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THE BUCK STOPS HERE: ILLINOIS CRIMINALIZES SUPPORT FOR INTERNATIONAL TERRORISM

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If you are a poor man, I cannot know what you will do with the donation I give you. But I don't know if a poor man would buy bullets.[1]

INTRODUCTION

Antixania, a nation once known as a powerful and sovereign state, no longer exists.[2] Displaced by war with Xania, a neighboring country, Antixanians are scattered throughout the world. Still, some have chosen to remain on their native soil and follow what they believe is their God's will: survive and kill your way to freedom. These Antixanians are carrying on their mandate against Xanians at home and abroad. They bomb ships, planes, trains and buildings. They are international terrorists.

For other Antixanians, the United States has become their new home. Here, they have pieced together their families, their religion and their lives. Many of these Antixanian-Americans remain sympathetic to the struggle that continues in Antixania. They do what they can to help, even though U.S. citizens continue to be among the innocent victims killed by Antixanian terrorists. The Antixanian-American community in part funds many of these violent attacks.

Ms. *X* is one such supporter. Every weekend she goes to a religious fellowship, where she and her family worship the Antixanian God. At the end of each service, the fellowship leader, Mr. *Y*, describes the attacks planned by Antixanian terrorists. Mr. *Y*

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1. Stephen Franklin, *U.S. Probing Chicago Connection to Hamas*, CHI. TRIB., Nov. 16, 1994, § 1, at 20. The statement was made by Rafeeq Jaber, a spokesman for the Bridgeview Mosque, Illinois. *Id.* Mr. Jabar, a financial planner in the Chicago suburbs, is a contributor to the Holy Land Foundation, one of five Muslim-oriented charities in the United States. *Id.* Beginning in the early 1990s, this Islamic charity was accused of funding numerous terrorist attacks organized by Hamas. *Id.* Hamas is a Muslim extremist movement engaged in "Jihad," or the "Holy War" against Israel. *Id.*

2. While Antixania is a fictitious country, this hypothetical illustrates the origin of a terrorist organization.

then asks for contributions and Ms. *X* writes a check for fifty dollars.[3] She prays that some day her native land will once again be a free and sovereign nation under the Antixanian flag.

In July 1996, Illinois became the pioneer state in combating international terrorism.[4] The new addition to the Illinois Criminal Code makes it a Class One felony[5] to solicit or contribute "material support"[6] with the intent to fund an act of international terrorism.[7] Inevitably, as is the case with many new laws, the constitutionality of this recent addition to the Illinois Criminal Code may well be challenged. This Comment argues that the newly enacted Article 5/29C of the *Illinois Criminal Code* is constitutionally valid because it does not violate the First Amendment or the Fourth Amendment to the U.S. Constitution, or the Supremacy Clause. Part I describes the history of international and domestic terrorism and its effect on the American people. Part I also outlines the activities of international terrorists in Illinois. Part II reviews federal measures aimed at combating terrorism. Part III analyzes legislative efforts by the states in enacting antiterrorism laws. Part IV discusses First and Fourth Amendment freedoms and demonstrates why the new Illinois Law does not violate any of the constitutional guarantees and is a valid exercise of state police power. Part IV concludes with the examination of the Supremacy Clause and the potential preemption concerns.

I. TERRORISM AND THE AMERICAN EXPERIENCE

This Part discusses the history of international and domestic terrorism and its devastating consequences. This Part also outlines the effect of terrorism on the lives of the American people and concludes with the description of the activities of international

3. This exchange illustrates a situation that the newly enacted Illinois antiterrorism law prohibits. *See* 720 ILCS 5/29C-10 (1996) (prohibiting the solicitation of funds with intent to aid an international terrorist organization). *See also* 720 ILCS 5/29C-15 (1996) (prohibiting the contribution of funds with the intent to aid an international terrorist organization). See *infra* notes 99-120 and accompanying test for a further discussion of the Illinois law.

4. Telephone Interview with Jeffrey Weill, co-author of the Illinois antiterrorism law (Sept. 13, 1996). Two other states, Wisconsin and Maryland, unsuccessfully attempted to enact similar legislation but the acts failed constitutional scrutiny. See *infra* notes 121-32 and accompanying text for a discussion of legislative attempts in Wisconsin and Maryland.

5. A Class One felony is a criminal offense punishable by imprisonment for a period of no less than four years and not more than 15 years. 730 ILCS 5/5-8-1(a)(1)(4) (1994).

6. Material support is defined as "currency or other financial securities, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets." 720 ILCS 5/29C-5 (1996).

7. 720 ILCS 5/29C-5, 10, 15.

terrorists in Illinois which gave rise to the enactment of the state's antiterrorism law.

A. Recent Threats of Terrorism on American Soil

While terrorism has been a part of the human experience for close to a millennium, no uniform definition of terrorism exists.[8] The common consensus, however, is apparent: the objective of terrorism is to instill fear and intimidation.[9] More significantly, terrorists have succeeded in their endeavors.[10] Americans are fright-

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8. *See, e.g.*, Beverly Allen, *International Terrorism: Prevention and Remedies: Talking "Terrorism": Ideologies and Paradigms in a Postmodern World*, 22 SYRACUSE J. INT'L L. & COM. 7, 8 (1996) (asserting that the definition of terrorism changes according to the user's ideological beliefs); HENRY H. HAN, TERRORISM AND POLITICAL VIOLENCE: LIMITS AND POSSIBILITIES OF LEGAL CONTROL 163 (1993). Other authors referred to terrorism as a "form of ultimate protest," noting that terrorists use violence to instill fear for political purposes. E. NOBLES LOWE & HARRY D. SHARGEL, LEGAL AND OTHER ASPECTS OF TERRORISM 208 (1977). "Terrorism is a doctrine about the efficacy of unexpected, dramatic, and life-threatening violence for inducing political change, and a strategy of political action which embodies that doctrine." Ted Robert Gurr, *Empirical Research and State Terrorism*, *in* CURRENT PERSPECTIVES ON INTERNATIONAL TERRORISM 116 (Robert O. Slater & Michael Stohl eds., 1988).

A federal statute defines terrorism as "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational or clandestine agents, usually intended to influence an audience." Annual Country Reports on Terrorism, 22 U.S.C. § 2656f(d) (1994). The Illinois antiterrorism law defines terrorism as "[a] violent act or acts, perpetrated by a private person or non-governmental entity, dangerous to human life . . . and are (iii) intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of the government by assassination or kidnapping." 720 ILCS 5/29C-5 (1996).

9. *See* Alex Schmid, *Goals and Objectives of International Terrorism*, *in*, CURRENT PERSPECTIVES ON INTERNATIONAL TERRORISM 63 (Robert O. Slater & Michael Stohl eds., 1988). LOWE & SHARGEL, *supra* note 8, at 116. The former head of Mossad, the Israeli secret intelligence service, stated that the objective of terrorism is to permeate its victims with fear. Richard B. Strauss, *Nahum Admani; Going Public: Former Head of Mossad Talks of Terrorism—And How to Fight It*, L.A. TIMES, Sept. 1, 1996, at M3.

10. *Remarks by Secretary of Defense William Perry to the American Bar Association*, FED. NEWS SERV., Aug. 6, 1996, *available in* LEXIS, Nexis Library, Curnews File. "One of our darkest fears in this new era is the specter of terrorism. Terrorism hangs like a dark cloud over our hopes." President Bill Clinton described terrorism " the number One threat of the 21st century." Bruce Wallace, *The Fear Factor; Governments Grapple With A New, Anonymous Style Of Terror*, MACLEAN'S, Aug. 12, 1996, at 26. Statistics also show that fear is a prevalent emotional response by Americans to the threat of terrorism. Peter McGrath et al., *Psychic Scars*, NEWSWEEK, Aug. 5, 1996, at 36. Dr. Orrin Bright of Grady Memorial Hospital Trauma Center in Atlanta, Georgia, stated that depression was common following a bomb explosion at the Centennial Olympic Park in Atlanta in July of 1996. *Id.* Andrew Young, the former mayor of Atlanta described his emotional state after the bombing as "almost complete numbness and despair." *Id.*

ened, and for a good reason, as only natural disasters register a higher death toll than acts of terrorism.[11]

The past three years have proved to be especially traumatic for America. In 1993, religious fanatics bombed the World Trade Center in New York City and fatally wounded two CIA employees in Virginia.[12] Two years later, members of a militia group bombed the Alfred P. Murrah Federal Building in Oklahoma City, killing and wounding hundreds of children and adults.[13] In July 1996 alone, nineteen American soldiers were killed in a bomb attack at U.S. Army barracks in Saudi Arabia, all 230 passengers aboard the Paris-bound TWA Flight 800 perished in a strongly suspected bomb explosion off the coast of Long Island, New York, and a bomb explosion killed one woman and injured 111 people in Atlanta's Centennial Olympic Park.[14] Consequently, recognizing the need for aggressive measures in the war against terrorism, the United States government assumed its role as a leader in the world's efforts to combat terrorism.[15] Since 1995, the White House has sponsored four antiterrorism bills, demonstrating its determination to

11. Brian Jenkins, *Future Trends In International Terrorism*, *in* CURRENT PERSPECTIVES ON INTERNATIONAL TERRORISM 255 (Robert O. Slater & Michael Stohl eds., 1988).

12. Richard Robertson, *Front*, THE ARIZ. REPUBLIC, May 31, 1993, at A1. Yossef Bodansky, former Director of the U. S. House's Task Force on Terrorism and Unconventional Warfare asserted that both terrorist attacks were planned at the 1991 meeting of the militant branch of the Muslim Brotherhood and Islamic Jihad in Phoenix, Arizona. *Id.* According to Mr. Bodansky, neither this conference, nor the ones held in Chicago and Kansas City in 1989 and 1990 respectively, were kept under surveillance, as the measures in effect then did not allow such investigation without more than a reasonable suspicion. *Id.*

13. Judy Gibbs, *Explosion in Oklahoma Kills 19; Toll From Car Bomb Includes 17 Children; 200 Are Injured*, BUFF. NEWS, Apr. 19, 1995, at A1.

14. John Omicinski, *This Ugly Word Speaks Only Of Hate*, THE MONTGOMERY ADVERTISER, Aug. 11, 1996, at 3F. The same Pakistani terrorist, Ramza Ahmed Yousef, who was to stand trial in late 1996 for masterminding the World Trade Center bombing, was convicted of planning another dozen plane explosions over the Pacific in 1995. Joan Beck, *U.S. Should Take a Realistic Approach to Terrorism*, CHI. TRIB., Sept. 8, 1996, § 1, at 21. His conviction came only a few weeks after the fatal crash of the TWA Flight 800, and signaled that terrorism is on the rise. *Id.* It also signaled that the federal authorities were failing in their attempts to counter terrorism. *See id.*

15. *President Bill Clinton, Remarks On American Security in a Changing World at the George Washington University*, U.S. NEWSWIRE, Aug. 5, 1996, *available in* LEXIS, Nexis Library, Curnews File. President Clinton expressed his determination to intensify antiterrorism efforts in the United States. *Id.* The President outlined a plan of action which included the newly proposed legislation and additional funding to the agencies involved in the war against terrorist violence. *Id.* "[T]he United States must lead on this—no other country will do it. We have the best reason: The terror is now unquestionably in our backyard." *Id.* President Clinton reassured that fighting terrorism is "both a national priority and a national security priority." *Id.*

eradicate terrorist activity affecting Americans.[16]

B. Activities of International Terrorists in Illinois

While Illinois has not suffered from terrorist attacks as profoundly as Oklahoma City or New York,[17] international terrorists' activities affect Illinois in a debilitating way.[18] Almost immediately following the origination of Hamas, an Islamic terrorist organization, in 1987, Chicago has been at the heart of its fundraising activities in the United States.[19] Chicago's population includes an estimated 300,000 Muslims, making it the nation's most established Muslim community.[20] In 1993, members of this community became prime suspects after Israeli officials arrested and charged two Muslim Chicagoans with transporting currency and intelligence orders from the United States to Hamas.[21] In the course of

16. 141 CONG. REC. S7880 (daily ed. June 7, 1995); The Antiterrorism and Effective Death Penalty Act of 1996, Pub L. No. 104-132 (1996); The Aviation Security and Antiterrorism Act of 1996, H.R. 3953, 104th Cong., 2d Sess. (1996); and The Iran and Libya Sanctions Act of 1996 Pub. L. No. 104-172, 110 Stat. 1541 (1996). See *infra* notes 46-73 and accompanying text for the discussion of this legislation.

