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Crime - Chicago Anti - Gang Case [2]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	Petition Endorsing Chicago's Anti-Gang Loitering Ordinance (29 pages)	ca. 1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Elena Kagan
OA/Box Number: 14358

FOLDER TITLE:

Crime - Chicago Anti-Gang Case [2]

2009-1006-F
kh550

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Crime - Chicago anti-gang case

SUPPORTERS OF CHICAGO'S ANTI-GANG LOITERING ORDINANCE

The Resurrection Project
United Neighborhood Organization
West Woodlawn Council of Block Clubs
Hegwisch Community Committee
Chicago Roseland Coalition for Community Control
South Chicago Chamber of Commerce
Ravenswood Community Council
Nobel Neighbors
Hermosa Community Organization
Reach Out and Touch Ministries
West Humboldt Park Family and Community Development Council
United States Conference of Mayors
The National League of Cities
The National Association of Counties
The International City/County Management Association
The International Municipal Lawyers
The National Association of Chief of Police
The State of Ohio
The State of California
The State of Illinois
The State of Kansas
The State of Louisiana
The State of Michigan
The State of Mississippi
The State of Nebraska
The State of Nevada
The State of South Carolina
The State of South Dakota
The Commonwealth of Pennsylvania
The Commonwealth of Virginia

RESOLUTION

WHEREAS, the 1998 Chicago Community Policing Convention, consisting as it does of representatives of district advisory committees, community-based organizations participating in community policing and beat facilitators, is thoroughly familiar with Chicago's community policing programs, and in particular the importance of proactive efforts to prevent breaches of the peace rather than delaying intervention until crimes are committed; and

WHEREAS, one of the major factors that threatens to destabilize neighborhoods is the visible presence of criminal street gang members, who all too often blatantly engage in drug deals and other crimes in the public way in full view of neighborhood residents, but merely stand about pretending to be innocently loitering once the police arrive; and

WHEREAS, even when gang members are not committing other crimes while loitering on the public ways, the mere presence of a collection of obviously brazen, lawless and violent persons on the public ways intimidates residents, detracts from property values, and ultimately can threaten to destabilize communities; and

WHEREAS, Chicago's Anti-Gang Loitering Ordinance represents an important effort to deal with the problems posed by gang crime by empowering police to disperse gang loiterers, rather than waiting until they commit some other crime which may itself have even more serious consequences; and

WHEREAS, during the period of time that the Anti-Gang Loitering Ordinance was in effect before it was invalidated by the Illinois courts, levels of gang-related crime in Chicago declined

at rates considerably steeper than the rate at which the overall crime rate declined; and

WHEREAS, available statistical evidence also reflects an increase in gang-related crime in 1996, when the anti-gang loitering ordinance was no longer enforced as a result of adverse judicial decisions even though the overall crime rate continued to decline; and

WHEREAS, the experience of community residents confirms that the anti-gang loitering ordinance was an important tool in removing a visibly lawless and disruptive element from the public ways,

NOW, THEREFORE, BE IT RESOLVED, that the 1998 Chicago Community Policing Convention endorses Chicago's Anti-gang Loitering Ordinance, expresses its view that the ordinance made an important contribution to the fight against gang crime in the City of Chicago, and authorizes the filing of a brief on behalf of the Convention in the United States Supreme Court urging that Court to uphold this ordinance as an important community-based and proactive initiative in the fight against gang crime.

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No. 97-1121

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1997

City of Chicago,
Petitioner,
v.
Jesus Morales, et al.,
Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court of Illinois

BRIEF *AMICUS CURIAE* OF OHIO, CALIFORNIA, ILLINOIS, KANSAS, LOUISIANA, MICHIGAN, MISSISSIPPI, NEBRASKA, NEVADA, SOUTH CAROLINA, SOUTH DAKOTA AND THE COMMONWEALTHS OF PENNSYLVANIA AND VIRGINIA IN SUPPORT OF THE PETITION

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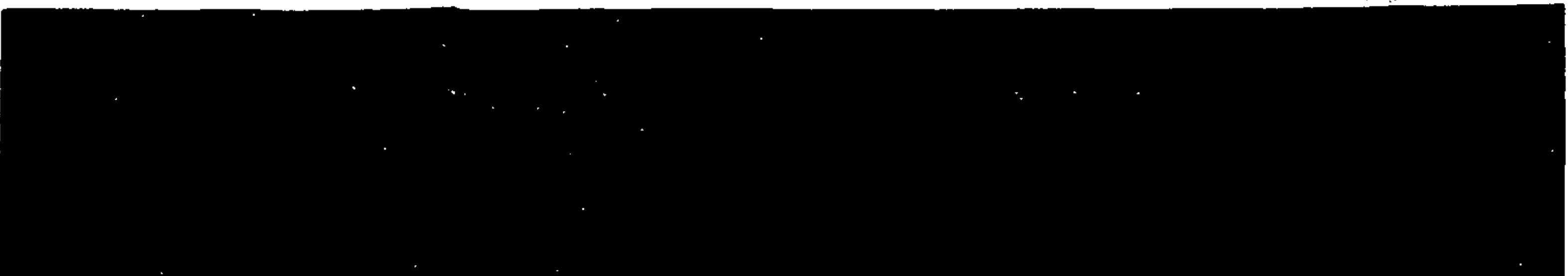

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STATEMENT OF *AMICI* INTEREST

The State of Ohio, together with twelve other *amici* States, join the City of Chicago in urging the Court to review the decision of the Supreme Court of Illinois. Because the *amici* States share the City's concerns about the urban crime, violence and disruption of community life that criminal gangs continue to spawn throughout the country and because they share with their political subdivisions the essential lawmaking responsibility for rooting out these problems, they agree that the Court should clarify the permissible scope of police power that the Constitution tolerates in this important area.

The problems that youth gangs have brought to local communities are new in kind, and indeed would have surprised most prior generations of American adults. A 1995 survey of over 4000 local law enforcement agencies confirms the pervasive scope of youth gang influence in modern America: It shows the existence of gang activity in all fifty states; it demonstrates a gang presence in rural as well as urban counties; and it shows a total of 23,388 youth gangs and a total of 664,906 gang members. *See* 1995 National Youth Gang Survey, published by the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice, p. xi. The overwhelming majority of law enforcement agencies report that gang problems in recent years either have stayed the same or are getting worse, with almost half reporting worse. *Id.* The National Institute of Justice reports similar statistics. In 1993, when there were 16,643 gangs with 555,181 members, the Institute projected 580,331 gang crime incidents nationwide. D. Curry et al., *Estimating the National Scope of Gang Crime from Law Enforcement Data* (Nat'l Institute of Justice, Aug. 1996), at 3-4. The volume of such crimes, the Institute estimated, grew from eight to 11 times the number that existed in 1991. *Id.*

To their credit, State and local governments have attempted to respond to these disturbing developments through a number of different strategies. At the State level, for example,

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Ohio has proposed legislation that makes it a second degree felony to "actively participate" in a criminal gang and to promote or assist in the commission of specified crimes. The pending legislation in Ohio follows the lead of California's "STEP" legislation ("street terrorism enforcement and prevention"), first enacted in 1988 and amended several times since then. Cal. Penal Code §§186.20, 186.21 (legislative findings), 186.22(a) (prohibiting active participation plus promoting or assisting with predicate offenses), 186.22(c), (f) (definitions), 186.26 (offense of coercing a minor to participate in a gang), 186.28 (offense of supplying firearms to gang) (West Supp. 1998).

In like manner, several other States either criminalize gang participation or enhance penalities based on the gang-related nature of a criminal act. *See, e.g.*, Ariz. Rev. Stat. Ann. §§ 13-105 (definitions), 13-2308(G) (class 2 felony offense of criminal gang participation) (West Supp. 1997); Ark. Code Ann. §§ 5-74-102 (legislative findings), 5-74-103 (definitions), 5-74-104 (defining first and second degree gang participation offenses), 5-74-203 (gang recruitment offenses), 5-74-105 (offense of using another's property for gang activity), 5-74-107 (unlawful discharging of firearms from vehicle) 5-74-108 (enhancement of penalties acting in concert), 5-74-201 (findings), 5-74-202 (definitions), 5-74-203 (offense of soliciting gang membership) (Michie 1997); Fla. Stat. ch. 874.02 (legislative findings), 874.03 (definitions), 874.04 (enhancement of felonies committed as part of pattern of gang activity) (1993); Ga. Code Ann. §§ 16-15-2 (legislative findings), 16-15-3 (definitions), 16-15-4 (enhancement of gang-related misconduct) (Michie 1996); Ind. Code §§ 35-45-9-1, 2 (definitions), 35-45-9-3 (gang participation offense), 35-45-9-4 (compelling membership in gang) (1993); 720 Ill. Comp. Stat. Ann. 570/405.2 (offense of street criminal drug conspiracy) (West Supp. 1997); Iowa Code Ann. §§ 723A.1 (definitions), 723A.2 (gang participation offense) (West 1993 & Supp. 1997);

Kan. Stat. Ann. § 21-4704(k) (sentencing guidelines presume imprisonment for gang offense) (Supp. 1996), La. Rev. Stat. Ann. §§ 15.1402 (legislative findings), 15.1403 (gang participation offense), 15.1404 (definitions) (West 1992 & Supp. 1998), Mass. Gen. Laws Ann. ch. 265, § 44 (offense of coercing minor to join gang) (West Supp. 1997); Minn. Stat. § 609.229 subd. (1) (definitions), subd. (2) (participation offense) (1992 & Supp. 1993); Mo. Ann. Stat. §§ 578.421 (definitions), 578.423 (participation offense), 578.425 (enhancements), 578.435 (offense of possessing weapons for gang crime) (West 1995); Mont. Code Ann. §§ 45-8-402, 405 (definitions), 45-8-403 (offense of coercing membership), 45-8-404 (enhancement of sentence for gang-related felony), 45-8-406 (offense of supplying firearms to gang) (1997); Nev. Rev. Stat. § 193.168 (doubling prison term for gang-related crime) (1997); Okla. Stat. Ann. §§ 21-856 (offense of willfully recruiting minor into gang) (West Supp. 1998); S.D. Codified Laws §§ 22-10-14 (definitions), 22-10-15 (enhancements) (Michie Supp. 1997); Tex. Penal Code Ann. §§71-01(d) (definition), 71-02 (participation offense) (West Supp. 1998). Alaska also uses gang-participation as an element in some crimes. Second degree murder, for instance, occurs when the individual causes the death of a non-participant while committing or attempting to commit a felony. *See* Alaska Stat. §11.41.110(4) (Michie 1996). The State also makes gang participation an aggravating factor in sentencing, §12.55.155(28), and outlaws gang recruitment, §11.61.160, 165 (Michie 1996).

The Chicago ordinance follows a similar path in trying to inhibit gang violence and maintain public order. Based on extensive testimony before the City Council, the ordinance tries carefully to strike at the following evils: the intimidation of law-abiding residents by gang loitering; and the creation of a context and cover for gang criminal activities as well as a method of recruitment. The Illinois Supreme Court did not appear to doubt any of this. Yet under its holding society's power to

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defend itself against these acknowledged evils was sharply curtailed. It would seem to be an essential function of State and local government to determine the proper balance between rights and regulations concerning access to and enjoyment of a community's streets, above all to ensure equal access to this basic component of urban life. Because the *amici* States need the legislative tools to engage in criminal gang control and community policing, they respectfully submit that the Court should grant review of the decision of the Illinois Supreme Court to clarify this essential area of the law.

REASONS FOR GRANTING THE WRIT

At the same time the Illinois Supreme Court recognized that "[c]riminal street gangs are an expanding cancer in our society and their illegal activities endanger the safety of many law-abiding citizens," Pet. App. 17a, the court struck a debilitating blow to the reasonable efforts of State and local governments to abate youth gang crime. The problem with the decision is not that it contradicts *dicta* in *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972). It is precisely that broad *dicta* in *Papachristou* would seem to sanction not just the lower-court decision but virtually any other decision that invalidates sensible lawmaking efforts like these. *See* Pet. App. 9a (citing Papachristou for the proposition that a law is infirm if it "makes criminal" activities which "by modern standards are normally innocent"); *id.* 17a ("The Court observed [in *Papachristou*] that such activities [loafing, loitering and nightwalking] are amenities of American life").

The breadth of the *Papachristou dicta* not only overprotects criminal gangs but also underprotects other members of urban communities. If walking the streets or even sauntering about them are constitutional "amenities of American life," for example, *Papachristou*, 405 U.S. at 164, then surely they are amenities to be enjoyed by all American citizens.

