, and sweeps up so much innocent and protected conduct, as well as minor law violations, that the Illinois legislature "has impermissibly delegated the legislative power to 'define crimes and fix penalties'" to the police and prosecutors. *United States v. Jones*, 689 F.3d 696, 703 (7th Cir. 2012) (quoting *United States v. Evans,* 333 U.S. 483, 486 (1948)).

12. Most importantly, the vague nature of the terms "coerce," "intimidate" and a "significant portion of the civilian population" allows for the arbitrary and discriminatory enforcement of the law. This is compounded by the fact that the definitions of "terrorist act" or "act of terrorism" do not require that the act violate state or federal law and thus could encompass lawful conduct. "A vague law impermissibly delegates basic policy matters to policemen, [prosecutors], judges and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Graynard,* 408 U.S. at 108.

13. This lack of standards contained in the statutory definition of terrorism has allowed the State to arbitrarily demonize the defendants as "terrorists" based on their political views and the political motivations and predilections of the police and prosecutors.

14. Since the statutory definition of terrorism implicates and could possibly impact First Amendment protected acts like labor strikes, peaceful occupations and sit-ins, political protests and boycotts, the defendants can properly raise a challenge to the statute on its face. *See People v. Einoder*, 209 Ill. 2d 443, 448 (2004). "[W]here a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms." *Graynard*, 408 U.S. at 109.

15. Even if arguably, the statute does not implicate First Amendment conduct, the defendants are still entitled to make a facial challenge to the

statute, since the statute "simply has no core" and lacks "any ascertainable standard for inclusion and exclusion [and] is impermissibly vague regardless of the application of facts in the case. *Jones*, 689 F.3d at 703.

16. In addition, the statute applied to the facts of this case, as reflected in the discovery tendered to the defense, does not provide the defendants with sufficient, specific criteria necessary to put the defendants on notice that their conduct would constitute "terrorism" under the Illinois statute. Without an element of force or violence, a definiteness to the words "coerce" and "intimidate," and without specificity to the meaning of the terms "significant portion" of the "civilian population," the defendants were never properly apprised that their conduct would violate the Illinois terrorism statute. Moreover, since the *actus reus* element of the offense contained in the definition of "terrorist act" could encompass lawful conduct, the failure to provide constitutionally sufficient notice is further exacerbated.

17. The vagueness of the terms "intend to coerce or intimidate a significant portion of the civilian population," also impermissibly allows for the prosecution and trier of fact to apply their own predilections, including the political beliefs of those targeted, and thus fails to protect against the arbitrary enforcement of the statute.

18. As applied to the facts of this case, the meaning of intent to "coerce" or "intimidate" a "significant portion" of the "civilian population" is

critical to a determination of whether the defendants' alleged acts fall under the statutory definition of terrorism. With no standards or definitions of these terms the defendants are left to the mercy and whims of the individual prosecutors, and ultimately to the triers of facts own subjective sense of the meaning of these undefined and vague terms.

19. The dangers implicit in allowing a defendant to be arbitrarily labeled under a vague statute with the most serious and damning of charges – terrorism – for reasons other than proper law enforcement purposes are present in, and applicable to the case at bar.

20. Seeking to maximize the sensationalism of the announcement of charges the day before a massive non-violent anti-NATO protest in Chicago in order to discourage and frighten people from attending the protest, and to justify the massive expenditure of public and private dollars to host and provide security for the NATO conference, the prosecution filed a press release under the guise of a bail proffer, calling the defendants terrorists and anarchists, and alleging a series of violent acts, none of which ever occurred. Because of the vague parameters of the statute, the State was able to proclaim the defendants to be "terrorists" without any evidence that they "intended to intimidate or coerce a significant portion of the civilian population."

21. The terrorism charges in this case are not constitutionally permissible, and their inclusion in this indictment are highly prejudicial and

irreparably prejudices the defendants' right to a fair trial on the other charges in the indictment.

WHEREFORE, the defendants respectfully request that the Court, after being fully advised, dismiss the counts of the indictment that rely on the unconstitutionally vague definition of "terrorism" and "terrorist act."

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Respectfully submitted,

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