17. See *supra* notes 12, 13 and accompanying text for a discussion of terrorist attacks in New York City and Oklahoma City.

18. Franklin, *supra* note 1, at § 1, at 20. As the connection between Islamic Hamas and Chicago Muslim community resurfaced, some Israeli officials demanded action. *Id.* Following a Hamas bus bombing in Israel in October 1994, the U.S. State Department acknowledged that Americans contribute financially to Hamas' livelihood. *Id.*

19. *Id.* Hamas, which means "zeal" in Arabic and is also an acronym for Islamic Resistance Movement, was founded in 1987 in the Gaza Strip. *Id.* The organization, including its military wing, the Izzedine al-Qassam Brigades, has as its goal the restoration of Palestine as an independent state. Nicolas B. Tatro, *Hamas Sells Death-Wish Videotapes*, CHI. TRIB., Dec. 12, 1994, § 1, at 23. In the period of 15 months, between the signing of the peace accord between Israel and Palestinian Liberation Organization in September of 1993 and December of 1994, Hamas' terrorists were responsible for 94 deaths. *Id.* Although Hamas, as it is known today, has been in existence since 1987, the tactics Hamas terrorist employ are similar to those of other Muslim terrorists, namely, Shiites. *See* Strauss, *supra* note 9, at M3 (describing an act of a typical suicide terrorism used in some religiously motivated terrorist attacks).

20. Franklin, *supra* note 1, § 1, at 20. An estimated 70,000 are Palestinians, who emigrated from the West Bank. *Id.*

21. JUDITH MILLER, GOD HAS 99 NAMES (1996), *reprinted in*, CONFRONTING INTERNATIONAL TERRORISM AT THE LOCAL LEVEL: THE ILLINOIS MODEL 16-19 (Jewish Community Relations Council ed., 1996). A Chicago-area used-car dealer Muhammad Salah provided Israeli investigators with hard evidence of Hamas activities and fundraising in the United States and Illinois in particular. 142 CONG. REC. E1081-04, E1082 (daily ed. June 13, 1996) (statement of Sen. Schumer). Salah and his partner, Mohammed Jarad, were convicted, and while Israeli officials released Salah upon serving six months in prison, Jarad remains incarcerated. Todd Winer, *In Question: Concerns About Terrorism Bill*, THE NEWS, Apr. 14-20, 1995, at 30. While the U.S. government

the investigation, Israeli officials discovered that prior to the arrest close to one million dollars had been deposited into a U.S. bank account to provide for the needs of Hamas terrorists.[22]

However, government agencies investigating Hamas activities in the United States had been ineffective in their attempts to connect the fundraising to any of the organization's known terrorist attacks.[23] Consequently, the U.S. government was unable to impose any sanctions on the individuals who contributed or solicited funds in the United States, and particularly, in Illinois.[24] The current law's inability to deal effectively with this situation mandates additional legislation to deter fundraising organized by or on behalf of terrorist organizations.[25] While most state governments did

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did not begin an investigation into the Chicago-area Muslim community Hamas fundraising until 1993, Mr. Bodansky, then director of the U.S. House's Task Force on Terrorism and Unconventional Warfare asserted that Islamic terrorists held a meeting in Chicago as early as 1989. Robertson, *supra* note 12, at A1. Mr. Bodansky stated that even though the U.S. government was informed of the Hamas activists' next gathering in Phoenix in 1993, the government did not authorize an investigation because of the lack of appropriate sanctions. *Id.*

22. 142 CONG. REC. E1081-04, E1082 (daily ed. June 13, 1996) (statement of Sen. Schumer). This banking transaction is not the only evidence of Muslim fundraising. Franklin, *supra* note 1, § 1, at 20. Numerous Muslim charities collect millions of dollars annually for what they say are humanitarian causes. *Id.* However, the solicitors of funds do not welcome an inquiry into the actual causes supported by the donations. *Id.* When questioned directly, the response is unequivocal: "We support a militant struggle, if it is a just cause." *Id.*

23. 142 CONG. REC. E1081-04, E1083 (daily ed. June 13, 1996) (statement of Sen. Schumer). Vince Cannistraro, a former CIA counterterrorism chief, stated that although the investigation of funds channeling did not yield any concrete findings, contributions to humanitarian causes usually benefit the planning of the Hamas' terrorist attacks. *Id.*

24. Henry DePippo, *International Terrorism: Prevention and Remedies: Criminal Remedies For Terrorist Acts*, 22 SYRACUSE J. INT'L L. & COM. 19, 23 (1996). Mr. DePippo is a former Senior Trial Counsel for the United States Attorney's Office, who was in charge of the investigation and arrest of terrorists responsible for the New York World Trade Center bombing in 1993. *Id.* at 19. Mr. DePippo is distrustful of the federal government's ability to effectively prevent terrorism. *Id.* at 23. According to DePippo, "[one] cannot be overly reliant on law enforcement to prevent terrorism. I just don't think that the criminal justice system or law enforcement agencies have the tools that they need to prevent terrorism." *Id.*

25. Charles Kruthamer, *Anti-terrorism Measures Not Strong Enough*, CHI. TRIB., Aug. 12, 1996, § 1, at 19. The United States government must be prepared to respond in kind to terrorist attacks and threats of violence. 141 CONG. REC., E1680-02 (daily ed. Aug. 4, 1995) (statement of Rep. Lantos). Prior to the enactment of the Comprehensive Antiterrorism Act of 1995, the first of four major legislative responses to terrorism, even the extradition procedures of a known terrorist Abu Marzuq were plagued with difficulties. *Id.* To illustrate, while the United States government was arranging for Marzuq's extradition to Israel, Hamas threatened President Clinton with adverse consequences. *Id.* Obviously, terrorists believe that the United States is not

not feel the urgency to lead the way with antiterrorism proposals, the federal government[26] and the Illinois legislature[27] were prepared to deal with the growing threat of terrorism.

II. THE SIGNIFICANCE OF EXISTING LAWS

Since the end of the Cold War, terrorism has become the most feared of all invisible enemies, replacing nuclear weapons. The United States government responded to the threat by enacting a series of laws designed to deter and punish terrorism. The international community has also become an arena for the most aggressive antiterrorism measures in the history of multi-national cooperation. This Part addresses the federal and international measures designed to combat terrorism. It begins with a review of the United States' early legislative efforts aimed at combating terrorism and continues with an analysis of the contemporary legislative efforts of the United States government. This Part concludes with a discussion of recent antiterrorism measures enacted through the joint efforts of the international community.

A. Antiterrorism Efforts in the Twentieth Century

Terrorism is a global issue.[28] Unlike the United States, which did not experience the horrors of terrorism until the 1960s, other nations have suffered for hundreds of years.[29] The statistics began to change in the second half of the twentieth century.[30] Virtually untouched by terrorism until the last two decades, the United States stood unprepared.[31] Prior to the Nixon Administration, the

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equipped with the proper means to respond to acts of hostility. *Id.*

26. See *infra* notes 45-73 and accompanying text for a discussion of recently enacted and pending federal laws combating terrorism.

27. See *infra* notes 99-120 and accompanying text for a discussion of the Illinois antiterrorism law, 720 ILCS 5/29C (1996).

28. *USIA Foreign Press Center Briefing*, FED. NEWS SERV., June 25, 1996, *available in* LEXIS, Nexis Library, Curnews File.

29. ROBERT H. KUPPERMAN & DARRELL M. TRENT, TERRORISM: THREAT, REALITY, RESPONSE, at xiii (1977). *See also* LOWE & SHARPEL, *supra* note 8, at 210-13 (discussing the activities of terrorist organizations in Western Europe, Japan and the Arab countries). In the 19th century, terrorism was a means employed by radical nationalists and, later on, by anarchists, to express their ideological differences and overall discontent. *Id.* at 207.

30. LOWE & SHARPEL, *supra* note 8, at 218. "Of the 2,690 international terrorist incidents that occurred between 1968 and 1978, more than 42 percent involved U.S. citizens and property." *Id.* According to 1975 CIA statistics, there were more incidents of terrorism in that year than at any time in the past. KUPPERMAN & TRENT, *supra* note 29, at xiv. In the 1970s, a poll assessing the attitude of Americans toward terrorism showed that almost 90% of Americans viewed terrorism as a serious global issue while 60% of Americans viewed terrorism as a serious domestic problem. *Id.* at 3.

31. LOWE & SHARPEL, *supra* note 8, at 218. The United States had neither the knowledge of security procedures, nor the legislative measures to deal with the issue of terrorism. *Id.* To illustrate, when the first kidnappings of

Espionage Act of 1917 had been the last enacted antiterrorism measure.[32] The antiquated provisions of the 1917 Act were insufficient to combat the horrors of terrorism that began plaguing the nation with increasing fervor.[33] The United States was ready for more aggressive measures.[34] To supervise the U.S. antiterrorism forces, President Nixon established a cabinet committee and organized the Office for Combating Terrorism.[35] The Working Group on Terrorism reported to the National Security Council's Special Coordination Committee.[36] However, the federal government made only one legislative change to the United States Penal Code, the Civil Rights Act of 1968.[37] This change resulted in the creation of criminal penalties for domestic terrorism.[38]

In the 1980s, prompted by a series of attacks, including the Libyan sponsored bombing of Pan American Flight 103, Congress enacted a number of laws intended to combat terrorism originating outside of the United States.[39] However, as the continuance of ter-

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the U. S. officials began to occur in the late 1960s, the United States assumed the "superpower" stance, and the hostage was killed. *Id.* If the United States had been more experienced and adopted the attitude of the majority of the world towards dealing with hostage situations, it would have accepted the terrorists' demands in exchange for the safe return of the hostage. *Id.* at 214-15, 218.

32. *See id.* at 218. For more information about the Espionage Act of June 15, 1917, see Pub. L. No. 24, ch. 30, 40 Stat. 217 (1917). *See also* Thomas C. Martin, Note, *The Comprehensive Terrorism Prevention Act of 1995*, 20 SETON HALL LEGIS. J. 201, 208-09 (1996).

33. LOWE & SHARPEL, *supra* note 8, at 218.

34. KUPPERMAN & TRENT, *supra* note 29, at 3. The Harris Survey of 1970s expressed the mood of the Americans, who felt the need for more stringent antiterrorism measures. *Id.* For example, of those surveyed, 90% favored the development of elite military units such as those used by the Israelis to combat terrorist activities. *Id.* Similarly, 80% favored terminating airline flights to and from countries that give refuge to terrorists. *Id.* Over 50% of those surveyed supported the death penalty for those convicted of terrorist activity. *Id.*

35. LOWE & SHARPEL, *supra* note 8, at 218.

36. *Id.* at 219.

37. *Id.* at 557. The 1968 Civil Rights Act punished armed riots if they involved an intrastate element. *Id.* The 95th Congress was prepared to pass only one legislative act intended to combat terrorism. *Id.* at 219. The 95th Congress did however, pass two laws aimed at preventing international financial institutions from providing assistance to any state sponsors of terrorism. *See* Pub. L. No. 95-118, § 701.

38. LOWE & SHARPEL, *supra* note 8, at 557.

39. HAN, *supra* note 8, at 450. In 1984, Congress enacted the Comprehensive Crime Control Act, which created a section dealing with hostage situations. *Id.* The Omnibus Diplomatic Security and Antiterrorism Act of 1986 "established a new violation pertaining to terrorist acts conducted abroad against U.S. Nationals." *Id.* President Reagan introduced a legislative package that would "send a strong and vigorous message to friend and foe alike that the United States will not tolerate terrorist activity against its citizens within its borders." President's Message to the Congress Transmitting Proposed Legislation to Combat International Terrorism, Pub. Papers, Admin. of

rorist activities evidences; such efforts have been an insufficient deterrent to ward off the surge of international terrorism in the United States in the 1990s.[40]

B. Recently Enacted Legislation Combating Terrorism

A significant escalation of international terrorism characterized the early 1990s.[41] International terrorism scholars attributed the rise of the number of incidents[42] to the upsurge of religious fundamentalism around the world and in the United States.[43] The international community took action via its major dispute resolution forum, the United Nations.[44] The U.S. government also responded in kind by enacting three major pieces of legislation.[45]

First, Congress passed the Comprehensive Terrorism Prevention Act of 1995.[46] This Act contained unprecedented provisions for the expeditious removal of alien terrorists,[47] expanded the scope of the Posse Comitatus Act,[48] amended federal wiretapping

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Ronald Reagan 575-76 (Apr. 26, 1984). The Hostage Taking Act was the result of the legislative efforts. 18 U.S.C. § 1203 (1994).