When a city like Chicago thus determines that brazen, intimidating, even coercive, members of its community are infringing the enjoyment of these amenities by all citizens, it ought to have the police power to ensure that the allocation of these amenities is fairly distributed. Current law, however, makes that very difficult.

A. The Deliberate Nature Of Chicago's Efforts To Regulate Criminal Gang Loitering Contrasts Markedly With The Anachronistic Jacksonville Ordinance Invalidated In *Papachristou*.

As an initial matter, it is important to emphasize the differences between the Chicago ordinance and the Jacksonville (and State-law) provisions invalidated by *Papachristou* 26 years ago. The *Papachristou* ordinances addressed a problem whose time had come and gone. As a brief review of the provisions confirms, *see Papachristou*, 405 U.S. at 158, "Jacksonville's ordinance and Florida's statute were derived from early English law, and employ[ed] archaic language in their definitions of vagrants," *id.* at 161 (quotation omitted). Even though "the theory of the Elizabethan poor laws" that perpetuated and harshened these laws "no longer fits the facts," and even though the "conditions which spawned these laws may be gone," the "archaic classifications remain[ed]" in Florida in the early 1970's. *Id.* at 161-62 (quotations omitted).

In conspicuous contrast to the *Papachristou* laws, which after years of innocuous desuetude were suddenly enforced in Florida, the Chicago ordinance takes aim at a distinctly modern problem with a fresh set of legislative facts to support it. As the Illinois Supreme Court recognized, the ordinance represents the culmination of significant study and consideration. It starts out (Pet. 60a) by identifying the policy judgments that prompted the law – an increasing murder rate as well as an increase in violent

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and drug-related crimes. an assessment that criminal street gang activity bears a substantial responsibility for the problem. and the use of loitering by criminal gangs to maintain control over identifiable areas and to intimidate others from using those areas The ordinance then proceeds to define "criminal street gang" as

> any ongoing organization, association in fact or group of three or more persons, whether formal or informal, having as one of its substantial activities the commission of one or more . . . enumerated [criminal acts], and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

Pet. 61a- 62a. A "pattern of criminal gang activity" in turn means "two or more acts of criminal gang activity of which at least two such acts were committed within five years of each other." *Id.* at 63a.

Unlike the *Papachristou* ordinances, the Chicago law regulates a current and serious problem, and does so on the basis of up-to-date legislative findings. The provision also uses familiar definitions of crime. The definition of a "pattern of criminal gang activity," for instance, parallels the familiar concepts of "enterprise" and "pattern of racketeering activity" found in federal and state RICO legislation. *See Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46 (1989); *United States v. Turkette*, 452 U.S. 576, 578-79 (1980). This of course helps to distinguish the law from other cases as well. *See Lanzetta v. New Jersey*, 306 U.S. 451, 453-54 (1939) (finding law vague because it defined "gang" to mean simply "two or more persons" without also defining impermissible gang conduct).

In further contrast to the *Papachristou* laws, Chicago's delegation of authority to disperse loiterers based on an officer's objective determination that one of them is likely to be a criminal gang member represents an innovation in community policing. It is typical of other urban inititiatives designed to abate youth gang street crime by moving away from a crime-solving model of law enforcement to a preventive, community-policing model. The new approach rests upon the insight that by declining to tolerate mild levels of public disorder, cities can avoid the all-too-familiar spiral into more severe disorder, crime and community dysfunction. *See* D. Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 Colum. L.Rev. 551, 581-82 (1997) (citing empirical research supporting the "broken windows" thesis -- that unremediated disorder leads to greater disorder). While this model plainly offers a fresh approach to urban crime, it also coincides with the concern of residents in many urban communities that "passivity in the face of outrageous street behavior" constitutes a critical law-enforcement shortcoming. G. Kelling & C. Coles, *Disorder and the Court*, 116 Pub. Interest 57, 70 (1994).

Nor is the new Chicago ordinance the first one to fall victim to the broad *dicta* in *Papachristou*. In 1989, the District of Columbia passed an "illegal drug zone" ordinance, 36 D.C. Reg. 2835, authorizing the Chief of Police to disperse persons who congregate within the specially-designated zones for up to five days. The D.C. Superior Court invalidated the law on vagueness and overbreadth grounds. *See United States v. Kennedy*, 118 Daily Wash. L. Rep. 873 (Jan. 12, 1990). Unlike the present law, the D.C. ordinance potentially subjected any assemblage to dispersal within the zone (even a First Amendment activity), and failed to give the police any express standard as to which congregations of people should be dispersed and which should not be. Like the lower court here, however, the D.C. court invoked broad language from

Papachristou, stating that "the freedom to be with intimate relations and close friends in public places would seem as fundamental as the liberty of the individual simply to walk or loiter in those places, which the Supreme Court in *Papachristou v. City of Jacksonville*, 405 U.S. 156, 163-65 (1972) found protected by substantive due process." 118 Daily Wash. L. Rep. at 877.

B. The Chicago Ordinance Is Not Unconstitutionally Vague.

The Chicago ordinance does not violate the Constitution's prohibition against vague criminal laws. In particular, it steers clear of the two flaws that characterize such laws: They fail either to "provid[e] fair warning" of what is prohibited or to "provide explicit standards" to limit the discretion of those who enforce the law. *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

Neither defect applies here. In plain terms, the ordinance (1) authorizes the police to issue a dispersal order when they reasonably believe that one or more loiterers is a criminal gang member; (2) gives additional notice to all persons covered by the law when they are told to disperse; and (3) sanctions only those who disobey the police orders.

Chicago, then, chose not to regulate loitering in and of itself, but only to regulate it when combined with criminal gang activity and when police orders to disperse are ignored. These features of the law bring it well within the parameter of other laws the Court has upheld. *See, e.g.*, *Grayned*, 408 U.S. at 113 (1972) (upholding conviction for creating noise near school where police discretion was cabined by required showing of interference with school activities); *Colten v. Kentucky*, 407 U.S. 104, 108-09 (1972) (upholding conviction under disorderly conduct statute that required compliance with dispersal order

and that required intent to cause public inconvenience). *Cf. Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 91 (1965) (upholding disobedience-to-police-order law when coupled with element of sidewalk blockage).

Instead of stopping here and relying on this authority, however, the lower court proceeded. It took the view that these features of the law did not suffice to save it, even when combined with an order of dispersal and a careful definition of criminal gang activity, because the individual "has no way of knowing whether an approaching police officer has a reasonable belief that the group contains a member of a criminal gang." Pet. 11a-12a. In the lower court's view, in other words, the validity of requiring compliance with police orders turns on whether the individuals subject to the order themselves perceive an objective basis for the order, not whether the officers have an objectively reasonable basis for issuing the order. No doubt other courts have voiced similar sentiments. *See, e.g., City of Akron v. Rowland*, 618 N.E. 2d 138, 145 (Ohio 1993) (drug loitering ordinance held invalid where, "without being able to read the officers' minds," a suspect could not ascertain the reasonableness of police suspicion). But these views cannot be squared with traditional methods for balancing a community's collective interests in security against the individual's interest in liberty.

Left unreviewed, this position also threatens to upset time-honored understandings of the legitimate authority of the police to investigate, ferret out and stop crime. The Fourth Amendment has long used "reasonable suspicion" and "probable cause" as objective touchstones for determining when government may interfere with individual liberty. *See Terry v. Ohio*, 392 U.S. 1, 20-22 (1968) (discussing probable cause and reasonable suspicion standards as the basis for "assur[ing] that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of

a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances"). Indeed, the Fourth Amendment itself refers just to "unreasonable searches and seizures," and has never assessed compliance with the standard from the perspective of the *individual's*, as opposed to the officer's, objective determination of whether cause exists to request an accounting of the individual's conduct.

Case law proves the point. The Court has frequently examined the objective reasonableness of law-enforcement action from the standpoint of the officer involved, not the individual suspected of crime. *See Ornelas v. United States*, 116 S.Ct. 1657, 1661-62 (1996) ("components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether those historical facts, *viewed from the standpoint of an objectively reasonable police officer*, amount to reasonable suspicion or to probable cause"); *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968) (standard for reviewing Fourth Amendment reasonableness is "would the *facts available to the officer* at the moment of the seizure or the search warrant a man of reasonable caution in the belief that the action taken was appropriate") (internal quotation omitted). Under the *Terry*-stop rule, as a result, police may briefly detain an individual on "reasonable suspicion" that crime is afoot even though probable cause does not yet exist. In the words of Justice Brennan: "The *Terry* doctrine permits police officers . . . [i]f *they have the requisite reasonable suspicion* . . . [to] use a number of devices with substantial coercive impact on the person to whom they direct their attention, including an official 'show of authority,' the use of physical force to restrain him, and a search of the person for weapons." *Kolender v. Lawson*, 461 U.S. 352, 364 (1983) (Brennan, J., concurring). As these cases illustrate, the

authority of law enforcement to intrude upon an individual's liberty simply does not turn on the suspect's insight into the reasonableness of the officer's action.

In addition generally to looking at these requirements from the perspective of the law-enforcement officer, the Court's search-and-seizure decisions also have applied these reasonableness principles specifically to similar types of law-enforcement action. Just as Chicago authorizes an officer to stop "a person whom he reasonably believes to be a criminal street gang member," 8-4-015(a), so too federal drug enforcement agents frequently stop travelers in an airport who fit the profile of a drug courier. In the drug interdiction context, the Court has frequently permitted such detentions (which, it is worth adding, pose far more risk of arrest and loss of liberty than an order to disperse). *See United States v. Sokolow*, 490 U.S. 1 (1989); *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985). Roadside stops also may be justified by particularized, articulable suspicion of drug trafficking. *See, e.g., United States v. Sharpe*, 470 U.S. 675 (1985). Even without reasonable suspicion, the Court has permitted random drug testing and random roadside stops to end drunk driving. *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989); *Michigan Dept. Of State Police v. Sitz*, 496 U.S. 444 (1989).

Surely, in the light of these precedents, Chicago does not offend the Constitution when it authorizes officers to impose a *de minimis* restriction on individual liberty with a far greater explanation for doing so than these Fourth Amendment decisions require. Here, officers observed a group of persons loitering in a public place. They formed a "reasonable belief" that the individuals belonged to a criminal gang. They asked them to disperse. Then and only then did the officers arrest anybody, and even then only for failing to do what all citizens in a civil society customarily have been expected to do -- obey the

police *See Cox v. New Hampshire*, 312 U.S. 569, 574 (1941) ("[c]ivil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses"); *Cox v. Louisiana*, 379 U.S. 536, 554 (1965) (maintaining public order protects liberty itself from being "lost in the excesses of anarchy").

As in the Court's drug-profile cases, moreover, the general police order implementing the Chicago ordinance illustrates a city policy ensuring that trained officers will perform this function, Pet. App. 65a, and sets forth identifiably objective criteria for determining gang membership, Pet. App. 67a-68a. *See also Sokolow*, 490 U.S. at 10. In the end, it would seem anomalous if the vagueness limitation of the due process clause of the Fourteenth Amendment prohibited what the search-and-seizure requirement of the same clause positively permits.

No such anomaly, however, exists. Contrary to the lower-court's decision, similar rules have governed vagueness and overbreadth challenges. *See Boos v. Barry*, 485 U.S. 312, 331-32 (1988) (rejecting vagueness challenge to ordinance limiting demonstrations at embassies because it was interpreted to permit dispersal "only when the *police reasonably believe* that a threat to the security or peace of the embassy is present"); *Grayned*, 408 U.S. at 114 (acknowledging that enforcing ordinance prohibiting noisy interference with school activity "requires the exercise of some degree of *police judgment*, but, as confined, that degree of judgment here is permissible"); *Colten*, 407 U.S. at 109 (upholding conviction for disorderly refusal to obey dispersal order where "police had cause for apprehension . . . [of] the risk of accident").

All things considered, the Chicago ordinance advances the group goals of security without infringing on individual constitutional rights. In many respects, the legality of this

ordinance poses a far less severe risk to liberty than the customary right of officers to detain individuals reasonably suspected of crime. Notably, Chicago does not authorize a detention based upon loitering with a gang member, but only upon refusal to obey the dispersal order. Far from requiring detention, the police officer's order assumes detention will be avoided when the individual complies with the order. Accordingly, while the Chicago ordinance contemplates that the individual will exercise his or her freedom to walk away, a Fourth Amendment seizure contemplates that the police will "restrain[] his freedom to walk away," *Terry*, 392 U.S. at 16. At most, in other words, the dispersal order intrudes upon a generalized privilege of casual association in public places -- a privilege that receives no special constitutional protection under *City of Dallas v. Stanglin*, 490 U.S. 19 (1989). The lower-court's contrary position should be reviewed and reversed.

