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MEMORANDUM

To : Senate Judiciary Committee Chairman Amodel
Senate Judiciary Committee Members

From : J. J. Jackson

Re : SB 38 Comments and Concerns from the Nevada ACLU

Chairman Amodel and Committee Memebers:

The following comments are offered to you in follow up to SB 38 from Nevada ACLU Member JoNell Thomas, Esq., and Dr. Rich Siegel. Dr. Siegel will be present for the work session on SB 38 for further comment or to answer any questions regarding his comments.

Comments/Concerns by JoNell Thomas, Esq. :

An initial concern is the potential fiscal impact of this measure on the state's budget. It is important to note that this bill would double penalties, which would have a significant impact on the prison budget.

The bill also states that there is no impact on local government. This is not correct. Every prosecution would have a financial impact on the DA's office, PD's office and courts if court appointed attorneys are hired (which would be likely if there is more than one or two defendants). These expenses could go beyond typical costs of prosecution because of the unique challenges which would be presented under this bill.

Section 1, Paragraph 2 - the term "the person who committed the felony intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person" is both vague and overly expansive. It should be limited to "many people" rather than "more than one person."

Section 6, Paragraph 1 - "any act of undeclared war" is not defined and is vague.

Section 6, Paragraph 2 - the section has several terms which could be broadly interpreted to apply to situations not intended by this bill: threatened, attempted, sabotage, fear, intimidate, coerce, disrupt, affect, influence, retaliate, impairment. In addition, it is unclear as to whether "substantial" in subparagraph (c) is applicable to "contamination", "impairment" or "disruption" or whether it is limited to "destruction."

Section 15, Paragraph 1- "A person shall not knowingly hinder, delay or obstruct the prosecution of a terrorist." - This appears to be directed at criminal defense attorneys and their investigators and expert witnesses. This section is a blatant violation of the Fifth, Sixth and Fourteenth Amendments. If this is not the intent of the section, its intent is unclear.

Comments/Concerns by Dr. Siegel :

In this bill terrorism repeatedly is being extended to refer to:

1. Any action that can be construed to aid a terrorist , as overbroadly defined, and
2. Overly broad inclusions of actions and impacts that reach constitutionally protected behaviors.

Specifically:

1. We must insist that terrorism be limited in meaning to violent behaviors directed and intended to kill or maim many people. This would strike out:

Sec. 6

- 2. "threatened or attempted use of "fear---"
- or the threat to "more than one person."

2. We insist on distinguishing actual acts of terrorism from other behaviors that may be related to terrorism:

- Sec. 9: conceal, aid, further, house, send communication or money

3. Need to strike Sec. 15:

- "knowingly hinder, delay or obstruct the prosecution of a terrorist." (See Jo Nell notes)

4. Need to challenge overbreadth in Sec. 20 on production or storage of "lethal agent" for use as a weapon. The bill later seeks to exclude from this coverage business activity and other lawful uses, but it raises real concerns in this section. Every home and business has "lethal agents." And criminality is to be established through such vague references as:

Sec. 20 (b)

"or (2) Under circumstances likely to cause harm, whether or not such harm actually occurs."

5. The First Amendment violations are particularly clear in Sec. 21. There we are asked to criminalize the conveying of any false information "concerning an act of

terrorism or production/storage of a lethal agent. This section relates this conveying to acts with intent to "frighten, alarm or distress any person." (Sec. 21, line 26). This is tied in Sec. 21, line 12 to actions that "interfere with the operations of or cause economic or other damage to any person or...unit of...government...whether or not such interference or damage actually occurs." (Sec. 21, line 36). One cannot interfere and not interfere in the same sentence or act. Sec. 21 associates terrorism with (line 20) "using any product" that another person "reasonably could believe" is any weapon or delivery system. How can we create such a serious felony based on what someone (anyone?) "reasonably could believe."

As such, the ACLU of Nevada considers SB38 in need of serious rewriting in order to narrow it to actual acts that meet common sense definitions of terrorism and to not extend its reach to constitutionally protected activities. We see the need to go over the entire document for vague and overbroad language that is designed to sweep into the crime of terrorism many kinds of economic and political activities and to recognize the many contradictions in the drafted language.