40. HAN, *supra* note 8, at 445-46. The situation seemed to level off following law enforcement efforts after the bombings in 1983. *Id.* The mid and late 1980s counted no cases of international terrorism. *Id.* By the early 1990s, however, terrorist activity was once again on the rise. *Id.* at 446. In 1992 and 1993 there were two major international terrorist activities in the United States. First, in 1992, an Iranian opposition group overtook and briefly occupied the Iranian Mission to the United Nations in New York City. *Id.* Later, in 1993, terrorists bombed the World Trade Center in New York City. *Id.*

41. *Id.* at 462. In addition to the takeover of the Iranian Mission and the bombing of the World Trade Center, in 1993, the FBI arrested and charged eight people with attempt to build bombs intended for detonation in New York City. *Id.*

42. *Id.* at 445. In 1989, there were four incidents; by 1993, the number of incidents had grown to 12. *Id.*

43. *Id.* at 462. The U.S. Intelligence Community placed Iran, Syria, Libya and Sudan on the list of state sponsors of terrorism. *Id.*

44. *Secretary-General Says New Forms of International Cooperation Requires to Meet Global Issues*, FED. NEWS SERV., May 31, 1996, *available in* LEXIS, Nexis Library, Curnews File.

45. The Comprehensive Terrorism Prevention Act of 1995, S. 735, 104th Cong. (1995) [hereinafter CTPA]; The Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, (Apr. 24, 1996) [hereinafter AEDPA]; The Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, 110 Stat. 1541 (1996) [hereinafter ILSA].

46. CTPA, S. 735. *See generally* Martin, *supra* note 32 (discussing the CTPA).

47. The Alien Terrorist Removal Act, title III of S. 735. 141 CONG. REC. S7480 (daily ed. May 25, 1995).

48. CTPA, S. 735, title IX, § 908. A Posse Comitatus is "[t]he power or force of the county. The entire population of a county above the age of fifteen, which a sheriff may summon to this assistance in certain cases, as to aid him in keeping the peace, in pursuing and arresting felons." BLACK'S LAW DICTIONARY 806 (6th ed. 1991). This amendment allows the Attorney General to request military assistance to clean-up after the use of the chemical

authority,[49] mandated the use of taggants,[50] restricted publication of bomb-making technology,[51] and reformed habeas corpus relief.[52]

Second, the Congress passed the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA").[53] The signing of this law coincided with the one-year anniversary of the Oklahoma City bombing.[54] Congress intended the AEDPA to deter third-party financial contributions to terrorist organizations.[55]

Third, Congress passed the Iran and Libya Sanctions Act of 1996.[56] Although the Act is aimed at punishing Iran and Libya, which remain the most prolific supporters of state-sponsored terrorism,[57] the Act evoked an extremely controversial response.[58]

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and biological weapons. CTPA, S. 735, title IX, § 908; Martin, *supra* note 32, at 223-24.

49. CTPA, S. 735, title IX, § 909. Before Congress passed this amendment, law enforcement officers had to show that the suspect changed telephone numbers with intent to thwart government surveillance efforts. 141 CONG. REC. S7756 (daily ed. June 6, 1995) (statement of Sen. Biden). Following the passage of the amendment, however, the standard changed, allowing the government to show the effect of the change in telephone numbers. *Id. See also* Martin, *supra* note 32, at 225-27 (discussing a proposal to amend S. 735 under title IX).

50. CTPA, S. 735, title VII, § 708. This amendment required conducting a study to determine whether the explosives could be marked with taggants for tractability. 141 CONG. REC. S7660 (daily ed. June 5, 1995) (statement of Sen. Feinstein). *See also* Martin, *supra* note 32, at 227-30 (discussing the provisions of S. 735 title VII, § 708).

51. CTPA, S. 735, title IX, § 901. This amendment prohibits the sharing of bombmaking technology with someone who intends to make a bomb. 141 CONG. REC. S7682 (daily ed. June 5, 1995) (statement of Sen. Feinstein). *See also* Martin, *supra* note 32, at 230-32 (discussing the taggants amendment and its constitutionality).

52. CTPA, S. 735, title VI. The amendment shortens the deadline to file the federal habeas petition, restricts the court's ability to hear additional petitions, and requires greater deference by federal courts to state court findings. S. 735, title V, §§ 601(d)(1), 606, 604. *See also* Martin, *supra* note 32, at 233-40 (discussing the constitutionality validity of habeas corpus reform).

53. AEDPA, Pub. L. No. 104-132 (1996). Similar to the Illinois antiterrorism legislation, the AEDPA's aim is to thwart terrorists' fundraising efforts. CONFRONTING INTERNATIONAL TERRORISM AT THE LOCAL LEVEL: THE ILLINOIS MODEL 39 (Jewish Community Relations Council ed., 1996). The AEDPA differs from the Illinois law in that it targets specific international terrorist groups and the subsequent freezing of their assets. *Id.*

54. See Note, *Blown Away? The Bill of Rights After Oklahoma City*, 109 HARV. L. REV. 2074 (1996) for a complete discussion of the AEDPA.

55. AEDPA, § 102(e), § 2339B(a). "Whoever . . . knowingly provides material support or resources . . . to any organization which the person knows is a terrorist organization that has been designated under § 212(a)(3)(B)(iv) of the Immigration and Nationality Act as a terrorist organization shall be fined under this title, imprisoned for more than ten years, or both." *Id.*

56. ILSA, Pub. L. No. 104-172, 110 Stat. 1541 (1996).

57. *See, e.g., Iran Denies U.S. Claims of Saudi Bomb Connection*, REUTERS N. AM. WIRE, Aug. 3, 1996, *available in* LEXIS, Nexis Library, Curnews File. For example, Iran was a leading suspect in the deadly truck bombing of June 25, 1996, in Saudi Arabia. *Id.*; *see also Inside Politics*: *Newt Gingrich Dis-*

The provisions of the Act impose severe sanctions on countries that continue to trade and invest in Iran and Libya.[59] While the world community concedes that available international antiterrorism measures are seriously deficient,[60] there is also global resentment of America's "father-knows-best" attitude.[61]

Supporters of the Iran and Libya Sanction Act emphasized that in the absence of the Act, there is neither a deterrence mechanism in place, nor a remedial measures system to discourage the rest of the world from dealing with state sponsors of terrorism.[62] However, even its supporters saw potential problems concerning the enforcement of the law.[63] Some sympathetic critics recognized that such a law cannot exist in a vacuum, and if other nations choose to ignore the Act, the United States stands to suffer a boomerang effect, potentially resulting in both political and eco-

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cusses State-Sponsored Terrorism, (CNN television broadcast, Aug. 4, 1996) (transcript available in LEXIS, Nexis Library, Curnews File) (citing evidence that Hezbollah is linked to the bombing of American base in Saudi Arabia); John Lancaster, *Libyan Arms Factory A Myth, Mubarak Says*, INT'L HERALD TRIB., May 31, 1996, *available in* LEXIS, Nexis Library, Curnews File (discussing the United States allegations that Libya maintains an underground chemical weapon plants); *Wall Finished at U.S. Embassy In Kuwait*, UPI, Aug. 5, 1996, *available in* LEXIS, Nexis Library, Curnews File (quoting U.S. Defense Secretary William Perry as saying "[Iran remains] the leading candidate for international terrorism directed against the United States.").

58. *See, e.g.*, 142 CONG. REC. H8125-01 (daily ed. July 23, 1996); Charles Miller, *Angry EU Threatens USA over Iran and Libya Trade Move*, Press Association Newsfile, Aug. 5, 1995; Scott Steele & Luke Fisher, *Shades of Helms-Burton: Washington Targets Iran and Libya Over Terror*, MACLEAN'S, Aug. 19, 1996, at 32; Bruce W. Nelan et al., *Taking On the World*, TIME, Aug. 26, 1996, at 26.

59. Pub. L. No. 104-172, 110 Stat. 1541 (1996). The law sanctions any individual conducting business dealings with Iran "that would enhance the ability of Iran to explore for, extract, refine, or transport by pipeline petroleum resources . . . ." 142 CONG. REC. H8125-01(daily ed. July 23, 1996) (statement of Sen. Gilman). The law also penalizes business dealings of foreign persons who sell either weapons, aviation or oil supplies to Libya or Iran. *Id.*

60. 142 CONG. REC. H8125-01(daily ed. July 23, 1996) (statement of Sen. Roth). "There is no doubt that Iran and Libya are rouge states. The leaders of these regimes continue to violate every standard of acceptable behavior . . . . I agree that current U.S. policy is failing badly, not achieving any of these goals." *Id. See also* Nelan et al., *supra* note 58, at 26.

61. Nelan et al., *supra* note 58, at 26.

62. 142 CONG. REC. H8125-01 (daily ed. July 23, 1996) (statement of Sen. Hamilton). "[T]he conduct of Iran and Libya remains far outside international norms, and our allies have simply not done enough to help us change that conduct. Rhetoric alone is not sufficient, steps to increase the economic isolation of Iran and Libya are warranted, and this bill takes U.S. Policy in the right direction." *Id.*

63. *Id.* To illustrate, Senator Hamilton saw two problems: first, the possibility of the reduction in international cooperation in isolating Iran and Libya; second, costly consequences of the building resentment among other countries. *Id.*

nomic isolation.[64] Nonetheless, the United States must be prepared to defend the viability of the Act, since many countries continue to engage in business transactions with Iran and Libya, thereby indirectly providing economic support for state-sponsored terrorist activities.[65]

Finally, the Aviation Security and Antiterrorism Act of 1996 is currently pending in Congress.[66] Although this legislation does not satisfy the need for comprehensive protective measures,[67] failing the expectations of some,[68] it contains significant improvements to United States' aviation security.[69] The Act provides for the criminal background check of airport employees,[70] and mandates the nation's airports to use the best explosives detectors available.[71] The Act also requires the employment of bomb-sniffing dogs in the country's largest airports.[72] Furthermore, the Act guarantees supplemental funding to support the implementation of airport security.[73]

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64. 142 CONG. REC. H8125-01 (daily ed. July 23, 1996) (statement of Sen. Roth); Nelan et al., *supra* note 58, at 26.

65. Nelan et al., *supra* note 58, at 26. For example, Turkey's Prime Minister recently contracted with Iran to purchase $23 billion worth of Iranian gas. *Id.*

66. H.R. 3953, 104th Cong., 2d Sess. (1996); 142 CONG. REC. H9886-01 (daily ed. Aug. 2, 1996). *See also* Paul Mann, *Senate to Weigh Terrorism Bill*, AVIATION WK. & SPACE TECHNOLOGY, Aug. 12, 1996, at 34.

67. *See* 142 CONG. REC. H9890 (daily ed. Aug. 2, 1996) (statement of Sen. Shuster) (proclaiming that this bill is "not a panacea. It is but a step in the right direction.").

68. *Id.* at H9891 (statement of Sen. Hefner, a member of the Committee on Appropriation).

> Here we have a bill that nobody knows anything about, that does nothing and, if you vote against it, you are going to have commercials run against you that say you are soft on terrorism. In the meantime, nothing is going to happen that deters terrorism. This is a sad day in our country when people are out there grieving because they have lose loved ones in these terrorist acts, and we are doing something that absolutely does nothing. It is strictly a political document. That is a sad day in this body.

Id.

69. See 142 CONG. REC. H9886-01 (daily ed. Aug. 2, 1996). *See generally* Shirlyce Manning, *The United States' Response to International Air Safety*, 61 J. AIR L. & COM. 505 (1995) (discussing air safety measures prior to the enactment of the Aviation Security and Antiterrorism Act).