C. The Chicago Ordinance Does Not Violate Substantive Due Process.

In addition to misjudging vagueness law, the lower court erred in striking the law in all of its applications (*i.e.*, facially) on substantive due process grounds. While the court properly recognized that the law was subject to rational-basis review and could be invalidated only if it "intrude[s] upon personal liberties arbitrarily or in an utterly unreasonable manner," Pet. 18a, it nonetheless found the law unconstitutional. This, too, was error, and ought to be reviewed.

It is difficult to see how the Chicago ordinance falls short of meeting the modest requirement of rational lawmaking. While the laws at issue in *Papachristou* may not have contained a rational means-end fit, Pet. 18a-19a, this law certainly does. It takes on the acute problems of youth gang crime by carefully regulating criminal gang loitering in the urban setting. Three specific harms form the basis for the law:

- **Intimidation.** By occupying a specific street corner or some other public place, criminal gang members chill ordinary, legitimate passage by law-abiding citizens, thereby securing an area from which to conduct criminal activity -- most prominently and most usually, drug-dealing.

- **Facilitation.** The presence of loitering criminal gang members provides a context in which crime flourishes. A drug transaction in a loitering crowd, for example, provides cover, allows perpetrators to evade being caught, and creates a group dynamic of lawlessness that is larger than the sum of its individual parts. The conspicuous public presence of the gang also makes it difficult for innocent youths to resist the temptation (or outright pressure) to join one or another criminal gang.

- **Victimization.** A particularly cruel feature of criminal gang activity is the loss of young lives through gang shootings, be they the lives of fellow gang members or those of unfortunate bystanders. Loitering by persons with identifiable gang membership, the Chicago experience has shown, creates a frequent target for rival gangs.

Plainly, these reasons together with those identified in the extensive hearings before the Chicago City Council, suffice to establish a rational basis for enacting this law.

But even if these rational bases did not support the legislation in some circumstances, they most assuredly supply sufficient grounds to prevent the Illinois Supreme Court from striking the law facially, which is to say in all of its applications. A facial challenge is the most difficult to sustain. Because courts have a duty to save, not destroy, legislation, *see Adams*

Fruit Co. v. Barrett, 494 U.S. 638, 647 (1990), the Court has long held that a facial challenge may succeed only after the claimants have met their burden of showing "no set of circumstances" in which the law may be constitutionally applied." *United States v. Salerno*, 481 U.S. 739, 745 (1988); *See Reno v. Flores*, 507 U.S 292, 301 (1993). A similar rule governs vagueness challenges. *See Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982) (facial challenge must be rejected unless the law is "impermissibly vague in all of its applications"). In some circumstances, if not in most or all circumstances, the police clearly do not violate substantive due process when they order individuals reasonably suspected of criminal gang activity to disperse.

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March 9, 1998

CONCLUSION

For the foregoing reasons, the *amici* States respectfully urge the Court to grant the writ and reverse the lower-court decision.

Respectfully submitted,

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March 9, 1998

No. 97-1121

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

CITY OF CHICAGO,
Petitioner,
v.
JESUS MORALES, *et al.*,
Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Illinois

**BRIEF *AMICI CURIAE* OF
CHICAGO NEIGHBORHOOD ORGANIZATIONS
IN SUPPORT OF PETITIONER**

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QUESTIONS PRESENTED

1. Whether the right to loiter on public streets with members of a criminal street gang is one of the traditional "amenities of American life" that, under principles of "substantive due process," may not abridged by a police order to disperse.

2. Whether an ordinance that (i) specifically defines "loitering" and "criminal street gangs," (ii) authorizes police to order the dispersal of a group of loiterers when there is probable cause to believe that members of criminal street gangs are among the group, and (iii) permits the arrest of those loiterers who disobey the order to disperse, is so lacking in clarity that it is void for vagueness in all of its applications.

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BRIEF *AMICI CURIAE* OF CHICAGO NEIGHBORHOOD ORGANIZATIONS IN SUPPORT OF PETITIONER

Amici curiae Chicago Neighborhood Organizations respectfully submit this brief in support of petitioner, the City of Chicago.[1]

INTEREST OF *AMICI CURIAE*

Amici curiae are a number of neighborhood organizations and community groups in the City of Chicago. *See* App., *infra*. *Amici* represent concerned Chicago citizens and voters who are actively involved in identifying and implementing programs to stem the epidemic of drug abuse, violence, and

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[1] Pursuant to this Court's Rule 37.2(a), letters of consent from all parties to the filing of this brief have been filed with the Clerk. Pursuant to this Court's Rule 37.6, *amici* represent that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

other gang-related criminal activities that plague their neighborhoods and our Nation's urban areas generally. *Amici* are concerned that the Illinois Supreme Court's decision unreasonably thwarts the reasoned determination by the people's elected representatives that responsible community-based policing of members of criminal organizations can prevent and deter gang-related crime in Chicago.

Amici represent the interests of the very people for whom the gang-loitering ordinance was enacted: They live in many of the Chicago communities hit hardest by gang-related crime, and are afraid to walk about in their own neighborhoods as a result of gang-related crime and violence. They saw firsthand that the ordinance, before it was declared unconstitutional, improved the quality of life in their communities.

Amici believe that community policing generally, and particularly the gang-loitering ordinance under review, benefits *all* residents of the communities in which gangs are active, including both law-abiding citizens and the young people—their children, siblings, and relatives—who are most at risk from the dangers of gang membership. Moreover, *amici* see no constitutional infirmity in reasonable efforts to rid their streets of the scourge of criminal street gangs, and they support the City's efforts to reinstate and enforce the ordinance that was enacted explicitly to safeguard the safety, security, and liberty of their members.

STATEMENT

1. Recent years have seen a dramatic change in the way many big-city police departments respond to criminal behavior. Rather than focusing solely on solving serious crimes that already have occurred, police increasingly take measures to prevent crime before it happens. Police intervention in relatively small-scale disorder—for example, preventing rowdy, drunken and antisocial behavior; eradicating graffiti, litter and vandalism; and enforcing curfew, cruising and loitering laws—has been shown to make neighborhoods safer

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places and to reduce the incidence of more serious criminal activity.[2]

The increasingly prevalent strategy of using police to maintain order in urban communities, in addition to the traditional police role of solving serious crimes, generally is referred to as "community policing."[3] Although the concept can be implemented through a variety of means, a central tenet of community policing is that "working partnerships between the police and the community can play an important role in reducing crime and promoting security."[4] In other words, "[i]t promises that police will be responsive to the expressed needs of the communities they serve."[5]

A principal impetus for the community policing movement is the common-sense notion that there is less crime in orderly neighborhoods. As a leading article explained, "if a

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[2] For example, New York City police implemented such a program in 1993, focusing on such low-level offenses as vandalism, panhandling, public drunkenness, unlicensed vending and prostitution. In the ensuing several years, this strategy proved to be effective in reducing the level of serious crime: The murder rate dropped nearly 40 percent, the robbery rate more than 30 percent, and the burglary rate more than 25 percent. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 Va. L. Rev. 349, 367 (1997). Crime in New York is decreasing at more than twice the national average, and is at its lowest level in more than 25 years. "City officials and at least some criminologists credit the larger reduction in crime rates to [the] recent emphasis on 'order maintenance.'" *Id.* at 368-369; *see* Kelling & Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities* 151-156 (1996).

[3] *See* Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 Colum. L. Rev. 551, 573-578 (1997).

[4] Moore, *Problem-Solving and Community Policing*, in Tonry & Morris, eds., *Modern Policing* 99, 123 (1992).

[5] Skogan, *Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods* 90 (1990).

window in a building is broken and left unrepaired, all the rest of the windows will soon be broken. . . . [O]ne unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing."[6] Signs of disorder in public streets—*e.g.*, broken windows, litter, drunks or drug addicts slumped on the sidewalk, or loitering gang members—cause the law-abiding public to avoid public rights of way and thus severely dilute the kinds of informal social checks that traditionally have permitted all of us to look after each other and to keep our streets safer. "[I]t is more likely that here, rather than in places where people are confident they can regulate public behavior by informal controls, drugs will change hands, prostitutes will solicit, and cars will be stripped."[7] Community policing is thus founded on the notion that "the police ought to protect communities as well as individuals," and that, accordingly, "the police—and the rest of us—ought to recognize the importance of maintaining, intact, communities without broken windows."[8]

2. In 1992, the Chicago City Council held extensive hearings on the vexing public-safety problems posed for that city's residents by criminal street gangs. After extensive testimony from law enforcement and from community residents who lived under the terror created by those gangs, the City Council found that "the continuing increase in criminal street gang activity in the City [was] largely responsible" for an "increasing murder rate as well as an increase in violent and drug related crimes," and that "the burgeoning presence of street gang members in public places has intimidated many law abiding citizens." Pet. App. 60a.

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[6] Wilson & Kelling, *Broken Windows*, The Atlantic Monthly 29, 31 (Mar. 1982) (emphasis omitted).

[7] *Id.* at 32.

[8] *Id.* at 38.

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The City Council specifically found that, apart from "creat[ing] a justifiable fear for the safety of persons and property in the area" (*ibid.*), loitering involving members of criminal street gangs furthered the gangs' criminal activities in two important and distinct ways. First, gang members "avoid arrest" for their street crimes by eschewing overt criminality and simply loitering "when they know the police are present." *Ibid.* Second, loitering is indispensable to the notion of gang "turf"—*i.e.*, the assertion by a particular criminal gang of the right to *control* a given area of the City to the detriment of competing gangs and the members of the law-abiding public—because "[o]ne of the methods by which criminal street gangs establish control over identifiable areas is by loitering in those areas and intimidating others from entering those areas." *Ibid.*

In view of those findings, the City Council adopted an ordinance authorizing police officers to order gang members who are loitering in public areas (or those loitering with them) to disperse, and to arrest those who refuse to do so:

> Whenever a police officer observes a person whom he reasonably believes to be a criminal street gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section.

Pet. App. 61a. The ordinance carefully defined each of its operative terms. The phrase "criminal street gang" was defined to require, among other things, an organization engaged in a pattern of specifically identified state crimes. Pet. App. 61a-62a. The term "loiter" was defined as "to remain in any one place with no apparent purpose." Pet. App. 61a.

In addition, the Chicago Police Department adopted detailed guidelines governing the enforcement of the gang-loitering ordinance. The ordinance was enforced only in "areas frequented by members of criminal street gangs which, because of their location, significantly affect the ac-

tivities of law-abiding persons in the surrounding community." Pet. App. 68a. Such areas were to be designated after consultation with "local officials, leaders of local community organizations, and other citizens likely to be able to provide reliable information." *Ibid.* Thus, in the finest spirit of community policing, the police explicitly entered into a partnership with neighborhood residents to identify those areas in which gangs were destroying the fabric of community life, and to enforce the ordinance in those areas to enhance the security and safety of all residents.

3. Respondents were separately arrested for disobeying a police order to disperse or "move along" under Chicago's gang-loitering ordinance and challenged the validity of the ordinance on numerous constitutional grounds. After separate proceedings in the lower state courts, the Supreme Court of Illinois consolidated respondents' challenges and agreed with respondents that the ordinance is inconsistent with the federal Constitution.