70. H.R. 3953, title I, § 102;142 CONG. REC. H9886-01 (daily ed. Aug. 2, 1996).

71. H.R. 3953, title I, § 101; 142 CONG. REC. H9886.

72. H.R. 3953, title I, § 107; 142 CONG. REC. H9887.

73. H.R. 3953, title I, § 106; 142 CONG. REC. H9887.

> I rise in strong support of this legislation. . . [T]he Aviation Security and Antiterrorism Act makes several needed improvements to our Nation's aviation security system. This legislation will require bomb-sniffing dogs to be used at the 50 largest airports in the Nation. It directs the Federal Aviation Administration to deploy the best available bomb de-

C. International Efforts Aimed at Combating Terrorism

Although nations around the world have intensified their efforts in combating international terrorism, the United Nations remains the most important forum for international cooperation.[74] In 1996, the United Nations took steps to restrain Sudan, a longtime state-sponsor of international terrorism, by imposing an air embargo on Sudan because its government failed to comply with previous extradition requests.[75] In the same year, two separate diplomatic meetings took place in Egypt to focus on resolving the issue of combating terrorism. The first involved the leaders of twenty-two Arab countries; the second involved the G-7 joined by Russia.[76] Although the Arab conference's members treated certain underground terrorist groups as legitimate opposition movements, they explicitly excluded from this category guerrilla organizations, such as Hamas and Hezbollah.[77] The G-7 and Russia also met in France to continue their dialogue on terrorism issues.[78] As a result of the meeting in Lyon, the member-countries adopted twenty-five practical resolutions, relating to an intelligence sharing agreement, strengthened Internet communications security and increased safety of public transportation.[79] Notwithstanding these efforts, the prosecution of international terrorists and their sponsors remains extremely difficult.[80] Therefore, criminal laws are

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> tection equipment at airports here at home—similar to equipment that is now being used at several airports in Europe and Israel. The bill also requires airport baggage screeners to undergo in-depth security background checks before they are hired. . . [T]he bill also directs the FBI to work closely with the FAA on security measures at our Nation's airports.

142 CONG. REC. H9886-01, H9891 (daily ed. Aug. 2, 1996) (statement of Sen. Duncan).

74. *Secretary-General Says New Forms of International Cooperation Required to Meet Global Issues*, FED. NEWS SERV., May 31, 1996, *available in* LEXIS, Nexis Library, Curnews File. The United Nations adopted Resolution 1070 which imposed an air embargo on Sudan because it did not comply with previous extradition requests. *Security Council to Impose Aircraft Sanctions on Sudan in 90 Days if Country Fails to Comply with Extradition Demands* FED. NEWS SERV., Aug. 20, 1996, *available in* LEXIS, Nexis Library, Curnews File.

75. *Id.* The Resoultion, along with future possible sanctions, were designed to ensure Sudan's cooperation with the Security Council's call for the extradition of three Ethiopian men suspected of attempting to assassinate the President of Egypt in June of 1996. *Id.*

76. *Arab Terrorist Extradition Reform Urged*, U.P.I., July 31, 1996, *available in* LEXIS, Nexis Library, Curnews File.

77. *Id.*

78. *Id.*

79. *Id.*

80. Joseph Dellapenna, *International Terrorism: Prevention and Remedies: Legal Remedies for Terrorist Acts*, 22 SYRACUSE J. INT'L L. & COM. 13, 13 (1996). Professor Dellapenna asserts that a resolution of an international terrorism dispute involving individuals, via litigation or arbitration, in an inter-

needed to deter terrorism sponsorship in the United States.

III. STATES EFFORTS IN ENACTING ANTITERRORISM LEGISLATION

While Illinois is currently the only state to enact a legislative measure combating international terrorism, several other states have attempted or are attempting to pass similar laws. This Part addresses both the attempts by several states to adopt measures to cut off private funding to international terrorists, and the enacted Illinois law. This Part begins with a discussion of the only state antiterrorism legislation currently enacted, section 5/29C of the *Illinois Criminal Code*, and concludes with an examination of Maryland and Wisconsin's legislative endeavors.

A. The Illinois Experience

While Illinois lawmakers did not succeed in their initial attempts to enact an antiterrorism law, by the Spring of 1996, the General Assembly acknowledged the need for state antiterrorism legislation. This controversial legislation which Governor Edgar signed into law in July 1996, is currently the single state measure in the struggle against sponsorship of international terrorism.

1. The Illinois "Solicitation for Charity Act"

The Solicitation for Charity Act was Illinois' first attempt to criminalize private parties' support of international terrorism.[81] Prompted by the Hamas-orchestrated bloodshed in Israel in October of 1994,[82] and disillusioned by the inaction of the United States government,[83] Jewish organizations in Chicago took steps to initiate legislation that would punish the funding of international terrorists.[84] Presented to the Illinois House Judiciary Committee in

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national forum remains to be a most ineffective endeavor. *Id.* at 14-15. In the event a sponsoring state is deciphered, an attempt to bring the state to justice for the acts committed by the accused terrorists is also a practical impossibility. *Id.* at 15-16.

81. H.B. 667, 89th Gen. Ass. (Ill. 1995).

82. *See Hamas: Attack Was to Avenge Mosque Killing*, U.P.I., Oct. 10, 1994, *available in* LEXIS, Nexis Library, Arcnews File (discussing the Hamas' bombing of Jerusalem's streets which claimed two lives and left 13 wounded); *Another Tel Aviv Explosion Victim Dies*, U.P.I., Oct. 23, 1994, *available in* LEXIS, Nexis Library, Arcnews File (describing an attack on Israeli civilians in Tel Aviv for which Hamas took responsibility); *The Week in Review: Tel Aviv Bombing Disrupts Peace Process*, (CNN television broadcast, Oct. 23, 1994) (transcript available in LEXIS, Nexis Library, Arcnews File) (discussing the Hamas terrorist action in Tel Aviv).

83. 1996 Ill. 89th Gen. Ass. Reg Sess. House of Representatives transcript. 108th Legis. day (Mar. 26, 1996) (statement of Rep. Lang).

84. Interview with Professor Ralph Ruebner, co-author of the Illinois antiterrorism law, in Chicago, Illinois (Sept. 16, 1996). The Illinois legislature was anxious to enact a measure deterring and punishing unlawful contributors and solicitors of support to international terrorists, because no other

January of 1995, the Bill undertook to curtail funding to international terrorist organizations by proposing a new section—225 ILCS 460/9.5 of the *Illinois Criminal Code*—entitled "The Solicitation for Charity Act."[85] The Bill provided that the Attorney General may obtain an injunction to cease a charitable organization's fundraising activities if he or she "ha[d] a reason to believe"[86] that the charity solicited funds that "may be used to support an organization that engages in international terrorism. . . ."[87] Additionally, the Bill would have amended the *Illinois Criminal Code* by penalizing solicitation of funds in support of a party or an organization which engages in international terrorism.[88]

The language of the Bill required specific intent of the offender as an element of the crime.[89] The Bill would have penalized

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state or federal laws dealt with the issue competently. H.B. 3233, 89th Gen. Ass. (Ill. 1996).

85. H.B. 667, § 9.5. The legislators intended to cut short fundraising efforts of certain Illinois charities who were suspected of channeling resources to international terrorist organizations. 1995 Ill. 89th Gen. Ass. Reg. Sess. House of Representatives transcript. 38th Legis. day (Mar. 24, 1995) (statement of Rep. Schoenberg). If passed into law, the Act would have been the government's instrument in taking away such charities' tax-exempt status. *Id.*

86. H.B. 667, § 9.5. During the Bill's third reading, Representatives Moore questioned the magnitude and omnipotence of the Attorney General's office in determining whether an entity or an individual should be prosecuted under the proposed law. 1995 Ill. 89th Gen. Ass. Reg. Sess. House of Representatives transcript. 38th Legis. day (Mar. 24, 1995) (statement of Rep. Moore).

87. H.B. 667, § 9.5. The Bill proposed the following amendment to 225 ILCS 460/9.5:

> When the Attorney General has reason to believe that any person, charitable organization, professional fund raiser, or professional solicitor is engaged in soliciting or collecting funds on behalf of an organization that engages in international terrorism, he or she may bring in the circuit court an action in the name and on behalf of the people of the State of Illinois against the person or organization to enjoin the person or organization from continuing the solicitation or collection or doing any acts in furtherance of the collection or solicitation, to cancel any registration statement previously filed with the Attorney General, and to confiscate the assets that were solicited or collected by the person or organization in the State of Illinois and utilize those assets for charitable purposes.

Id. The authors of the Bill defined a charitable organization as:

> Any benevolent, philanthropic, patriotic, or eleemosynary person or one purporting to be such which solicits and collects funds for charitable purposes and includes each local, county, or area division within this State of such charitable organization, provided such local, county, or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization.

Id. § 1(a).

88. *Id.*

89. *Id.* A charity is guilty of this offense where it "[knew] or ha[d] a reason to believe that moneys solicited . . . will support, in whole or in part, an organization that engages in international terrorism." *Id.*

a contributor only if he or she "knew or had a reason to believe" that his contribution will go to an organization that "engages in international terrorism."[90] However, it became apparent that the Bill would not withstand First Amendment scrutiny associated with the recognized right to freedom of association and other constitutional guarantees.[91] The Bill's language could have been construed to implicate charitable activities of international terrorist organizations, such as operations of hospitals and soup-kitchens.[92] As such, the Bill provided an opportunity for persecutions based on "guilt by association."[93] Furthermore, the Bill vested total discretionary power in the Attorney General allowing him or her to determine whether the charity's solicitation was intended to fund terrorists.[94] Such unlimited power guarantees at least a potential, if not a purposeful, abuse of discretion.

As a result, even though the Bill passed the House Judiciary Committee in March 1995,[95] it was referred back to the Illinois Senate Judiciary Committee in May.[96] Experiencing pressure from national and local opponents of the measure,[97] the authors amended the Bill and its sponsors presented it to the House Committee again in March 1996.[98]

2. *The Illinois "International Terrorism" Act*

Representatives Cross and Erwin introduced the second version of the law, entitled "International Terrorism," after the

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90. *Id.*

91. 1995 Ill. 89th Gen. Ass. Reg. Sess. House of Representatives transcript. 38th Legis. day (Mar. 24, 1995) (statement of Rep. Currie).

92. *Id.* Some of the major concerns raised at the third reading of this House Bill reflected the shortcomings of the language of the proposed law resulting in its vagueness. *Id.* Representative Currie, for example, was perturbed by the lack of the definition of international terrorism in the Bill itself, the application of which could have resulted in persecution of members of either non-violent groups or peaceful branches of some militant resistance movements. *Id.*

93. See *infra* notes 157-71 and accompanying text for a discussion of the constitutionally guaranteed freedom of association.

94. 1995 Ill. 89th Gen. Ass. Reg. Sess. House of Representatives transcript. 38th Legis. day (Mar. 24, 1995) (statement of Rep. Moore).

95. H.B. 667. The Bill passed the Committee by 91 votes of "yes" against 14 votes of "no" and 7 votes of "present." *Id.*

96. H.B. 667.

97. Interview with Professor Ralph Ruebner, *supra* note 84. Among those vigorously opposing the Bill were the Illinois chapters of the American Civil Liberties Union, the Anti-Defamation League, the Council on Domestic Relations and the Chicago Committee to Defend the Bill of Rights. *Id.* At the Bill's third reading in the House of Representatives, the Bill's sponsors debated not only the Bill's viability with respect to its language, but also its policy issues. 89th Ill. Gen. Ass. Reg. Sess. House of Representatives transcript. 38th Legis. day (Mar. 24, 1995) (statement of Rep. Cross).

98. H.B. 3233, § 29C-5, 89th Gen. Ass. (Ill. 1996).

authors[99] amended the first version by deleting the "Charity Solicitation Act" section.[100] Similar to the first draft, the second draft also aimed at preventing international terrorism by penalizing individual and private group solicitation and contribution of support for international terrorists' activities.[101] However, instead of referring to an established definition of international terrorism,[102] the authors defined its meaning directly in the text of the Bill, effectively eliminating the possibility of unconstitutional vagueness.[103] The new draft also provided the definition of "material support."[104] The authors also amended the portion of H.B. 667 dealing with solicitations and contributions by eliminating the requirement that the funding would be used by a group that "engages in international terrorism."[105]

The new draft of the Bill omitted the discretionary powers of the law enforcement agencies by requiring that solicitors and donors channel funds to "plan, prepare, carry out, or escape from an act or acts of international terrorism."[106] The second draft also included a more stringent mental state requirement. Rather than requiring that an offender had "reason to believe" that he or she was supporting terrorist activities,[107] the revised Bill now required a showing that he or she intended a donation to go toward an act

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99. The co-authors of the law are Professor Ralph Ruebner of The John Marshall Law School in Chicago and Mr. Jeffrey Weill of the Jewish Community Relations Council (JCRC) of Chicago.

100. H.B. 3233

101. H.B. 3233.

102. H.B. 667. In the first draft of the Bill, the authors referred the reader to the already established definitions of international terrorism in accordance with sections of the Illinois and United States Criminal Codes. *Id.*

103. H.B. 3233, § 29C-5. The earlier version of the law defined "international terrorism" as:

> Activities that (i) involve a violent act or acts dangerous to human life that would be a felony under the laws of the State of Illinois if committed within the jurisdiction of the State of Illinois; and (ii) occur outside the United States; and (iii) appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of government by assassination or kidnapping.

Id. This definition reflected the concept of terrorism as a crime committed by private parties. H.B. 3233 (March 26th version). The new amendment specified that international terrorist activities are "perpetrated [only] by a private person or non-governmental entity." *Id.*

104. H.B. 3233 defined "material support" as "currency or the financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets." *Id.* § 29C-5.

105. H.B. 667, § 9.5.

106. H.B. 3233, § 29C-10(a).

107. H.B. 667, § 9.5.

of terrorism.[108] Finally, Section 29C-15(b)(2) specifically excluded from investigation all constitutionally protected nonviolent activities that advance "political, religious, philosophical, or ideological goals or beliefs of any person or group."[109]

Nonetheless, some of the provisions of the second draft remained constitutionally problematic.[110] The February and March versions of the law's second draft defined international terrorism as an "activit[y] that . . . appear[s] to be intended to intimidate or coerce a civilian population . . . ."[111] As presented, the terminology opened the door to discretionary interpretations, once again raising an issue of vagueness.[112] Furthermore, the investigation provision allowed law enforcement agencies to inquire into a party's actions if the "facts reasonably indicated" that the party was "about to engage in the violation of this or any other criminal law" of Illinois.[113] Similarly, the potentially broad interpretation of this provision called into question its constitutionality.[114]

While only four representatives voted against the passage of the Bill in March 1996,[115] the authors continued to work on the language of the Bill[116] by either rephrasing or deleting all the terminology that gave rise to concerns of some representatives.[117] Instead of requiring that the prohibited activity "appear[ed] to be intended to intimidate or coerce," the clause now read to include only activities that "are intended" to procure such a result.[118] Additionally, the provision covering the investigative powers now permitted an inquiry only into the affairs of persons who "intentionally engag[e] or has engaged" in illegal activities, solving the problem of an overly broad grant of discretion to law enforcement agencies.[119] Consequently, the Illinois Senate agreed with

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108. H.B. 3233, § 29C-10(a).
109. *Id.* § 29C-15(b)(2).
110. 1996 Ill. 89th Gen. Ass. Reg. Sess. House of Representatives transcript, 108th Legis. day (Mar. 26, 1996).
111. H.B. 3233, § 29C-5.
112. 1996 Ill. 89th Gen. Ass. Reg. Sess. House of Representatives transcript. 108th Legis. day (Mar. 26, 1996) (statement of Rep. Scott). Rep. Cross, one of the sponsors of the Bill's second draft, defended the viability of the definition, reasoning that the provision concerning investigative powers was drafted to ensure the law's enforcement powers, so that the law would serve not only as a deterrent but also as a prosecutorial mechanism. *Id.* (statement of Rep. Cross).
113. H.B. 3233, § 29C-15(b). .
114. 1996 Ill. 89th Gen. Ass. Reg. Sess. House of Representatives transcript. 108th Legis. day (Mar. 26, 1996) (statement of Rep. Scott).
115. *Id.*
116. 1996 Ill. 89th Gen. Ass. Reg. Sess. House of Representatives transcript, 130th Legis. day (May 14, 1996) (statement of Rep. Cross) (statement of Rep. Long).
117. *Id.*
118. H.B. 3233, § 29C-5.
119. *Id.* § 29C-15(b).

the House of Representatives as to the Bill's constitutionality and passed the measure by a unanimous vote on May 14, 1996.[120]

B. Maryland's and Wisconsin's Efforts

Although to date the Illinois law is the only state antiterrorism measure enacted, Maryland and Wisconsin also sought to enact similar legislation.[121] Prompted by the reports of Hamas fundraising activities in Springfield, Virginia,[122] Maryland legislators presented H.B. 973 to the House Judiciary Committee in February, 1996.[123] The Bill was aimed at deterring and penalizing fundraising for international terrorism purposes by making such activities a felony.[124]

While the drafters of the Bill carefully enunciated virtually every element of the offense,[125] the language of the definitions made the Bill's constitutionality even more dubious than that of the first draft of the Illinois law.[126] First, according to the Bill's terminology, a mere promise to support international terrorism qualified as a contribution sufficient for a conviction.[127] The language of the Bill also provided that an international terrorist organization may be operating within the United States, thus blurring the distinction between international and domestic terrorism.[128] Most significantly, an organization could have qualified for a terrorist label without having for its goal unlawful intimidation or violence.[129] Consequently, H.B. 973 justifiably raised

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120. *Id.*

121. Telephone Interview with Lauren Kallins, lobbyist for Baltimore Jewish Council (Sept. 25, 1996). Telephone interview with Mark Graul, Office of Representative Mark Green, Wisconsin State Assembly (Sept. 25, 1996).

122. David Conn, *Safe Passage?*, BALTIMORE JEWISH TIMES, Mar. 1, 1996, at 18. By the beginning of 1996, the U.S. State Department confirmed the reports of Hamas fundraising in Springfield, Virginia. *Id.*

123. H.B. 973, 1996 Leg. Sess. The Baltimore Jewish Council supported the Bill's three sponsors, Delegates Samuel I. Rosenberg, Kenneth C. Montague Jr. and Frank S. Turner. Conn, *supra* note 122, at 18.

124. H.B. 973, § 2(C). In addition to the confirmed reports that Hamas' fundraising has been taking place in Maryland's "backyard," Maryland lawmakers were adamant about helping along the AEDPA of 1996, a piece of federal legislation, which at the time "ha[d] been stalled in Congress." Telephone Interview with Lauren Kallins, *supra* note 121.

125. H.B. 973, § 1(B).

126. Conn, *supra* note 122, at 18. At the House Judiciary Committee hearing on the viability of the proposed legislation, the members were concerned that the permissiveness of Bill's language would undermine people's constitutional guarantees and in particular their freedoms of association and religion. *Id.*

127. H.B. 973, § 1(A)(2). "Contribution means the gift, transfer or promise of: (I) money; (II) property or services. . .; or (III) any other thing or value. *Id.*

128. *Id.* § 1(A)(3)(I). International Terrorist organization is "(I) originated and is primarily active outside the United States. . . ." *Id.*

129. *Id.* § 1(A)(3)(II). "International terrorist organization means an or-

constitutional concerns[130] among Maryland's lawmakers who outright denied its passage in Committee.[131]

Although Wisconsin was unsuccessful in its initial attempts at introducing antiterrorism legislation, proponents are hopeful that an antiterrorism bill, similar to the new Illinois law, will be enacted by the end of 1997.[132] However, the Illinois antiterrorism law currently remains the only state legislation designed to combat the solicitation or contribution of funds to international terrorists.

IV. THE CONSTITUTIONALITY OF THE ILLINOIS ANTITERRORISM LAW

As is the case with many controversial pieces of legislation, the constitutionality of the Illinois antiterrorist law may be challenged. Those opposed to the law may claim that the law contravenes various constitutionally protected principles. Accordingly, this Part examines those grounds upon which an individual or group may front a constitutional attack upon Illinois' new law. This Part begins with a discussion of why the definitions used in the Illinois law are not, as some may claim, vague and arbitrary. This Part then examines the various freedoms guaranteed by the First Amendment to the U.S. Constitution. Next, this Part canvasses the Fourth Amendment's protection from unreasonable searches and seizures and demonstrates why the Illinois law does not violate this fundamental constitutional right. Finally, this Part concludes with discussion of Supremacy Clause concerns relating to the federal preemption doctrine.

A. First Amendment Concerns

The First Amendment to the U.S. Constitution reflects the desire of the Framers to restrain Congress from infringing upon people's freedom of expression and freedom of religion.[133] This

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ganization that : . . . uses international terrorism as a means to achieve a desired political or social objective." *Id.*

130. Conn, *supra* note 122, at 18. While House legislators possibly were not concerned about the Bill's implications on right-wing military groups in the United States, they were apprehensive about the Bill's ramifications on the Maryland supporters of the IRA and Nation of Islam. *Id.* Delegate Dana Lee Dembrow questioned the Bill's reasonableness with respect to American-Bosnian Muslims' fundraising for the purpose of defending against the Serbs. *Id.*

131. H.B. 973, 1996 Leg. Sess. On March 11, 1996, Maryland's House Judiciary Committee reported the Bill unfavorably. *Id.*

132. Telephone Interview with Mark Graul, Office of Representative Mark Green, Wisconsin State Assembly (Apr. 8, 1997). Mr. Graul stated that his office intended to introduce an antiterrorism Bill, similar to the new Illinois law, to the House of Representatives by the end of April 1997. *Id.*

133. U.S. CONST. amend. I. The First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the

same principle is applied to state legislatures through the Due Process Clause of the Fourteenth Amendment.[134] However, such protection is not absolute and it would not, for example, shield "a man in falsely shouting fire in a theater and causing a panic."[135]

Even before its enactment, the Illinois antiterrorism law evoked several concerns with respect to the law's constitutional validity. Opponents argued that the law would chill the constitutionally guaranteed rights of free speech.[136] Moreover, they alleged that the law created guilt by association, when a person donating funds is a member of religious group sympathetic to an international terrorist organization operating overseas.[137] Additionally, opponents are likely to challenge the law's potential invasion of people's freedom of religion. Accordingly, this Section deals with these concerns and demonstrates how the Illinois law overcomes these constitutional hurdles.

1. The Constitutionality of the Law's Definitions

Although opponents of the first version of the Illinois law challenged its constitutionality by contending that the definition of international terrorism rendered the legislation vague and subject to arbitrary enforcement,[138] the argument is meritless against the newly enacted version. Public interest groups have criticized the law's definition of international terrorism on the basis that it could be applied to prosecute American civilians in their attempts to resolve private grievances occurring overseas.[139] Such reading of the

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right of the people peaceably to assemble, and to petition the Government for a redress of grievances." *Id.* For a discussion of the First Amendment guarantees, see Hon. John Paul Stevens, *The Freedom of Speech*, 102 YALE L.J. 1293, 1310 (1993) (discussing the distinction between speech and conduct and under what circumstances the latter is entitled to protection); David M. Rabban, *The Emergence of Modern First Amendment Doctrine*, 50 U. CHI. L. REV. 1205, 1207-08 (1983) (outlining a historical overview of First Amendment jurisprudence as it developed following the First World War); Henry P. Monaghan, *First Amendment Due Process*, 83 HARV. L. REV. 518, 519 (1970) (commenting that the Court has and should continue "to extend First Amendment Due Process beyond obscenity cases").

134. Gitlow v. New York, 268 U.S. 652, 666 (1925).

135. *See* Schenck v. United States, 249 U.S. 47, 52 (1919) (analyzing whether the Espionage Act of 1917 violated defendants' freedom of expression guaranteed by the First Amendment to the U.S. Constitution). The Court held that in time of war inflammatory statements are more dangerous and therefore less protected than if published during peaceful times. *Id.* at 52. The Court upheld defendants' convictions for conspiracy to violate the Espionage Act and interfere with the U.S. military recruitment efforts. *Id.* at 53.

136. Letter from Mary Dixon, Legislative and Chapter Director, American Civil Liberties Union, to Jim Edgar, Governor of Illinois (July 11, 1996) (on file with The John Marshall Law Review).

137. *Id.*

138. *Id.* at 2.

139. *Id.* Ms. Dixon argues that a mother who pays to have her child kidnapped and returned to her from an overseas' location would face interna-

law's definition misconstrues both the meaning and the purpose of the law. While the law's definition of international terrorism authorizes the prosecution of a person funding a political kidnapping executed outside of the United States, it does not permit similar prosecution for kidnapping of a child, as lacking in "intimidat[ion] or coerc[ion] of the population or undermin[ing] the government," element, a necessary element of the definition. [140] However, if the fundraising efforts discussed in the introductory hypothetical led to the kidnapping of the Prime Minister of Xania, then the Illinois antiterrorism law would apply.