The court first concluded that the ordinance is void for vagueness. Pet. App. 6a-17a. The court explained that, even though the term "loiter" is specifically defined by the ordinance as "remain[ing] in one place with no apparent purpose," the term fails to give persons of ordinary intelligence sufficient notice of what is prohibited, because "[p]eople with entirely legitimate and lawful purposes will not always be able to make their purposes apparent to an observing police officer." Pet. App. 10a. That infirmity was not cured, in the court's view, by the requirement that the officer have probable cause to believe that one of the loiterers is a gang member, by the fact that it is a legal defense under the ordinance that no member of the group was in fact a gang member, or by the fact that prosecution is possible only if the defendant disobeys a clear order to disperse. As the court saw it, the city may not criminalize even a defendant's *knowing* participation in, or association with, criminal street gangs (Pet. App. 12a), and it may not confer on police authority to

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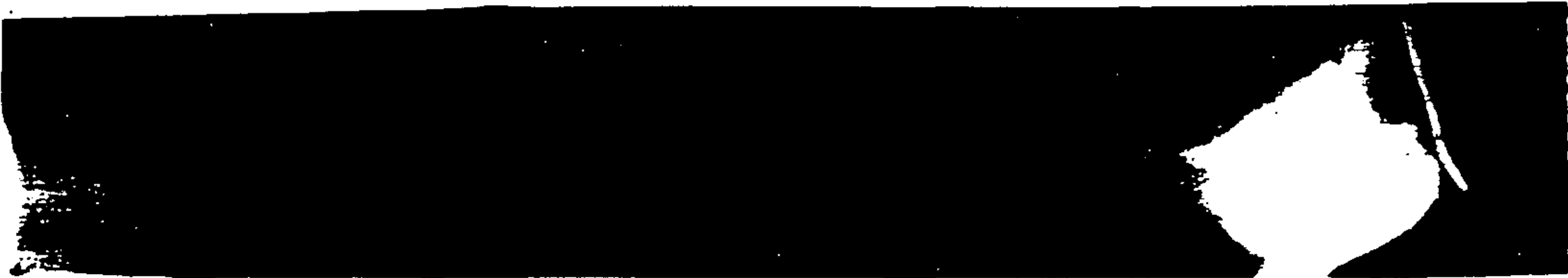
The court also concluded that the purported "vagueness" of the ordinance improperly encouraged "arbitrary and discriminatory enforcement" Pet. App. 14a. In this connection, the court was especially critical of the Chicago Police Department's effort to set forth specific written guidelines for enforcing the ordinance, a step that the court conceded was contemplated by the City Council, because in the court's view "lawmakers may not abdicate their responsibilities for setting the standards of the criminal law." Pet. App. 15a.

Finally, the court emphasized that Chicago's ordinance "is an arbitrary exercise of the city's police power and, thus, violates substantive due process." Pet. App. 17a. The court believed that its conclusion was compelled by *Papachristou* v. *City of Jacksonville*, 405 U.S. 156 (1972), which, in the court's view, stood for the proposition that the type of loitering prohibited by the ordinance is one of the traditional "amenities of American life." Pet. App. 17a (citing *Papachristou*, 405 U.S. at 164). The "amenities" invaded by the Chicago ordinance, in the court's view, included "the general right to travel, the right of locomotion, the right to freedom of movement, and the general right to associate with others." Pet. App. 18a (citations omitted).

In light of its conclusion that the gang loitering ordinance violates due process, the court found it unnecessary to examine respondents more specific claims under the First, Fourth, and Eighth Amendments. Pet. App. 5a, 19a.

REASONS FOR GRANTING THE PETITION

The Supreme Court of Illinois concluded in this case that the right to loiter with members of criminal street gangs is an "amenit[y] of American life" that includes a plethora of rights that are protected from government intervention by principles of "substantive due process." Pet. App. 17a-18a. The court also concluded that Chicago's gang loitering ordinance is an "arbitrary restriction" of those rights (Pet. App.



19a), because its purported "vagueness" encourages arbitrary law enforcement. Pet. App. 18a-19a, 14a-15a. Those conclusions, in the court's view, obviated any need to consider respondents' claims that the ordinance violates specific provisions of the Bill of Rights.

Neither the mode of analysis employed, nor the conclusions reached, by the Illinois Supreme Court can be reconciled with this Court's cases. This Court's precedents *forbid* the invocation of "substantive due process" in contexts already addressed by specific provisions of the Bill of Rights. The court below, however, neatly avoided respondents' claims under the Bill of Rights, which were obviously meritless, and awarded them relief on essentially the same allegations simply by inventing *broader* rights under the guise of "due process." The court similarly misused the narrow due process doctrine of vagueness, which is addressed to the *clarity* of legislation, to invalidate an ordinance that is unquestionably clear but that the court believed was, as a policy matter, *too broad*. Again, however, the breadth of legislation is cause for its invalidation *only* when it is shown that such legislation reaches substantial amounts of *constitutionally protected* conduct—*i.e.*, only upon analysis of the very questions under the Bill of Rights that the court below expressly refused to address. Because the erroneous ruling below exacerbates longstanding conflicts about the permissible scope of loitering and other community policing ordinances, and effectively disables an entire State of the Union from addressing a pressing social problem, this Court's review is clearly warranted.

1. The mode of analysis employed by the Supreme Court of Illinois put the cart before the proverbial horse. This Court has repeatedly made clear that if an "explicit textual source of constitutional protection" applies, government action must be analyzed under that standard "rather than under a 'substantive due process' approach." *Graham* v. *Connor*, 490 U.S. 386, 395 (1989). In *Graham*, the Court applied that principle to hold that substantive due process has

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no place in analyzing claims that police used "excessive force" during an arrest, which must instead be gauged *solely* under the Fourth Amendment. As the Court put it, "[b]ecause the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims." *Id.* at 395.

The Court reaffirmed that principle in *Albright* v. *Oliver*, 510 U.S. 266 (1994), which rejected the notion that substantive due process embodies some right to be free from "arbitrary" prosecutions. As the Chief Justice explained, "[i]t was through [the] provisions of the Bill of Rights that their Framers sought to restrict the exercise of arbitrary authority by the Government in particular situations." *Id.* at 273 (plurality). Thus, the Court concluded, only the specific Amendment that addresses the "particular sort of government behavior," rather than notions of substantive due process, should be applied to claims challenging that particular behavior. *Ibid.*; *see also id.* at 288-289 (Souter, J., concurring in judgment) (applying general "rule of reserving due process for otherwise homeless substantial claims"). And only last Term, the Court unanimously emphasized that "if a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process." *United States* v. *Lanier*, 117 S. Ct. 1219, 1228 n.7 (1997).[9]

The decision below got that principle exactly backwards, because it expressly refused to address the specific provi-

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[9] *See, e.g.*, *Mays* v. *City of St. Louis*, 123 F.3d 999 (7th Cir. 1997) (Fourth Amendment alone controls conduct of police officer who gave chase that resulted in death); *Armendariz* v. *Penman*, 75 F.3d 1311 (9th Cir. 1996) (en banc) (Just Compensation Clause, not due process, controls claims for inverse condemnation).

sions of the Bill of Rights that speak to respondents' claims and resolved those claims instead by reference to the amorphous requirements of "substantive due process." That is a key error, because it is obvious from this Court's cases that Chicago's ordinance offends *none* of the provisions of the Bill of Rights that the ordinance implicates. Because the Bill of Rights speaks to—and does not invalidate—the bulk of the governmental conduct that the court below found objectionable, its "requirements are not to be supplemented through the device of 'substantive due process.'" *Albright*, 510 U.S. at 276 (Scalia, J., concurring).

The most germane provision of the Bill of Rights is, of course, the Fourth Amendment. As Judge Easterbrook recently noted, it is clear that this "Court has looked exclusively to the fourth amendment for substantive limits to searches and seizures," *Mays*, 123 F.3d at 1002 (emphasis added), attempted seizures, *see California* v. *Hodari D.*, 499 U.S. 621 (1991), and even entirely consensual encounters in which police purportedly communicate to a citizen that "he [is] not at liberty to ignore the police presence and go about his business." *Florida* v. *Bostick*, 501 U.S. 429, 437 (1991).

Chicago's ordinance is fully consistent with the Fourth Amendment. Even if an officer's order to disperse could be considered a "seizure," *but see Brower* v. *County of Inyo*, 489 U.S. 593 (1989), Chicago police will issue such an order *only* "when there is *probable cause* to believe that criminal street gang members are loitering in a designated area." Pet. App. 72a (emphasis added). The existence of probable cause objectively justifies the minimal intrusion on individual liberty that the Chicago ordinance contemplates, and it accordingly constitutes the best guarantee of "evenhanded law enforcement." *Horton* v. *California*, 496 U.S. 128, 138 (1990); *compare Brown* v. *Texas*, 443 U.S. 47, 50-53 (1979) (invalidating "stop and identify" statute under the Fourth Amendment, because statute did not require officer to have probable cause or reasonable suspicion). That point was unanimously emphasized by the Court only two years ago,

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when this Court rejected the claim that the vehicular traffic laws are so broad and pervasive that they essentially license "the police to single out whomever they wish for a stop." *Whren* v. *United States*, 116 S. Ct. 1769, 1777 (1996). As the Court emphasized in *Whren*, the existence of probable cause is sufficient to justify interference with an individual's freedom of movement, since "the usual rule [is] that probable cause to believe the law has been broken 'outbalances' private interest in avoiding police contact." *Ibid.*[10]

While this Court's cases recognize that particular governmental conduct may implicate more than one "textual source" of protection, *Soldal* v. *Cook County*, 506 U.S. 56, 70 (1992); *United States* v. *James Daniel Good Real Property*, 510 U.S. 43, 49-50 (1993), respondents' claims are even more implausible when examined in light of other provisions of the Bill of Rights. Chicago's ordinance does not create a "status" offense (Pet. App. 5a), because it requires affirmative volitional *conduct*—loitering, membership in (or association with) a criminal street gang, and disobedience of a police order. *See Powell* v. *Texas*, 392 U.S. 514, 533 (1968). Nor does the ordinance interfere with associational rights protected by the First Amendment. Standing on a street corner with members of a criminal street gang "might be described as 'associational' in common parlance," but loitering "simply do[es] not involve the sort of expressive association that the First Amendment has been held to protect." *Dallas* v. *Stanglin*, 490 U.S. 19, 24 (1989). Rather, the activity proscribed by the ordinance is analogous to "walking down the street or meeting one's friends at a shopping

[10] Indeed, the Court expressly disclaimed the *ability* to engage in the sort of open-ended review that the court below adopted here under the guise of "substantive due process": "[W]e are aware of no principle that would allow us to decide at what point a code of law becomes so expansive and so commonly violated that infraction itself can no longer be the ordinary measure of the lawfulness of enforcement." *Whren*, 116 S. Ct. at 1777.

mall"—which this Court has held outside the ambit of First Amendment protections. *Id.* at 25. Just as the Constitution does not recognize a "generalized right of 'social association' that includes chance encounters in dance halls" (*ibid.*), it does not create any right of "criminal association" that includes the right to remain on a street "with *no* apparent purpose" *other* than to associate with a "criminal street gang."

The proper mode of constitutional analysis, therefore, demonstrates that Chicago's ordinance does not violate any of the textual provisions it arguably implicates. Those textual provisions, "not the more generalized notion of 'substantive due process'" (*Graham*, 490 U.S. at 395), must therefore control respondents' assertion that Chicago's ordinance unduly invades their liberty interests in remaining on a public street without police interference. And, as demonstrated below, this Court's cases make it absolutely clear that the ordinance is also consistent with the requirement of "fair warning"—the *only* remaining liberty interest that was identified by the Supreme Court of Illinois *and* has been recognized by this Court's cases.

2. "The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity." *Albright*, 510 U.S. at 272 (plurality).[11] This Court's reluctance

[11] The "rights" of loiterers that the Chicago ordinance purportedly infringes are, needless to say, "markedly different from those recognized in this group of cases." *Albright*, 510 U.S at 272. While this Court has recognized a limited constitutional right to *interstate* travel—"or, more precisely, the right of free interstate migration" (*Attorney General of N.Y.* v. *Soto-Lopez*, 476 U.S. 898, 902 (1986))—it has never held that the Constitution prohibits restrictions on intrastate (much less intracity) travel. *Cf. Hodgson* v. *Minnesota*, 497 U.S. 417, 435 (1990). The Court certainly has never recognized a constitutional right to travel—or "locomote," or "move around"—sufficiently elastic to comprehend a "right" to "remain in one place with no apparent purpose" other than to congregate with criminal street gangs.

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to invoke "substantive due process" has nowhere been more pronounced than in matters touching on what conduct States choose to make criminal. States enjoy wide latitude in this area, *see, e.g.*, *Martin* v. *Ohio*, 480 U.S. 228, 232 (1987), and courts therefore "should not lightly construe the Constitution so as to intrude upon the administration of justice by the individual States." *Medina* v. *California*, 505 U.S. 437, 445 (1992); *Montana* v. *Egelhoff*, 116 S. Ct. 2013, 2024-2025 (1996) (Ginsburg, J., concurring in judgment). A State's decision in this regard is not subject to due process challenge unless it "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Medina*, 505 U.S. at 445; *Egelhoff*, 116 S. Ct. at 2025 (Ginsburg, J., concurring in judgment). And, of course, it is respondents' burden to establish affirmatively that the ordinance they challenge transgresses fundamental principles of justice. *See Egelhoff*, 116 S. Ct. at 2019 (plurality). This they cannot do.