Most importantly, by requiring the element of intent to fund an act of international terrorism, the law dispenses with the possibility of potential encroachment upon First Amendment rights. The Supreme Court has long held that by including the element of scienter or knowledge, the legislature would avoid imposition of strict criminal liability on the offender, consequently inhibiting his or her constitutionally protected expression.[141] Therefore, the new Illinois law safeguards the constitutional freedoms of potential suspects by requiring that they donate support intending to advance a terrorist activity.

2. *Freedom of Expression*

The First Amendment protects conduct as an expression of an individual's ideological beliefs.[142] The forms of expressive conduct that are protected have expanded significantly over the years.[143]

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tional terrorism charges under the Illinois law's definition of international terrorism. *Id.*

140. 720 ILCS 5/29C-5 (1996). Section (iii) of the law defines international terrorist activity to be "intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of government by assassination or kidnapping." *Id.*

141. Mishkin v. New York, 383 U.S. 502, 511 (1966). In *Mishkin*, a publisher was convicted for unlawful possession of obscene materials. *Id.* at 504-05. The Court upheld his conviction relying on the evidence that the defendant knew of the obscene character of the materials, noting that the defendant's scienter helped avoid self-censorship and protected his First Amendment rights. *Id.* at 512. *See also* Smith v. California, 361 U.S. 147, 154-55 (1959) (reviewing the conviction of a bookstore proprietor for dealing in obscene material in violation of a Los Angeles city ordinance). The city ordinance made it unlawful to possess any indecent materials regardless of a violator's scienter. *Id.* at 148-49. The Court held that dispensing with the requirement of knowledge of the contents by the bookseller of the book inhibited his constitutionally protected freedom of expression. *Id.* at 154-55.

142. Texas v. Johnson, 491 U.S. 397, 398-99 (1989).

143. *See* R.A.V. v. City of St. Paul, 505 U.S. 370, 391 (1992) (holding unconstitutional a state statute prohibiting expressions of hatred on private or public property, including but not limited to cross-burning and exhibiting swastikas); Dawson v. Delaware, 503 U.S. 159, 168 (1992) (holding that the First Amendment prohibits states from using defendant's membership in a Nazi organization to prove his guilt in murder trial); *Johnson*, 491 U.S. at 420 (holding that as long as it does not threaten public safety, burning of a flag is

Although the Court continues to hold that speaking and writing enjoy far greater constitutional protection,[144] the Court preserves the constitutionality of solicitation and contribution of funds for charitable purposes.[145]

Solicitation or contribution may fall under the classification of either "commercial speech,"[146] "speech plus conduct,"[147] or "group economic activity."[148] However, while such activity is constitu-

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a form of expression protected by the First Amendment).

144. Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 455-56 (1978).

145. Cincinnati v. Discovery Network, Inc. 507 U.S. 410, 420 (1993). The Court stated that such expression qualifies for First Amendment protection where "money is spent to project" certain ideas. *Id.* *See also* William P. Marshall, Village of Schaumburg v. Citizens for a Better Env't and Religious Solicitation: *Freedom of Speech and Freedom of Religion Converge*, 13 LOY. L.A. L. REV. 953, 960, 973 (1980). In *Schaumburg*, the Court stated that where money is solicited or contributed, such an expression of support is in effect an advocacy of a specific cause. Schaumburg v. Citizens for a Better Env't, 444 U.S 620, 632 (1980).

146. The term "commercial speech" is defined as "speech which does no more than propose a commercial transaction." Bolger v. Youngs Drug Prods., 463 U.S. 60, 66 (1983). The Court has held that Constitution affords less protection to commercial speech than to other constitutional forms of expression. *Ohralik*, 436 U.S. at 455-56 (1978). Furthermore, where the government intends to restrict commercial speech, the relationship between government interest and the means by which it is achieved must be that of a "reasonable fit." Board of Trustees v. Fox, 492 U.S. 469, 480 (1989). *See also Discovery Network*, 507 U.S. at 424 (holding that the city was not justified in placing restrictions on the operation of street newsracks because the city failed to establish a "reasonable fit" between ensuring street safety and the means selected for the advancement of this legitimate interest); Central Hudson Gas & Elec. Co. v. Public Serv. Comm'n, 447 U.S. 557, 566 (1980) (holding that where a governmental intrusion is not accomplished via the least restrictive means, it could still pass the constitutional muster if narrowly tailored). For a detailed discussion of commercial speech and its constitutionality, *see* T.M. Scanlon, Jr., *Freedom of Expression and Categories of Expression*, 40 U. PITT. L. REV. 519, 541 (1979) ("[commercial speech deserves less than full first amendment protection because] we regard the government as much less partisan in the competition between commercial firms than in the struggle between religious or political views."). *Cf.* Ronald A. Cass, *Commercial Speech, Constitutionalism, Collective Choice*, 56 U. CIN. L. REV. 1317 (1988).

147. "Speech plus conduct," or symbolic speech is a person's symbolic behavior aimed at the expression of his political or other views. *See* Clark v. Community for Creative Non-Violence, 468 U.S. 288, 294 (1984) (asserting that protesters' overnight stay in a public park can be a form of speech-related conduct); Spence v. Washington 418 U.S. 405, 415 (1974) (determining that a peace symbol attached to the flag conformed with the definition of symbolic speech).

148. The term "group economic activity" may be used to describe a boycott. *See* NAACP v. Claiborne Hardware Co., 458 U.S. 886, 911-13 (1982). In *Claiborne Hardware*, the Supreme Court considered whether a politically motivated boycott organized by the NAACP members qualifies for the First Amendment protection. *Id.* at 889-91. The Court held that while "[t]he First Amendment does not protect violence," the peaceful boycott activities deserve the constitutional shield. *Id.* at 916.

tionally protected, neither solicitation nor contribution of "material support" qualifies for full constitutional protection, which is generally afforded only to speaking and writing.[149] Instead, the Supreme Court has established that the federal government and the states may regulate such hybrid forms of expression if such regulation furthers a sufficient state interest, and the restrictions imposed are no more constricting than necessary.[150]

Furthermore, the First Amendment does not protect a form of expression that is intended to produce "imminent, lawless action and is likely to incite or produce such action."[151] In cases of solicitation and contribution of funds, the Supreme Court has also stated that the size of the contribution is irrelevant, as the sym-

149. Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 773 (1976) (striking down a state statute proscribing advertisements of prescription drugs' prices). *See also* Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations, 413 U.S. 376, 389-90 (1973) (upholding a ban on sex-related advertisements in the help-wanted section of a newspaper). The *Pittsburgh Press* Court held that the Constitution will not protect speech that advocates an illegal business transaction. *Id.*

150. *See, e.g.*, Roberts v. United States Jaycees, 468 U.S. 609, 623 (1984) (upholding a state regulation closely tailored to achieve a worthy state interest of eliminating gender discrimination); Buckley v. Valeo, 424 U.S. 1, 17 (1976) (holding that where government's interests were wholly unrelated to its means for advancing the interests, the regulation could not stand); United States v. O'Brien, 391 U.S. 367, 376 (1968) (holding that not all expressive conduct is constitutionally protected, and that government may regulate such conduct where it furthers a compelling state interest by the means that are least restrictive); NAACP v. Button, 371 U.S. 415, 444 (1963) (holding that where a state's regulation did not advance a sufficient interest, the regulation did not satisfy the requirements of the First Amendment). In fact, the Court applies balancing approach: the greater the infringement on a constitutionally protected freedom, the greater the burden to show justification for such encroachment. *See Buckley*, 424 U.S. at 44. *See also* Dennis v. United States, 183 F.2d 201 (2d Cir. 1950), *aff'd*, 341 U.S. 494 (1951). In *Dennis*, the court addressed the issue of whether a law which prohibited association with the Communist Party was constitutionally sound. *Id.* at 205. In upholding the constitutionality of this federal anti-subversive law, Chief Judge Learned Hand developed a formula to apply to each case's facts. *Id.* at 212. According to this formula, each case is to be decided on its own facts, and where the "gravity of 'evil' discounted by its improbability" outweighs the harm of intrusion into the freedom of speech, such intrusion is deemed warranted. *Id.* On appeal to the U.S. Supreme Court, Chief Justice Vinson upheld the Smith Act as a timely governmental response to the "clear and present danger" of the Communist threat. Dennis v. United States, 341 U.S. 494, 515 (1951). Thus, the threat of Communism during that era was similar to the contemporary threat of terrorism, justifying swift constitutional measures.

151. Brandenburg v. Ohio, 395 U.S. 444, 447-48 (1969). While freedom of speech enjoys absolute constitutional protection, speech which incites violence does not justify such preservation. *Id.* It is axiomatic that advocacy of a theoretical principle is absolutely protected by the Constitution, whereas a call for actual performance of such principle is not. Yates v. United States, 354 U.S. 298, 318-19 (1957). *See also* Bernard Schwartz, *Holmes Versus Hand: Clear and Present Danger or Advocacy of Unlawful Action?*, 1994 SUP. CT. REV. 209.

bolism of the gesture is the only relevant factor in adjudging the availability of the constitutional shield.[152]

The new Illinois law does not invade the constitutionally guaranteed freedom of expression. Opponents argue that the law chills free speech rights of those who would otherwise choose to solicit for or contribute their support to terrorist organizations.[153] Inapposite to this contention, the new law proscribes only contributions that are intended to maintain and fuel violent acts, "dangerous to human life, . . . that would be a felony" under Illinois law.[154] Moreover, a person soliciting or contributing support must intend for the resources to fund a terrorist attack.[155] For example, if Mr. *Y* requested donations from the fellowship members following a video presentation depicting starving children and ailing elderly people, the requirement of intent would not be satisfied. Similarly, if Ms. *X* was overcome by sympathy and gave a check for fifty dollars to sponsor one of the children, the crucial element of intent would also be lacking. Significantly, the authors of the law included specific intent as a requisite element of the offense even though legal precedent does not require such explicit determination.[156]

Consequently, the new Illinois law regulates only such expressions that are unlawful by design, as the link between soliciting or donating funds for terrorist activities and actual attacks is easily detected. In fact, the law recognizes that deadly terrorist attacks would be practically impossible without such sponsorship. Thus, the law does not implicate the First Amendment guaranteed freedom of expression because solicitation or contribution with intent to aid terrorists in killing more innocent victims does not qualify for any constitutional protection.

3. *Freedom of Association*

Freedom of association, while not expressly enumerated in the U.S. Constitution, is implicit in the First Amendment.[157] However, the Constitution does not afford absolute protection to the people's right to assemble and associate.[158] Furthermore, while

152. Buckley v. Valeo, 424 U.S. 1 (1976).
153. *Id.*
154. 720 ILCS 5/29C-5 (1996).
155. *Id.*
156. Ralph Ruebner & Jeffrey Weill, *Combating International Terrorism While Protecting Constitutional Rights: An Analysis of the Illinois Legislation*, *in* CONFRONTING INTERNATIONAL TERRORISM AT THE LOCAL LEVEL: THE ILLINOIS MODEL 34 (Jewish Community Relations Council ed., 1996).
157. NAACP v. Alabama, 357 U.S. 449, 460 (1958). "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment." *Id.*
158. Roberts v. United States Jaycees, 468 U.S. 609, 623 (1984). Where a

punishing membership in an organization ordinarily creates "guilt by association,"[159] under certain circumstances criminal charges resulting from such membership may be justified.[160] If the government can show that the person charged is an active member of an organization whose illegal goals he was intentionally furthering, his or her freedom of association is not violated.[161]

Moreover, the government must also show that the group's objective was not to simply advocate, but actually instigate, an illegal action.[162] However, such illegal action need not come to fruition before the instigator loses his constitutionally guaranteed right of association.[163] Ordinarily, the punishment is imposed based not on subsequent injurious actions, but on the sole fact of instigation.[164] Unless a suspect is a member of a "legitimate" organization, courts may exhibit extreme deference to the legislature, adopting measures in response to threats to U.S. national security.[165]

The new Illinois law does not overstep the bounds of the freedom of association. Although the law's opponents claim that it creates "guilt by association," in effect punishing mere member-

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state cannot reach its meaningful goals without somewhat restricting people's freedom of association, such restriction may be justified as long as it is "unrelated to the suppression of ideas," and the state's goals could not be reached via other avenues. *Id.*

159. For full discussion of the concept of "guilt by association" in terrorism context, see Keisha A. Gary, Note, *Congressional Proposals to Revive Guilt by Association: An Ineffective Plan to Stop Terrorism*, 8 GEO. IMMIGR. L.J. 227 (1994) (outlining the history of certain legislation that gave rise to the concept of guilt by association, including the Immigration Act of 1903, the Alien Registration Act of 1940, the Internal Security Act of 1950, the McCarran-Walter Act).

160. Scales v. United States, 367 U.S. 203, 205 (1961). In *Scales*, the lower court convicted the defendant under the membership clause of the Smith Act as a member of the Communist Party. *Id.* at 205-06. The Court affirmed defendant's conviction because the defendant was an active member of the organization and knew of the Party's plans for violent overthrow of the Government. *Id.*

161. *Id.* at 220.

162. Noto v. United States, 367 U.S. 290, 297 (1961).

163. *Scales*, 367 U.S. at 251-54.

164. *Id.*

165. *See, e.g.*, Communist Party v. Subversive Activities Control Bd., 367 U.S. 1, 81 (1961) (upholding the compelled disclosure of Communist Party membership list under the Subversive Activities Control Act); Barenblatt v. United States, 360 U.S. 109, 128 (1959) (upholding a contempt conviction for defendant's refusal to answer question concerning his association with the Communist Party members). On the opposite side of the scale is the strict scrutiny standard, applicable where a group under investigation is considered "legitimate." *See* Gibson v. Florida Legislative Investigation Comm., 372 U.S. 539, 548-49 (1963). In *Gibson*, the Court stated that before a disclosure of NAACP membership information could be compelled, the government must "convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest." *Id.* at 546.

ship in an organization,[166] the law does not implicate associational freedom. Significantly, the new Illinois law implicates only support for illegal, violent activities conducted on foreign soil. The law's definition of international terrorism impliedly protects support for the lawful actions of sovereign nations by explaining that international terrorism applies only to "private person[s] or non-governmental entit[ies]" perpetrating activities that are "dangerous to human life."[167] Hence, the law does not implicate Illinois' residents' freedom to associate with independent nations who are conducting legitimate activities and with individuals who act lawfully.

In *NAACP v. Claiborne Hardware Co.*,[168] the U.S. Supreme Court established guidelines for determining whether by prohibiting a certain activity a law creates "guilt by association."[169] While a law may not punish association without more, it may proscribe association with an organization whose members strive to advance the group's violent goals.[170] Clearly, the new Illinois legislation adheres to the guidelines of the test. To illustrate, Mr. *Y* would not be guilty of the offense if he asked for money following a presentation on the need for medical supplies at the Antixanian hospitals. Similarly, Ms. *X* would not be guilty of the offense if she contributed fifty dollars for the construction of a new Antixanian school building.

Furthermore, according to the law's explicit language, both the solicitor and the contributor must intend for the donation to further an act of violent international terrorism.[171] Therefore, it is impertinent that the militant branch of Antixanians is active in its struggle against Xanians, as long as Ms. *X* and Mr. *Y*'s intentions were purely humanitarian. Consequently, the new Illinois law penalizes only illegal conduct and as such, does not violate constitutionally protected freedom of association.

4. Freedom of Religion

Freedom of religion holds a distinct place among the enumerated constitutional guarantees.[172] The Supreme Court has long

166. Dixon, *supra* note 136, at 3.
167. 720 ILCS 5/29C-5 (1996).
168. 458 U.S. 886 (1982).
169. *Id.* at 920.
170. *Id.*
171. 720 ILCS 5/29C (1996).
172. *See, e.g.*, George C. Freeman, III, *The Misguided Search for the Constitutional Definition of "Religion"*, 71 GEO. L.J. 1519, 1520-21 (1983) (discussing history of definition of religion; from the Founding Fathers who equated religion with "theism," to the Supreme Court's understanding religion as a relation to the one's Creator); Jesse H. Choper, *Defining "Religion" in the First Amendment*, 1982 U. ILL. L. REV. 579, 580 (arguing that the society is in need of not only a standard definition of religion for purposes of both traditional

held that while the First Amendment unconditionally protects a person's religious beliefs, acts in furtherance of such beliefs may be regulated.[173] It is axiomatic that a law does not violate a person's right to free exercise of religion if the law does not specifically target the religion in its application.[174]

However, where a law is neither neutral nor of general applicability, its application may be justified only if used to enforce a compelling governmental interest with the least restrictive means available.[175] In 1990, the Supreme Court refused to apply the "compelling interest" test vis-à-vis the question of the constitutionality of a criminal law proscribing the use of a drug used in religious ceremonies.[176] Following the Court's precedent established in *Employment Division, Department of Human Resources of Oregon v. Smith*,[177] the state is no longer required to show a compelling interest in its attempts to regulate its citizens' conduct, where that conduct would potentially threaten public safety.[178] The Court stressed that a person may not evade compliance with criminal laws by invoking the right to free exercise of his religion.[179] However, in 1993, Congress revived the compelling interest test when

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and nonconformist groups, but also for a uniform "legal" definition of religion); Note, *Toward a Constitutional Definition of Religion*, 91 HARV. L. REV. 1056, 1089 (1978) (advocating movement away from the formalistic definition of religion and toward a functional one, which would allow more freedom for the expression of the individuals' beliefs). One of the most concise determinative tests is one by the Supreme Court defining a religious belief as "sincere and meaningful [which] occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God. . . ." United States v. Seeger, 380 U.S. 163, 166 (1965).

173. Cantwell v. Connecticut, 310 U.S. 296, 304 (1940). In *Cantwell*, the defendant, a Jehovah Witness, approached two Catholic men on the street and attempted to persuade them to change religion. *Id.* at 300-02. The Court reversed the defendant's conviction for breach of the peace, holding that the statute prohibiting religious solicitation without a license unconstitutionally restricted defendant's peaceful endeavors. *Id.* at 304, 306.

174. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531-33 (1993). In *Church of the Lukumi Babalu Aye*, the practices of the Santeria religion required animal sacrifice. *Id.* at 524-25. The Court held unconstitutional a state statute prohibiting such sacrifices, reasoning that because it targeted only Santerian religious practices it was neither "neutral" nor "of general applicability." *Id.* at 535-36.

175. *Id.* at 533.

176. Employment Div. Dep't of Human Resources of Oregon v. Smith, 494 U.S. 872, 885 (1990). In *Employment Division*, the petitioner challenged constitutionality of the Oregon statute criminalizing the ingestion of a hallucinogenic drug peyote, often used in religious ceremonies by Native Americans. *Id.* at 874. The Court held the statute constitutional, stating that an individual is obligated to comply with valid criminal laws even if it means foregoing certain religious rituals. *Id.* at 890.

177. 494 U.S. 872 (1990).

178. *Id.* at 885.

179. *Id.*

it enacted The Religious Freedom Restoration Act.[180]

Regardless of the test applied, a person will not escape prosecution for his or her criminal activity by claiming the right to freedom of religion. If Mr. *Y* and Ms. *X* jointly or individually collect funds intending to further an activity which is considered a felony in Illinois, they are criminally responsible, regardless of their ideological or religious motivations. Under the precedent established by *Employment Division*, Illinois would not be required to show a compelling state interest. However, if a court follows the Religious Freedom Restoration Act, the interest in curtailing terrorism would certainly satisfy the compelling interest requirement. Since the ability of terrorists to launch deadly attacks on innocent civilians abroad is dependent on receiving funding for such activities, criminalizing intentional donations is a narrowly-tailored means of advancing governmental interest of preventing such attacks. While international terrorist activity on foreign soil is ordinarily of concern only to federal authorities, Illinois, and Chicago in particular, have an interest in such activity as well, after the Chicago Muslim community was named the primary supplier of funding to Hamas.[181] As such, the new Illinois law furthers a meaningful state interest by restricting criminal activity. Consequently, the new Illinois law satisfies the guidelines of either test without infringing upon the freedom of religion.

B. Fourth Amendment Concerns

The Fourth Amendment preserves the people's right of privacy, implicit in the United States Constitution.[182] While instituting the requisite safeguards in furtherance of this protection, the Fourth Amendment regulates searches, seizures and arrests of suspected criminal offenders.[183] The actions of law enforcement officers in invading a person's privacy with a search or seizure are justified only where such invasions are reasonable.[184] The Supreme Court ascertained that a search is reasonable if it is conducted with a warrant or if it satisfies one of seven other pre-

180. 42 U.S.C. § 2000bb (1994).

181. See *supra* notes 19-23 and accompanying text for a discussion of Hamas fundraising activities in Chicago.

182. U.S. CONST. amend. IV. The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Id.

183. *See* ROBERT S. PECK, THE BILL OF RIGHTS AND THE POLITICS OF INTERPRETATION 245-48 (1992) (discussing how the requirement of a warrant is meant to operate as a check on the authority of law enforcement officers).

184. U.S. CONST. amend. IV.

determined types of warrantless searches.[185] Where the police conduct a search without a warrant, such an invasion may still be warranted if it falls under one of the exceptions to the requirement of securing a warrant.[186] The officers may proceed with a warrantless search if they reasonably believe that their safety is threatened,[187] to protect evidence from destruction or loss,[188] or if they detain the perpetrator following a "hot pursuit."[189] Additionally, police officers are not required to obtain a warrant if probable cause exists for a search incident to a valid arrest,[190] if the incriminating evidence is in "plain view,"[191] or if the accused consents to the search.[192] The Court also extended the application of warrantless searches to motor vehicles,[193] open spaces,[194] and prisons.[195]

185. *See* LEE EPSTEIN & THOMAS G. WALKER, CONSTITUTIONAL LAW FOR A CHANGING AMERICA 495-536 (1994) (discussing the eight types of searches and seizures that the Supreme Court has designated as reasonable).

186. *See* RALPH A. ROSSUM & G. ALAN TARR, AMERICAN CONSTITUTIONAL LAW 458 (1994).

187. *See* Terry v. Ohio, 392 U.S. 1, 23 (1968). In *Terry*, a Fourth Amendment milestone case, the Court established the guidelines for "stop and frisk" searches. *Id.* at 10. The Court held that the law enforcement officers may conduct a pat down search of persons they suspect of carrying a weapon. *Id.* at 24-25.

188. *See* Cupp v. Murphy, 412 U.S. 291 (1973). In *Cupp*, while the police questioned Murphy, the estranged husband of a murdered woman, a detective noticed marks on the husband's fingers. *Id.* at 292. Concerned that Murphy could remove the stains before the police secured a warrant, the detective took scrapings from Murphy's nails despite his protests. *Id.* The Court held that the detective's actions were justified due to the possibility of destruction of evidence connecting Murphy to the murder of his wife. *Id.* at 295.

189. *See* Warden v. Hayden, 387 U.S. 294, 297 (1967). In *Warden*, the defendant was arrested in his home following a report containing a description of a robber. *Id.* Based on this description, the police apprehended the defendant in his home within 30 minutes after the robbery. *Id.* The Court upheld the conviction stating that search of the defendant's house without a warrant was justified as the speedy actions of the police were essential in capturing the offender. *Id.* at 298.

190. *See* Chimel v. California, 395 U.S. 752, 753 (1969). In *Chimel*, the police searched a house of a person suspected of a coin shop burglary. *Id.* While the officers had a valid arrest warrant, they searched the entire house of the accused against his protests. *Id.* The Court held that such investigation was not warranted, and that the officers could reasonably search only the defendant's person and the immediate vicinity. *Id.* at 768.

191. *See* Arizona v. Hicks, 480 U.S. 321, 323 (1987).

192. *See* Stoner v. California, 376 U.S. 483, 489 (1964) (holding that a hotel clerk does not have the authority to consent to a search of hotel guest's room).

193. *See* United States v. Ross, 456 U.S. 798, 809 (1982) (holding that law enforcement officers may search a car, provided that a probable cause for such a search exists).

194. *See* Oliver v. United States, 466 U.S. 170, 177 (1984) (holding that police may conduct warrantless searches of open spaces, like fields, to collect incriminating evidence)

195. *See* Hudson v. Palmer, 468 U.S. 517, 526 (1984) (holding that police may search incarcerated persons as the prisoners lack expectation of privacy).