The *only* "firmly rooted" principle recognized by this Court that relates to respondents' claims here is the requirement of "fair warning " embodied in the void-for-vagueness doctrine. Contrary to the apparent assumption of the Illinois Supreme Court, however, the vagueness doctrine—like other due process doctrines—does not give the judiciary "a 'chancellor's foot' veto over law enforcement practices of which it [does] not approve." *United States* v. *Russell*, 411 U.S. 423, 435 (1973). As this Court made clear only last Term, the essence of vagueness review is simply the requirement of "fair warning," which centers on the use of "language that the common world will understand[] of what the law intends to do if a certain line is passed." *Lanier*, 117 S. Ct. at 1224 (quoting *McBoyle* v. *United States*, 283 U.S. 25, 27 (1931) (Holmes, J.)); *see also Kolender* v. *Lawson*, 461 U.S. 352, 357 (1983). Accordingly "the touchstone is whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the defendant's conduct was criminal." *Lanier*, 117 S. Ct. at 1225.

The gang-loitering ordinance easily meets that standard. It clearly defines membership in a "criminal street gang" by reference to a "pattern" of expressly identified state crimes. *Cf. Fort Wayne Books, Inc.* v. *Indiana*, 489 U.S. 59 n.7 (1989) (noting that state RICO statute's "pattern" requirement is "inherently *less* vague" than underlying crimes). The ordinance also clearly informs citizens of the prohibited conduct: "[R]emaining in one place with no apparent purpose" in the company of one or more members of a "[c]riminal street gang." App. 61a. Ordinary people are perfectly capable of understanding what the ordinance proscribes. Lest there be any doubt, however, an arrest can be made only after a police officer *informs* the loiterers of their legal obligations under the ordinance and they refuse a lawful order to disperse. There can be no question but that a person in those circumstances "should understand that he could be convicted . . . if he fails to obey an order to move on." *Colten* v. *Kentucky*, 407 U.S. 104, 110 (1972); *cf. Schenck* v. *Pro-Choice Network*, 117 S. Ct. 855, 869-870 (1997) (defendants, to whom injunction was specifically directed, "certainly" were given "a reasonable opportunity to know what was prohibited").[12]

In reaching the opposite conclusion, the Illinois Supreme Court placed nearly dispositive, but mistaken, reliance on two passages from *Papachristou*. The first passage referred to "amenities of life" that are "not mentioned in the Constitution or in the Bill of Rights" but that nonetheless may be elements of due process. 405 U.S. at 164; *see* Pet. App. 17a. That passage, however, is not a license for lower courts to

[12] It simply blinks reality to suggest that the aldermen, the police, the general public, and especially the gang members themselves do not know what the Chicago ordinance outlaws. Indeed, unless the opinion below is an exercise in disingenuity, the justices of the state supreme court may be the only people in Illinois who do *not* know what it means.

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discover those "amenities" on their own and in the teeth of the methodology prescribed by this Court in *Graham*, *Albright*, and *Lanier*; indeed, only the most benighted view of what "historically [has been] part of" those "amenities" (*Papachristou*, 405 U.S. at 164) could lead to the conclusion that loitering with criminal gangs is among them. In the second passage on which the court below relied, *Papachristou* emphasized that the activities outlawed by Jacksonville's ordinance "by modern standards are normally innocent." *Id.* at 163; Pet. App. 9a. As its context makes clear, however, nothing in that passage purported to confer on the lower courts unguided discretion to second-guess legislative judgments that specific conduct is *not* "innocent"—the Court's point was simply that an ordinance's lack of clarity is an especial source of concern when the ordinance is applied to conduct that a citizen would not otherwise recognize as culpable. *See Papachristou*, 405 U.S. at 162-163 (emphasizing need for "fair notice"). As already demonstrated, lack of *clarity* is not a failing that can fairly be ascribed to Chicago's ordinance.

Indeed, the Illinois Supreme Court's real difficulty with the ordinance apparently was not that it is unclear, but that it is too *broad*:

> The city has declared gang members a public menace and determined that gang members are too adept at avoiding arrest for all the other crimes they commit. Accordingly, the city council drafted an exceptionally broad ordinance which could be used to sweep these intolerable and objectionable gang members from the city streets.

Pet. App. 16a. Overbreadth is, of course, a distinct constitutional doctrine. Like vagueness, however, it is limited in reach.[13] This Court has made clear that a legislative enact-

[13] The repeated citation by the court below of *Shuttlesworth* v. *Birmingham*, 382 U.S. 87 (1965), an overbreadth case, suggests that the

ment can be declared unconstitutionally "overbroad" only if it "prohibits constitutionally protected conduct." *Grayned* v. *City of Rockford*, 408 U.S. 104, 114 (1972). Indeed, this Court "ha[s] not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment." *United States* v. *Salerno*, 481 U.S. 739, 745 (1987). Because the ordinance does not infringe on any First Amendment interests, and violates no other specific provision of the Constitution, its mere breadth cannot serve as a basis for facial invalidation.

In any event, the Chicago Police have prepared detailed guidelines for the enforcement of the ordinance, which eliminate any difficulty the broad language of the ordinance itself might pose. Pet. App. 64a-73a. The court below rejected those guidelines on the ground that "[i]t is the duty of the lawmakers to establish minimal guidelines to govern law enforcement." Pet. App. 16a. But nothing in our Constitution governs the manner in which States, or local governments, allocate their legislative functions. *Highland Farms Dairy, Inc.* v. *Agnew*, 300 U.S. 608, 612-613 (1937) ("How power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself"); *Dreyer* v. *Illinois*, 187 U.S. 71, 83-84 (1902) (due

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court below did not see any significance distinction between the two doctrines. *See* Pet. App. 8a, 12a-13a. The ordinance at issue in *Shuttlesworth*, however, made it a crime "to stand *or* loiter upon any street or sidewalk . . . after having been requested by any police officer to move on." 382 U.S. at 90. The Court's concern was primarily with the blanket prohibition on "standing" on a public street, which was permeated "with [an] ever-present potential for arbitrarily suppressing First Amendment liberties." *Id.* at 90-91. Indeed, the Court noted that the ordinance had been narrowed since the events in that case. Once the ordinance was narrowed to apply to loiterers who obstructed free passage and "refused to obey a request by an officer to move on," the Court could "not say that the ordinance is unconstitutional." *Id.* at 91.

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process does not require separation of state powers). This Court frequently looks to administrative constructions in determining whether state statutes are vague. *See, e.g., Village of Hoffman Estates* v. *The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5 (1982) ("In evaluating a facial challenge to a state law, a federal court must, of course, consider any limiting construction that a state court *or enforcement agency* has proffered") (emphasis added).

The police guidelines were adopted not only to narrow the breadth of the ordinance, but to avoid any possibility of arbitrary enforcement: "In order to ensure that the anti-gang loitering is not enforced in an arbitrary or discriminatory way, this directive [establishing the guidelines] establishes limitations on the enforcement discretion of Department members, and thereby provides for enforcement of the ordinance in a fair and principled way." Pet. App. 65a. Even a cursory review of the numerous and detailed discretion-guiding provisions of the police guidelines demonstrates that officers on the street have less discretion in enforcing the ordinance than they do, for example, in enforcing the traffic laws. The Court must presume that the police officers who enforce the gang-loitering ordinance, and the prosecutors and courts who will thereafter review those officers' work, will do so fairly. *See, e.g., United States* v. *Mezzanatto*, 513 U.S. 196, 210 (1995); *United States* v. *Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926).

3. The questions presented are important, and the decision below reflects profound confusion in the lower courts regarding the constitutionality of community policing laws. "[C]ourts have reached conflicting results in several recent cases assessing facial vagueness challenges to the efforts of legislatures and city councils to fashion new forms of police authority to deal with neighborhood problems," including prohibitions on loitering. Livingston, *supra*, at 558. Loitering statutes are upheld in some jurisdictions and struck down in others. *Compare, e.g., E.L.* v. *State*, 619 So. 2d 252 (Fla. 1993) (holding loitering ordinance unconstitutional), *with*,

e.g., *City of Tacoma* v. *Luvene*, 827 P.2d 1374 (Wash. 1992) (sustaining constitutionality of similar ordinance); *see* Pet. 14-16 & nn. 9-12.

The Chicago gang-loitering ordinance is only one of many legislative implementations of the new community policing methods. Yet the Illinois Supreme Court held, erroneously, that the Chicago ordinance is unconstitutional. The decision below casts doubt on the constitutionality of a broad range of community policing laws, and will deter other cities and States from experimenting with reducing crime by controlling disorder. Other courts, by contrast, have sustained the constitutionality of restrictions similar to those imposed by the Chicago ordinance. *See People ex rel. Gallo* v. *Acuna*, 929 P.2d 596 (Cal. 1997) (rejecting constitutional challenges to injunction prohibiting gang-related conduct), *cert. denied*, 117 S. Ct. 2513 (1997).[14]

Indeed, a comprehensive review of this area of the law indicates a "confused pattern of decisions," an "erratic and confusing body of case law," an "overall pattern of decisions" that is "erratic, fractured, and confusing," an "erratic pattern of the vagueness cases in this area," and a "problem posed by the fractured case law." Livingston, *supra*, at 561, 610, 628, 629, 631. The lower courts have reached conflicting results in considering the limits the Constitution places on increased police interaction with the community in an effort to redress relatively low-level street crime and disorder.

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[14] The *Acuna* court upheld, as against vagueness, overbreadth and First Amendment challenges (among others), an injunction that prohibited gang members from "[s]tanding, sitting, walking, driving, gathering or appearing anywhere in public with" any other gang members. 929 P.2d at 608. The Supreme Court of California's judgment can scarcely be reconciled with the conclusions reached by the Supreme Court of Illinois here, given that injunctions are generally tested under *more stringent* constitutional requirements than ordinances. *See Madsen* v. *Women's Health Center, Inc.*, 512 U.S. 753, 764-765 (1994).

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The source of the confusion among the lower courts is this Court's decision in *Papachristou*. The Court in that case struck down a Florida loitering statute as void for vagueness, but gave little guidance as to how the vagueness doctrine, or other constitutional restraints, should be applied in reviewing public order laws. "Disparate results in later cases were the predictable outcome." Livingston, *supra*, at 628. Courts reviewing the constitutionality of community policing laws have reached differing results depending on the breadth they ascribe to the ruling in *Papachristou*.

Many courts, including the Illinois Supreme Court, have given *Papachristou* an extraordinarily expansive reading, striking down even narrowly tailored laws designed to enhance public safety. This approach not only is fundamentally at odds with this Court's modern approach to due process, but also unnecessarily hampers state and local governments in their efforts to reduce crime by implementing community policing standards. Legislative bodies across the country increasingly are turning to the new policing methods, recognizing that frequent interaction between the police and the community is not only necessary but desirable.

Chicago's gang-loitering ordinance, for example, sprang from the demands of the City's residents—primarily from poor, minority communities—to rid their neighborhoods of the drive-by shootings, fighting, and drug dealing that attend criminal street gangs. It was passed by an overwhelming margin by the City Council, with crucial support from aldermen representing the most crime-ridden areas. And the Chicago ordinance is hardly unique: "Loitering legislation in the 1990s has often had broad community support, particularly in some predominantly minority communities plagued by street-level drug dealing." Livingston, *supra*, at 623. The residents of such communities understand full well that the kids the police can't order off the streets today are the same ones who will be taken off to jail tomorrow, if they are not taken to the emergency room or the morgue first.

This case presents an ideal vehicle for this Court to resolve the constitutionality of loitering laws and other similar efforts to reduce crime by policing disorder. A decision from this Court on the constitutionality of Chicago's ordinance would provide needed guidance not only to the Illinois courts, but also to courts and legislatures across the Nation that are considering the legal ramifications of the new policing. The Illinois Supreme Court expressly recognized that "[c]riminal street gangs are an expanding cancer in our society and their illegal activities endanger the safety of many law-abiding citizens." Pet. App. 17a. Yet, through a transparently fallacious analysis of this Court's cases, the court below disabled the citizenry of Illinois from dealing effectively with that "cancer." Only this Court's intervention can restore uniformity to this important area of federal constitutional law, which, perhaps more than any other, touches the day-to-day lives of our citizenry. This Court should grant certiorari to declare firmly that the Due Process Clause does not prevent the people from reclaiming their communities.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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March 9, 1998

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APPENDIX

Groups Comprising *Amici Curiae*
Chicago Neighborhood Organizations

The Resurrection Project
United Neighborhood Organization
West Woodlawn Council of Block Clubs
Hegwisch Community Committee
Chicago Roseland Coalition for Community Control
South Chicago Chamber of Commerce
Ravenswood Community Council
Nobel Neighbors
Hermosa Community Organization
Reach Out and Touch Ministries
West Humboldt Park Family and Community
Development Council

No. 97-1121

In the Supreme Court of the United States

October Term, 1997

CITY OF CHICAGO,

Petitioner,

v.

JESUS MORALES, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

(corrected)

BRIEF OF THE UNITED STATES CONFERENCE OF MAYORS, THE NATIONAL LEAGUE OF CITIES, THE NATIONAL ASSOCIATION OF COUNTIES, THE INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION and THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE AS AMICI CURIAE IN SUPPORT OF PETITIONER

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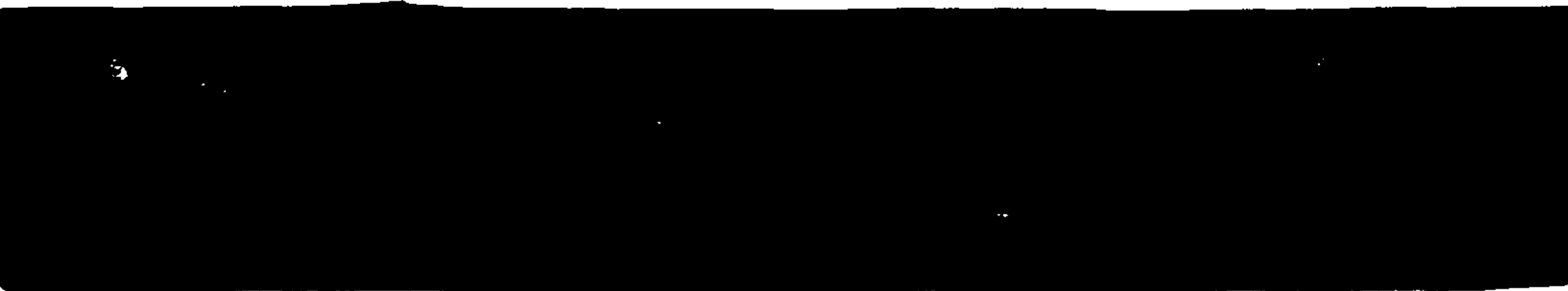

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INTEREST OF THE AMICI CURIAE[1]

The organizations filing this amicus brief all have a vital interest in legal issues affecting the powers and responsibilities of local governments. The United States Conference of Mayors is the official nonpartisan organization of the more than 1,000 cities in the United States with populations of 30,000 or more. The National League of Cities is the country's oldest and largest organization serving municipal government. Its direct members include more than 1,400 cities of all sizes and 49 state municipal organizations; its total membership includes over 17,000 municipalities. The National Association of Counties represents over 3,000 counties. The International City/County Management Association is the professional association that represents the interests of over 8,800 appointed local government managers.

The International Municipal Lawyers Association ("IMLA") is a nonprofit, nonpartisan organization consisting of over 1,400 local governments and their attorneys. Member governments operate IMLA through their chief legal officers. The International Association of Chiefs of Police, Inc. is the largest organization of police executives and managers in the world, consisting of more than 15,000 members from 72 nations.

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[1] The parties have consented to the filing of this brief. Copies of the letters of consent have been filed with the Clerk of the Court. This brief was not authored in whole or in part by counsel for a party, and no person or entity, other than the *amici curiae*, their members, and their counsel made a monetary contribution to the preparation and submission of this brief.

SUMMARY OF ARGUMENT

Chicago's gang-loitering ordinance is a narrowly tailored response to the very serious problem of gang intimidation on city streets. As demonstrated in Part I below, urban gang violence has reached epidemic proportions as gangs have gained a stranglehold on many inner-city neighborhoods. Law-abiding citizens have become prisoners in their own homes, afraid to venture out because of the gang members who loiter in the streets outside their doors. Chicago's gang-loitering ordinance was designed to give police a weapon to break the gangs' stranglehold, by allowing officers to order groups of gang members congregating for no apparent purpose to disperse and to arrest those who refuse to "move on."

Purporting to apply this Court's decision in *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), the Illinois Supreme Court struck down the ordinance on grounds that would make it impossible for local governments to enforce almost any loitering ordinance. First, the court below found the very concept of "loitering" to be too vague to provide a predicate for the imposition of criminal penalties—even though in this case, the ordinance permitted a person loitering in the company of gang members to be arrested only if he or she refused a police order to "move on." Then, the court went even further, suggesting that a valid gang loitering ordinance could *never* be constructed, no matter how precise its wording, because it would inevitably infringe on a perceived constitutional right to loiter.

This Court should grant the City's Petition in order to remedy the confusion apparent in the lower courts concerning the proper reach of this Court's decision in *Papachristou*. As demonstrated in Part II below, the Illinois Supreme Court's conclusion that Chicago's gang-loitering ordinance is unconsti-

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tutionally vague conflicts with numerous cases upholding loitering ordinances that are in many ways indistinguishable from the Chicago ordinance. In addition, as demonstrated in Part II below, the Illinois Supreme Court's recognition of a constitutional right to loiter is directly at odds with the California Supreme Court's recent decision in *People ex rel. Gallo v. Acuna*, 929 P.2d 596, 602, cert. denied, 117 S. Ct. 2513 (1997), which expressly refused to recognize such a right. In *Acuna*, the California Supreme Court rejected constitutional challenges to an injunction that operated in much the same way as the Chicago ordinance, concluding that the public's right to be protected from gang violence and intimidation outweighed whatever conceivable liberty interest individual gang members might have in loitering on public streets.

Communities throughout the country are searching for new and innovative ways to control gang violence and intimidation. Decisions like this one inevitably chill legitimate experimentation. This Court should grant certiorari and reverse the decision below.

ARGUMENT

I. The Chicago Ordinance Is An Appropriate Response To Gang Warfare

A. Urban Gang Violence Has Reached Epidemic Proportions

America's cities are under siege. In most large urban areas, and increasingly in medium and small ones as well, stories of innocent persons shot in gang war crossfires have become staples of newspaper headlines and TV news. *E.g.*, Gammon, *Suspected Gang Member Held in Fatal Shooting of 13-Year-Old*, L.A. Times, Feb. 27, 1998, at B5; Power, *Boy headed to school killed by gang member, police say*, Dallas Morning News, Jan. 29, 1998, at 21A; Craig & Boyd, *Police order crackdown after drive-by killings*, Ft. Worth Star-Telegram, Jan. 7, 1998, at 1.

There are over 23,000 youth gangs in the United States, with over 650,000 gang members. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention Fact Sheet #72 (Dec. 1997) ("OJJDP Fact Sheet"). Gangs are active in 98 percent of municipalities with populations over 100,000. Statement of Steven R. Wiley, Chief of FBI's Violent Crimes and Major Offenders Section, before the U.S. Senate Committee on the Judiciary, Apr. 23, 1997 ("Wiley Statement"). Chicago has some 125 street gangs, with more than 100,000 members. James B. Burns, U.S. Attorney, *Anti-Violent Crime Initiative Fact Sheet Northern District of Illinois* (1996). Four of Chicago's gangs —the Gangster Disciples, the Vice Lords, the Latin Kings, and the Latin Disciples—account for half of the city's gang members, dominate vast sections of the city, and have extended their tentacles into 35 states. Wiley Statement, *supra*.

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These street gangs are not benign associations of disadvantaged youths, but sophisticated criminal enterprises. A recent study, based on interviews with 99 gang members in St. Louis, found that most members "define their gang in terms of criminal involvement." G. David Curry & Scott H. Decker, *What's in a Name?: A Gang by any Other Name isn't Quite the Same*, 31 Val. U. L. Rev. 501, 504 (1997). After statistically demonstrating that young people commit more crimes, and more serious crimes, during periods of gang membership than prior to entering or after leaving the gang, the study's authors concluded: "Gangs facilitate the commission of crime. To ignore that is to ignore (or worse, to excuse) the violence gang members commit against each other and their communities." *Id.* at 514.

Although criminal gangs have long been part of the urban landscape, they have taken a dramatic new direction in recent years, away from small-scale and localized activities to highly organized takeovers of entire neighborhoods based on the acquisition of lethal weaponry financed by the lucrative trade in crack cocaine. See Herbert C. Covey et al., *Juvenile Gangs* 101 (1992); Mills & Bunuel, *Small Gang's Big Grip Troubles Neighborhood—The Saints Have Grown More Violent And More Diverse Since Forming In The 1960s*, Chi. Trib., Feb. 11, 1998, at B1. Brass knuckles and baseball bats are no longer the weapons of choice. See *There Are No Children Here*, Economist, Dec. 17, 1994, at 21 ("Now automatic and semi-automatic assault weapons are *de rigueur*"). Chicago and Los Angeles alone accounted for over 1,000 gang homicides in 1994. OJJDP Fact Sheet, *supra*. As one researcher has concluded, "The amount of lethal violence currently directed by youth gangs in major cities both against one another and against the general public is without precedent." Covey, *Juvenile Gangs*, *supra*, at 27.

Vast stretches of the nation's cities have become the equivalent of war zones. A study of Chicago's gangs labeled them "a mobilized army, in the tens of thousands." Chicago Crime Commission. *Gangs: Public Enemy Number One* (1995). Gang-dominated parts of Los Angeles have been described as "small armies of youths fighting one another and the police." Stanley, *Child Warriors*, Time, June 18, 1990, at 30. Indeed, the U.S. Army has trained its doctors in a South Central hospital to familiarize them with the types of gunshot wounds they may encounter on the battlefield. Stanley, *Los Angeles: All Ganged Up*, Time, June 18, 1990, at 50.

The gangs themselves view their operations militarily. The Economist reported on an "area co-ordinator" of Chicago's Gangster Disciples who controls a stretch of turf ten blocks long and five blocks wide and who has 150 "soldiers" working for him. *There Are No Children Here, supra*. These gang "soldiers" are becoming progressively younger. See Thomas, *Putting Children on the Front Lines*, Wash. Post, June 20, 1996, at A1; Mills & Bunuel, *Not yet 13—and a murder suspect*, Chi. Trib., Feb. 4, 1998, at A1; *There Are No Children Here, supra* (citing Chicago anti-gang counselor's estimate that 80% of boys aged 13 to 15 in the area where he works are involved in gangs). Children growing up in gang-dominated neighborhoods often show signs of post-traumatic stress disorder. Alfredo Gonzalez et al., *Introduction* to *Gang Violence Prevention* 5-6 (1990). As one journalist reported several years ago, "many of the children emerge from the streets of Los Angeles more psychologically scarred than the young mujahedin who patrol the mountain passes of Afghanistan." Stanley, *Child Warriors, supra*, at 30.

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B. The Gangs Use Street Intimidation As A Military Tactic

Stationing small groups of gang members on the streets is vital to the success of the gangs' criminal operations. These groups stake out and lay claim to gang turf, sell drugs to finance the procurement of arms, recruit new members (often coercively), serve as lookouts and intelligence gatherers, and intimidate neighborhood residents and passers-by. See Pet. 3. Intimidation takes many forms, including wearing gang colors and clothing, flashing gang signs, and plastering buildings with graffiti. See Michael Genelin, *Gang Prosecutions: The Hardest Game in Town*, in *The Gang Intervention Handbook* 417 (1993). Street-corner squads of gang members also facilitate the commission of violent gang crimes. See Malcolm W. Klein, *The American Street Gang* (1995); *Man Demanding Gang Affiliation Shoots Teen Standing on Street*, Chi. Trib., Feb. 17, 1998, at B3.