Moreover, in cases of either a magistrate-authorized or a warrantless search, law enforcement officers are justified in invading the privacy of an accused only if probable cause exists to search the suspect.[196] Courts usually concede to the existence of the probable cause for a reasonable search where the "totality of the circumstances" is such as to signal probability of criminal activity under way.[197] In *Illinois v. Gates*,[198] U.S. Supreme Court reconsidered the application of the then-existing tests with regards to probable cause. [199] By overruling the technical requirements of probable cause, the Court held that probable cause does not demand a technical examination of its elements, but rather is "a fluid concept—turning on the assessment of probabilities in particular factual contexts. . . ."[200]

The Supreme Court outlined the policy behind the limitations on searches and seizures as one to deter and discipline law enforcement officers from engaging in official misconduct.[201] Since the early twentieth century, the Court has established a remedy to counteract the unauthorized invasions of privacy by the law enforcement officials, requiring the application of the "exclusionary rule."[202] The rule prohibits admission of all evidence obtained through an unreasonable search, with the exception of the evi-

196. EPSTEIN & WALKER, *supra* note 185, at 496. *See also* Brinegar v. United States, 338 U.S. 160, 163 (1949); Spinelli v. United States, 393 U.S. 410, 411-12 (1969).

197. Illinois v. Gates, 462 U.S. 213, 233 (1983). In *Gates*, based on an anonymous letter, Illinois law enforcement officials arrested a couple suspected of drug-dealing. *Id.* at 227. The letter identified the sale of narcotics as the wealthy couple's source of income and prompted the police to investigate the Gates' activities. *Id.* at 225.

198. 462 U.S. 213 (1983).

199. *Id.* at 233-38.

200. *Id.* at 232.

201. Mapp v. Ohio, 367 U.S. 643, 660 (1961). "Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." *Id.* at 659. In *Aguilar v. Texas*, the Court held that neither federal nor state judiciaries may issue a warrant in the absence of probable cause for a search. 378 U.S. 108, 115 (1964).

202. PECK, *supra* note 183, at 252. Before the Court's holding in *Weeks v. United States* in 1914, police actions were virtually unsupervised. EPSTEIN & WALKER, *supra* note 185, at 536. However, the issue of the exclusionary rule on the federal level was not settled for almost 35 years, until *Wolf v. Colorado* in 1949. *Id.* at 537. Twelve years later, the Court advised the states that they also must apply the rule in local court proceedings. *Id.* at 544. The rule remains a target of criticism by scholars including Justices Cardozo and Burger. According to Cardozo, "[t]he criminal is to go free because the constable had blundered . . . . A room is searched against the law, and the body of a murdered man is found . . . . The privacy of the home has been infringed and the murderer goes free." Bivens v. Six Unknown Named Agents, 403 U.S. 388, 413 (1971) (Burger, C.J., dissenting) (quoting People v. Defore, 150 N.E. 585, 587-88 (N.Y. 1926). *See generally* STEVEN SCHLESINGER, EXCLUSIONARY INJUSTICE (1977) (discussing the application of the exclusionary rule).

dence obtained in "good faith," where an officer believed the search to be reasonable.[203]

The Supreme Court has held that a state's powers include the right to investigate suspected criminal activities of its residents.[204] Moreover, whereas probable cause is necessary for conducting a reasonable search and seizure, this high standard does not have to be satisfied in the initial stages of an investigation into an individual's or a group's activities.[205] Finally, the Court has long held that where there is no showing of objective harm or specific future harm, an investigation does not constitute a justiciable constitutional claim.[206]

The new Illinois law does not expand the investigatory police powers of the State. The law provides that an investigation into individual or group activities may be launched when "the facts reasonably indicate" that intentional solicitation or contribution of support for international terrorist purposes is under way.[207] Accordingly, the law not only guarantees that unconstitutional investigations will not be initiated, but also establishes functional and sensible standards for investigations that are warranted.

Consider, for example, a situation where a law enforcement agency acquires information that illegal fundraising activities are scheduled to occur at a religious service that Ms. *X* was to attend. While without more proof, police officers may not search the sanctuary, they may initiate an investigation into the foundation's activities. They may begin surveillance of the building, or any other public place where services are held. However, the new Illinois law does not expand authority of the police. All investigations must still be conducted within the boundaries established by the Fourth Amendment jurisprudence.

Furthermore, the drafters of the new Illinois law provided an

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203. *See* United States v. Leon, 468 U.S. 897 (1984); *see also* Massachusetts v. Sheppard, 468 U.S. 981 (1984).

204. Branzburg v. Hayes, 408 U.S. 665, 708 (1972).

205. United States v. Steinhorn, 739 U.S. 268, 273 (1990). In *Steinhorn*, the defendants appealed from conviction for transporting stolen jewelry across state lines. *Id.* at 269. The defendants appealed alleging that the law enforcement officers targeted them without "a reasonable suspicion" that criminal activity was afoot. *Id.* The Court upheld their convictions stating that such high standard is not required before police may investigate the conduct of citizens in spheres not protected by notions of privacy. *Id.* On the contrary, the Court refused to assume the role of an overseer of police investigatory tactics by requiring that a reasonable suspicion precede an investigation. *Id.*

206. Laird v. Tatum, 408 U.S. 1, 3, 10, 13 (1972). In *Laird*, the Army surveyed plaintiffs' political demonstration. *Id.* at 3. The plaintiffs alleged that such surveillance of a lawful civilian political activity was unconstitutional because no illegal conduct was taking place. *Id.* The Court held that plaintiffs were not entitled to a relief because they failed to show any objective harm from the government's surveillance. *Id.*

207. 720 ILCS 5/29C-15 (b)(1) (1996).

exception to state investigatory powers, excluding investigations based on conduct protected by the First Amendment.[208] As such, the law expressly protects financial support for the "nonviolent political, religious, philosophical, or ideological goals or beliefs of any person or group."[209] To illustrate, if following an initial investigation into reported criminal conduct of Ms. *X* and her congregation, the facts reasonably indicated that all donations were intended to go toward the school building for Antixanian children living overseas, law enforcement officials would have to cease their investigatory efforts or risk violation of the Fourth Amendment.

Consequently, the new Illinois law establishes workable guidelines for legitimate investigations while simultaneously protecting the ability of Illinois residents to express themselves freely through financial transactions for nonviolent activities. As drafted, this law does not violate the Fourth Amendment and is otherwise constitutionally valid.

C. Supremacy Clause Concerns

The Supremacy Clause in Article VI of the U.S. Constitution allows the federal government to preempt any state law only where there is an actual conflict between a federal law and a state law, or where Congress expressly or impliedly "occupies the field" subject to regulation.[210] Because the new Illinois antiterrorism law does not conflict with federal legislation, this Section addresses the issue of whether federal law should preempt for any other reasons.

While in rare cases Congress has identified its express occupation of a certain field, in its earlier decisions, the Supreme Courts bore the responsibility for ascertaining congressional intent and abrogating inconsistent state regulations.[211] To that end, the underlying policy was to prevent the impediments to congressional purposes stemming from the federal and state agencies that acted in discord.[212]

In its modern decisions, however, the Supreme Court has been reluctant to interpret congressional objectives absent clear indications of Congress' intentions.[213] Moreover, to avoid the role of delineator of the state sovereignty boundaries, the Court will

208. 720 ILCS 5/29C-15 (b)(2) (1996).

209. *Id.*

210. U.S. CONST. art. VI, cl. 2. *See also* JOHN E. NOWAK & RONALD E. ROTUNDA, CONSTITUTIONAL LAW § 9.1 (5th ed. 1995).

211. NOWAK & ROTUNDA, *supra* note 210, § 9.2.

212. *See* Hines v. Davidowitz, 312 U.S. 52, 67 (1941) (establishing that federal law preempts a state regulation where the state law "stands as an obstacle to the accomplishment and execution of the full purposes of Congress."). *See also* Pennsylvania v. Nelson, 350 U.S. 497, 502-05 (1956) (elaborating on the preemption analysis and instituting a three-part examination).

213. Anderson v. Edwards, 115 S. Ct. 1291, 1299 (1995) (citing New York State Dep't of Social Serv. v. Dublino, 413 U.S. 405, 413 (1973)).

maintain the validity of state regulation, unless congressional intent favoring preemption is persuasively manifested.[214] As such, a state regulation that complements existing federal law could be valid, especially if Congress left room for state regulation in fiscal and criminal aspects of the federal law.[215] Finally, the Court has held that states are well within their powers to legislate by instituting higher levels of protection for its residents than those granted by the federal government in similar matters.[216]

To illustrate, the enactment of the controversial Anti-Apartheid Act of 1986,[217] which limited economic ties to the South Africa regime did not act to preempt state decisions to further sever ties with the South-African economy in the absence of clear indication of such preemptive intent.[218] One of the leading preemption opinions is the Illinois Supreme Court's *Springfield Rare Coin Galleries, Inc. v. Johnson*.[219] In *Springfield Rare Coin*, the court established a three-prong test to determine whether a federal law should preempt a state regulation.[220] First, the court held that although the authority to conduct foreign affairs is ordinarily within the federal government's domain, it is within states' powers to impact foreign relations if such effects are incidental and even-handed.[221] Second, the court pointed out that state legislators may not direct their legislative authority at a single nation.[222] Finally, where a state's legislature is motivated solely by disapproval of a foreign nation's policies, any legislative product is an unconstitutional exercise of the lawmaking authority.[223]

The application of the *Springfield Rare Coin* test to the new Illinois antiterrorism law confirms the law's constitutionality. By penalizing solicitation and contribution of material support intended to facilitate terrorists' violent attacks on human lives, the State of Illinois is regulating its residents' criminal conduct, traditionally the domain of local legislatures. Although the imposition of criminal liability for such solicitations and contributions "generally can be said to have some effect on foreign na-

214. LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW § 6-25, at n.12 (2d ed. 1988).

215. *See* Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n, 461 U.S. 190, 203-04 (1983) (holding that states may not supplement federal law only if Congress "left no room" for such complementing additions).

216. *See* California Fed. Savings & Loan Ass'n v. Guerra, 479 U.S. 272, 279 (1987) (explaining that a federal law is "a floor beneath which . . . benefits may not drop— not ceiling above which they may not rise.").

217. Pub. L. No. 99-440, 100 Stat. 1086 (1986).

218. TRIBE, *supra* note 214, § 6-25 at n.12.

219. 503 N.E.2d 300 (Ill. 1986).

220. *Id.* at 305-07.

221. *Id.* at 306.

222. *Id.* at 307.

223. *Id.*

tions . . . ,"[224] the burdens of these effects are clearly incidental. Additionally, while Hamas' fundraising activities in Chicago prompted action on the part of the Illinois legislature, the new antiterrorism law does not direct its sword towards a distinct nation. To the contrary, the law specifically limits its application to the terrorist activities of "private person[s] or non-governmental entit[ies]."[225] As such, the Illinois law calls for evenhanded application, without targeting another sovereign's regime.

Finally, due to the continuous escalation of terrorist violence, the United States has acted to protect its citizens at home and abroad by enacting several antiterrorism laws.[226] In February 1997, in response to the recent terrorist attack at the Empire State Building, President Clinton called for more stringent federal and state gun laws.[227] Illinois has acted in the spirit of state and federal uniformity, by instituting penalties for offenders who finance violence. Therefore, the new Illinois law satisfies the *Springfield Rare Coin* test for purposes of Supremacy Clause and should be upheld as constitutional.

CONCLUSION

Governmental infringement upon the people's constitutionally guaranteed freedoms would have a debilitating consequence on the democratic order in this country. It follows that appropriate safeguards are necessary to ensure that every new law, whether state or federal, is constitutionally valid.

Illinois' antiterrorism law contains appropriate safeguards and would withstand any constitutional challenge. Because the law includes definitions of legal terms of art, in effect it permits only the most narrow application, punishing support of brutal terrorist attacks on innocent civilians overseas. Moreover, the Illinois law criminalizes only support of violent acts that unquestionably would be felonious according to the existing laws of Illinois. Most importantly, public policy requires state intervention where its residents are involved in support of deadly attacks conducted abroad. Finally, because the new Illinois law complements the existing federal legislation and is incidental to the field of foreign relations, it should be upheld as constitutional for purposes of the Supremacy Clause.

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224. Springfield Rare Coin Galleries, Inc. v. Johnson, 503 N.E.2d 300, 307 (Ill. 1986).

225. 720 ILCS 5/29C-5 (1996).

226. See *supra* notes 41-73 and accompanying text for a discussion of the antiterrorism laws .

227. *What's News*, WALL ST. J., Mar. 6, 1997, at A1.