Law-abiding citizens are effectively imprisoned in their homes as a result of the mere presence of gang members on the streets. A California State Task Force on Gangs and Drugs observed that "[s]ome communities are literally held captive by the violence, intimidation and decay." California Council on Criminal Justice, State Task Force on Gangs and Drugs, *Final Report* 16 (1989). One woman told a court that the presence of gang members made her afraid to walk down her street to buy a loaf of bread in broad daylight. Zane, *Judgment against Owner of Crime-Ridden Building*, S.F. Chron., Mar. 21, 1995, at A18. Civil rights leader Jesse Jackson expressed the feelings of many when he stated, "Just to think we can't walk down our

own streets, how humiliating." Johnson, *Crime: New Frontier*, Chi. Sun-Times, Nov. 29, 1993, at 4.[2]

The California Supreme Court has vividly portrayed what can happen to a community when gang members are permitted to congregate without any effective control. Describing a four-square-block neighborhood in San Jose as "occupied territory," the court explained:

> Gang members, all of whom live elsewhere, congregate on lawns, on sidewalks, and in front of apartment complexes at all hours of the day and night. They display a casual contempt for notions of law, order, and decency—openly drinking, smoking dope, sniffing toluene, and even snorting cocaine laid out in neat lines on

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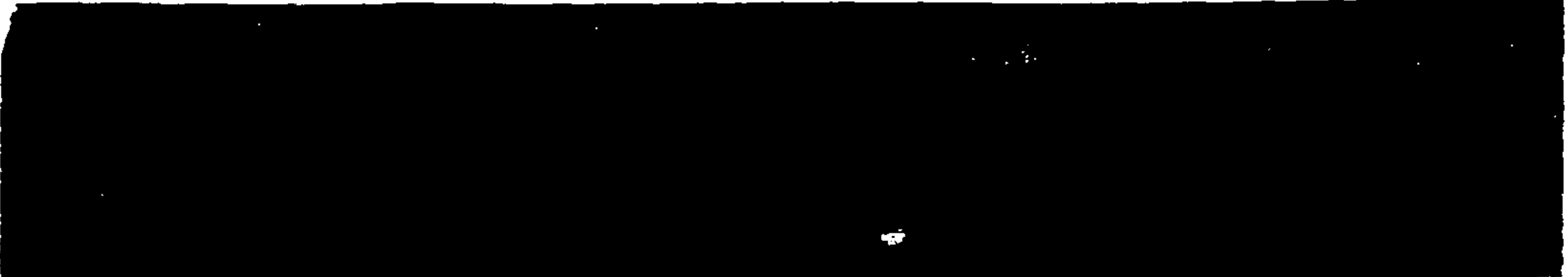
[2] Although some would argue that the police action authorized by the Chicago ordinance might have a harsh and disproportionate impact on minority youths, prominent African-American scholars have recognized that the failure of municipalities to take back the streets from gang members will permit the much harsher impact of gang violence to continue to flourish. In the words of Randall Kennedy, "the main problem confronting black communities in the United States is not excessive policing and invidious punishment but rather a failure of the state to provide black communities with the equal protection of the laws." Randall Kennedy, *The State, Criminal Law, and Racial Discrimination*, 107 Harv. L. Rev. 1255, 1256 (1994). See also Christo Lassiter, *The Stop and Frisk of Criminal Street Gang Members*, 14 Nat'l Black L.J. 1, 2 (1995) (urging the need to "stop and frisk" street gang members and to permit identifiable membership in a criminal gang to "alone constitute reasonable suspicion"). There can be no dispute that the most frequent victims of gang violence are law-abiding residents of minority communities. See Andrew Hacker, *Two Nations: Black and White, Separate, Hostile, and Unequal* 179-198 (1992) (detailing racial demographics of crime victims).

> the hoods of residents' cars. The people who live in Rocksprings are subjected to loud talk, loud music, vulgarity, profanity, brutality, fistfights and the sound of gunfire echoing in the streets. Gang members take over sidewalks, driveways, carports, apartment parking areas, and impede traffic on the public thoroughfares to conduct their drive-up drug bazaar. Murder, attempted murder, drive-by shootings, assault and battery, vandalism, arson, and theft are commonplace. * * * The people of this community are prisoners in their own homes.

People ex rel. Gallo v. Acuna, 929 P.2d 596, 601 (Cal. 1997).

Unchecked gang intimidation has a snowballing effect: law-abiding citizens feel pressured to move out of gang-ridden communities, leaving behind a neighborhood of increasingly concentrated criminal activity. Those who stay behind are unlikely to venture out into the streets, where "their simple presence would otherwise be a deterrent to crime." Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 Va. L. Rev. 349, 371 (1997). Indeed, residents may be afraid even to *report* a crime, because cooperating with the authorities may be perceived not only as dangerous, but useless as well. *Id.* at 376.

Children are particularly vulnerable to the intimidation of gang members congregating on the streets. Fear is the primary tool of gang recruitment. If you're a child and not in a gang, a Chicago anti-drug counselor told the Economist, "you're a target wherever you go." *There Are No Children Here*, *supra*. In Chicago, the heavy gang presence on the streets around the Robert Taylor Homes housing project has resulted in "waves of fear-induced absenteeism" from neighborhood



schools, prompting hundreds of volunteers to band together to shepherd children to school and the School Board to hire dozens of parents to serve as escorts. Braun, *Shepherds for a Flock in the Cross-Fire*, L.A. Times, Jan. 16, 1998, at A1; Martinez, *Parents paid to walk line between gangs and school*, Chi. Trib., Jan. 21, 1998, at A1.

C. Prophylactic Measures, Such As The Chicago Ordinance, Are Vital Tools.

Traditional police methods, even when coupled with increasingly stiff penalties on gang offenders, have failed to control gang violence and intimidation. See C. Ronald Huff, *Denial, Overreaction, and Misidentification*, in *Gangs in America* 310, 313 (C. Ronald Huff ed., 1990); Walter B. Miller, *Why the United States Has Failed to Solve Its Youth Gang Problem*, in *Gangs in America* 263, 267; *Steps Needed to Combat Gangs*, L.A. Times, Feb. 15, 1998, at B9 ("Efforts to rid our communities of gangs are either nonexistent or not working"). Gang-related violence "is so sporadic, so random, so hard to predict, that it's hard to stop," according to a police official in Elgin, a small city close to Chicago. "There's nothing that we haven't done or haven't tried to stop the gangs." Grandziel, *Gang Shootings Riddle the Peace Amid Local Rivals*, Chi. Trib., Jan. 15, 1998, at B1.

Studies show that gang murders are less likely to be solved than other murders, in part because they generally take place on the street and thus leave few physical clues. See *Gang Killings Exceed 40% of L.A. Slayings*, L.A. Times, Dec. 5, 1996, at A1. Moreover, gang intimidation often succeeds in frightening potential witnesses away from the courtroom, leaving prosecutors without a case. See *Acuna*, 929 P.2d at 614 (noting that numerous residents "refused to furnish declarations, fearing for their lives if any gang member should

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In light of the failure of traditional policing methods, leading criminologists have stressed the need for forceful preventive measures against gang activity. See James Q. Wilson, *Just Take Away Their Guns*, N.Y. Times Mag., Mar. 20, 1994, at 46-47. Local governments have taken a number of different approaches. For example, nearly a dozen cities in California—including Los Angeles, Pasadena, Norwalk, and San Jose—have sought civil injunctions against gang actions that constitute a public nuisance. Savage & Rivera, *Court Upholds Injunction Against Gangs*, L.A. Times, June 28, 1997, at A1. Other communities have stepped up enforcement of teen curfews.

Like the Chicago ordinance, these approaches seek to prevent serious crime *before* it occurs by breaking the gangs' stranglehold on the streets and destroying their aura of invincibility. Dispersing gang members and arresting them for violating a loitering or similar ordinance disrupts their ability to commit more serious crimes. Moreover, it sends a clear signal that the community will no longer tolerate gang intimidation and disorder. Over time, that strategy should allow law-abiding citizens to regain control of the streets and encourage young people who are now forced into gangs to resist their recruitment efforts. See David Matza, *Delinquency and Drift* 52-59 (1990). In fact, the empirical evidence cited by the City in its Petition shows that the Chicago ordinance did succeed in substantially decreasing gang crime. See Pet. 9.

For all of the reasons outlined below and in the City's Petition, the Chicago ordinance is "a legitimate and appropriate

means by which to combat the problems of escalating violence and crime in American cities." Lisa A. Kainec, Comment, *Curbing Gang Related Violence in America*, 43 Case W. Res. L. Rev. 651, 652 (1993). Indeed, in many ways, it is a more effective and less restrictive alternative than other measures that have been found constitutional. The kind of injunctions against gang activity upheld by the California Supreme Court in *Acuna* have proven difficult to enforce. See L. Sherman, *Oceanside gang becoming active despite injunction, police confirm*, San Diego Union-Trib., Feb. 18, 1998, at B3. And teen curfews are much more intrusive than Chicago's narrowly-targeted loitering ordinance, since they restrict the liberty of *all* teenagers.[3]

II. The Illinois Supreme Court's Interpretation Of *Papachristou* Conflicts With Numerous Cases Upholding The Validity Of Loitering Ordinances.

This Court long has recognized that cities have the right to prevent "antisocial conduct" on their streets and sidewalks through ordinances directed with "reasonable specificity" toward the prohibited conduct. *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971). In this case, however, the Illinois Supreme Court struck down Chicago's gang-loitering ordinance on the ground, among others, that it failed to provide a sufficient explanation of the conduct prohibited and left too much discretion to individual police officers to decide who could and could not be ordered, on pain of arrest, to "move on."

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[3] Curfews are also difficult and costly to enforce. A recent survey by *amicus* U.S. Conference of Mayors found that 276 of 347 responding cities had nighttime curfews for teenagers, but reported that many respondents complained of the high costs involved in enforcing those curfews. See *More cities use curfews to try to cut youth crime*, Chi. Trib., Dec. 1, 1997, at A10.

The court rejected the argument that the officer's discretion was properly limited by the requirement that an order to disperse be given only if he "reasonably believe[d]" that a group of loiterers included a member of a criminal street gang. Pet. App. 61a. Citing this Court's decision in *Papachristou*, the court below treated that limitation as immaterial, concluding that Chicago's ordinance effectively allowed police to arrest anyone they deemed to be undesirable. Pet. App.17a.

In fact, the ordinance does no such thing. No one can be arrested without first disobeying an order to "move on." Moreover, an order to "move on" will not be valid unless the officer had a reasonable suspicion that one of the people standing around in a group for no apparent purpose was a member of a criminal gang. The Chicago City Council expressly found that "loitering in public places by criminal street gang members creates a justifiable fear for the safety of persons and property in the area because of the violence, drug-dealing and vandalism often associated with such activity." Pet. App. 60a-61a. Thus, the ordinance is designed to allow an officer to issue an order to "move on" only in circumstances where there is a reasonable apprehension of a likely threat to the safety of persons or property.

The Chicago ordinance is similar in many respects to more traditional loitering ordinances, which have often —although not always—been upheld against vagueness challenges. For example, in *City of Milwaukee v. Nelson*, 439 N.W.2d 562, 563 n.1 (Wis. 1989), the Wisconsin Supreme Court rejected a vagueness challenge to an ordinance that prohibited loitering "in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that

warrant alarm for the safety of persons or property.'"[4] Accord *State v. Ecker*, 311 So. 2d 104, 109 (Fla. 1975); *Bell v. State*, 313 S.E.2d 678 (Ga. 1984) (upholding a similar ordinance); *Salt Lake City v. Savage*, 541 P.2d 1035, 1036 (Utah 1975) (same); *State v. Starks*, 186 N.W.2d 245 (Wis. 1971) (same); *City of Seattle v. Drew*, 423 P.2d 522 (Wash. 1967) (same).In *Ecker*, the Florida Supreme Court rejected the argument that the ordinance was unconstitutional because it was subject to the kind of arbitrary enforcement condemned in *Papachristou*, noting that the circumstances that would permit an officer to make a stop pursuant to the ordinance "are not very different from those that the United States Supreme Court described as 'specific and articulable facts' in *Terry v. Ohio*, [392 U.S. 1, 21 (1968)]." 311 So. 2d at 110.

Although a number of courts have disagreed and struck down similar loitering ordinances,[5] *Terry* provides a logical framework for limiting an officer's discretion under traditional loitering ordinances and under the Chicago ordinance as well. In *Terry*, this Court reached a reasonable accommodation between individual and community rights by permitting police officers to pat down suspects whom they reasonably suspect of contemplating a crime. That decision allayed the same kinds of concerns about arbitrary enforcement voiced by the Illinois

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[4] The ordinance challenged in *Nelson* is based on the American Law Institute's Model Penal Code § 250.6. See 439 N.W.2d at 565.

[5] See *City of Bellevue v. Miller*, 536 P.2d 603 (Wash. 1975) (striking down an ordinance similar to that upheld in the *Nelson* case); accord *City of Portland v. White*, 495 P.2d 778 (Or. Ct. App. 1972); *Powell v. Stone*, 507 F.2d 93 (9th Cir. 1974), rev'd on other grounds, 428 U.S. 465 (1976); *United States ex rel. Newsome v. Malcolm*, 492 F.2d 1166 (2d Cir. 1974), aff'd, 420 U.S. 283 (1975); *People v. Berck*, 300 N.E.2d 411 (N.Y. 1973).

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Supreme Court here, by crafting an objective standard—"reasonable suspicion"—based on how "a reasonably experienced police officer" would construe the facts at hand. 392 U.S. at 21-22. The Chicago ordinance is simply an application of the *Terry* principle that an experienced police officer should be able to take appropriate crime prevention measures based on a reasonable suspicion informed by objective factors. See also *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993) (reaffirming *Terry* reasonableness standard); *id.* at 380 (Scalia, J., concurring) (under the common law at the time the Bill of Rights was ratified, it was "reasonable to detain suspicious persons for the purpose of demanding that they give an account of themselves").

Like a *Terry* stop, an order to disperse under the Chicago ordinance and the implementing Police Department Order (see Pet. App. 66a-67a) has to be based on objective criteria that lead to reasonable suspicion by an experienced police officer. But those criteria are relatively easy to define. Gang members make a point of flaunting their membership, via particular tattoos, jackets, clothing colors, clothing position (*e.g.*, the direction their hats or belt buckles face), hand signals, and hair styles. See Martin S. Jankowski, *Islands in the Street: Gangs and American Urban Society* (1991); *Davis v. State*, 1998 WL 57720, at *9-*10 (Ala. Feb. 13, 1998) (describing how bandanna colors identify gang affiliation). As a result, gang membership lends itself to articulable, objective, and reasonable discernment by well-trained and experienced police officers.[6]

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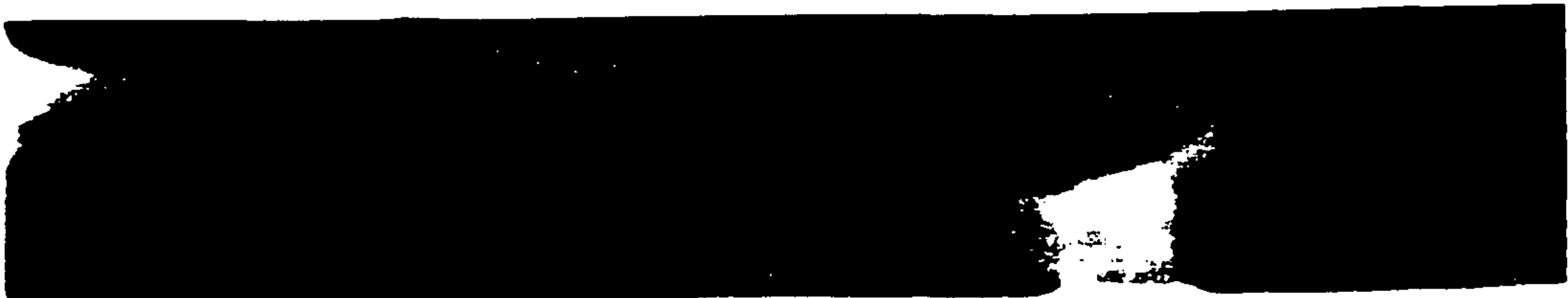
[6] Indeed, an identification of gang membership is likely to be a good deal more objective than the kind of drug courier profile that this Court found to be sufficient to justify detention of an alleged (continued...)



The Illinois Supreme Court's void-for-vagueness analysis is indicative of the confusion that surrounds loitering ordinances generally.[7] *Amici* urge this Court to grant the City's Petition in order to dispel that confusion and enable local governments to enforce reasonably drawn measures to control crime, like Chicago's gang-loitering ordinance.

III. The Illinois Supreme Court Erred In Concluding That The Ordinance Unreasonably Intrudes Upon Constitutional Protected Activity.

This Court should also grant the City's Petition to review the Illinois Supreme Court's conclusion that *Papachristou* recognizes an apparently absolute constitutional right to loiter. As the City points out, the California Supreme Court recently considered—and rejected—the very same argument in *People ex rel. Gallo v. Acuna*, 929 P.2d 596 (Cal.

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drug trafficker in *United States v. Sokolow*, 490 U.S. 1 (1989).

[7] The courts are also sharply divided on whether *Papachristou* requires invalidating ordinances that proscribe "loitering plus." Compare, *e.g.*, *City of Tacoma v. Luvene*, 827 P.2d 1374, 1379 (Wash. 1992) (upholding a drug-loitering ordinance that makes it unlawful "to loiter in or near any thoroughfare, place open to the public, or near any public or private place in a manner and under circumstances manifesting the purpose to engage in drug-related activity"); *State v. VJW*, 680 P.2d 1068, 1070 (Wash. Ct. App. 1984) (upholding a Seattle "prostitution loitering" ordinance); and *City of Akron v. Holley*, 557 N.E.2d 861, 867 (Ohio Mun. Ct. 1989) (upholding a drug-loitering ordinance), with *American Civil Liberties Union v. City of Alexandria*, 747 F. Supp. 324 (E.D. Va. 1990) (invalidating an ordinance similar to Tacoma's); *Wyche v. State*, 619 So. 2d 231 (Fla. 1993) (same); *E.L. v. State*, 619 So. 2d 252, 253 (Fla. 1993) (same); *Johnson v. Carson*, 569 F. Supp. 974, 975 (M.D. Fla. 1983) (striking down a prostitution-loitering ordinance).

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1997). In that case, the court upheld an injunction against gang activity that was found to constitute a public nuisance. In practice, the injunction was in many ways more restrictive than the Chicago ordinance, enjoining dozens of gang members from, among other things, "[s]tanding, sitting, walking, driving, gathering or appearing anywhere in public view with any other defendant * * * or with any other known" member of the identified gangs. *Id.* at 608. Despite the breadth of the injunction, the California Supreme Court declined to find that the gang members' constitutional rights to associate were implicated. Because the injunction did not infringe on either intimate or private activity or joint political or social advocacy, the court concluded that it simply did not implicate any constitutionally protected interest. *Id.* at 609.

In any event, the Illinois Supreme Court erred in concluding that whatever intrusion there might be into protected "liberty" interests was unreasonable. As the California Supreme Court recognized in *Acuna*, a court must consider not only the rights of gang members, but also the rights of the community:

> The state has not only a right to "maintain a decent society," but an obligation to do so. * * * [T]he community's right to security and protection must be reconciled with the individual's right to expressive and associative freedom. Reconciliation begins with the acknowledgment that the interests of the community are not invariably less important than the freedom of individuals. Indeed, the security and protection of the community is the bedrock on which the superstructure of individual liberty rests.

Id. at 603 (citation omitted).

By concentrating solely on the "liberty" interests of people who had refused to "move on" in response to a police order, the Illinois Supreme Court ignored the liberty interests of law-abiding citizens. As the record in this case and numerous scholarly studies demonstrate, permitting groups of gang members to camp out on city streets impedes the very liberties invoked by the court below—to travel, to move freely, and to associate with others. People living in gang-infested neighborhoods who wish to walk along their streets and associate with their neighbors have every right to do so free of threats, whether voiced or silent, and to expect the police to take crime prevention measures to promote their personal safety and the integrity of their homes, businesses, and communities.

In his concurring opinion in *Kovacs* v. *Cooper*, 336 U.S. 77, 89 (1949), Justice Frankfurter remarked that "[w]ise accommodation between liberty and order always has been, and ever will be, indispensable for a democratic society." The Chicago ordinance provides a good example of just such a "wise accommodation." The ordinance recognizes that individual liberties are hollow without community safety. Although it imposes some restraints on the ability of some individuals to stand on the street for no apparent purpose, those restraints are minimal and more than justified by their potential to greatly expand the liberties enjoyed by law-abiding residents.

As the California Supreme Court observed in *Acuna*, to allow the liberty of the peaceful and industrious residents of a community to "be forfeited to preserve the illusion of freedom for those whose ill conduct is deleterious to the community as a whole is to ignore half the political promise of the Constitution and the whole of its sense." 929 P.2d at 618. The Chicago ordinance implements the most basic promises of our Constitution—to "insure domestic Tranquility, provide for the

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common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our posterity." This Court should reverse the court below to enable Chicago to give effect to those promises and to prevent the horrors of gang violence from rendering them meaningless.

CONCLUSION

For the reasons outlined above and in the City's Petition, the *amici* urge the Court to grant the City's Petition and to reverse the judgment below.

Respectfully submitted.

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MARCH 1998.

AMENDMENT OF TITLE 8, CHAPTERS 4 AND 16 OF MUNICIPAL CODE OF CHICAGO BY IMPLEMENTATION OF RESTRICTIONS ON GANG RELATED CONGREGATIONS IN PUBLIC WAYS AND BY EXPANSION OF CURFEW REGULATIONS REGARDING MINORS.

On motion of Alderman Burke, the City Council took up for consideration the report of the Committee on Police and Fire, deferred and published in the Journal of Proceedings of May 20, 1992 pages 16474 through 16479, recommending that the City Council pass a proposed substitute ordinance to restrict gang related congregations in the public way and to expand curfew regulations regarding minors.

On motion of Alderman Beavers, the said proposed substitute ordinance was *Passed* by yeas and nays as follows:

Yeas -- Aldermen Mazola, Preckwinkle, Beavers, Dixon, Buchanan, Huels, Fary, Madrzyk, Burke, Murphy, Rugai, Laski, Gutierrez, E. Smith, Bialczak, Suarez, Gabinski, Austin, Wojcik, Banks, Giles, Cullerton, O'Connor, Doherty, Natarus, Eisendrath, Hansen, Levar, Schulter, M. Smith, Stone -- 31.

Nays -- Aldermen Tillman, Bloom, Steel, Shaw, Jones, Coleman, Evans, Miller, Hendon, Shiller, Moore. -- 11.

Alderman Natarus moved to reconsider the foregoing vote. The motion was lost.

The following is said ordinance as passed:

WHEREAS, The City of Chicago, like other cities across the nation, has been experiencing an increasing murder rate as well as an increase in violent and drug related crimes; and

WHEREAS, The City Council has determined that the continuing increase in criminal street gang activity in the City is largely responsible for this unacceptable situation; and

WHEREAS, In many neighborhoods throughout the City, the burgeoning presence of street gang members in public places has intimidated many law-abiding citizens; and

WHEREAS, One of the methods by which criminal street gangs establish control over identifiable areas is by loitering in those areas and intimidating others from entering those areas; and

WHEREAS, Members of criminal street gangs avoid arrest by committing no offense punishable under existing laws when they know police are present, while maintaining control over identifiable areas by continued loitering; and

WHEREAS, The City Council has determined that loitering in public places by criminal street gang members creates a justifiable fear for the safety of persons and property in the area because of the violence, drug-dealing and vandalism often associated with such activity; and

WHEREAS, The City also has an interest in discouraging all persons from loitering in public places with criminal gang members; and

WHEREAS, Aggressive action is necessary to preserve the City's streets and other public places so that the public may use such places without fear; and

WHEREAS, The City Council has also determined that it is necessary to amend the Municipal Code of Chicago to provide for a stronger curfew ordinance and a more effective means of enforcement; now, therefore,

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Chapter 8-4 of the Municipal Code of Chicago is hereby amended by adding a new Section 8-4-015 as follows:

8-4-015.

(a) Whenever a police officer observes a person whom he reasonably believes to be a criminal street gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section.

(b) It shall be an affirmative defense to an alleged violation of this section that no person who was observed loitering was in fact a member of a criminal street gang.

(c) As used in this section:

(1) "Loiter" means to remain in any one place with no apparent purpose.

(2) "Criminal street gang" means any ongoing organization, association in fact or group of three or more persons, whether formal or informal, having as one of is substantial activities the commission of one or more of the criminal acts enumerated in paragraph (3), and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(3) "Criminal gang activity" means the commission, attempted commission, or solicitation of the following offenses, provided that the offenses are committed by two or more persons, or by an individual at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members:

The following sections of the Criminal Code of 1961: 9-1 (murder), 9-3.3 (drug induced homicide), 10-1 (kidnapping), 10-4 (forcible

detention), subsection (a) (13) of Section 12-2 (aggravated assault-discharging firearm), 12-4 (aggravated battery), 12-4.1 (heinous battery), 12-4.2 (aggravated battery with a firearm), 12-4.3 (aggravated battery of a child), 12-4.6 (aggravated battery of a senior citizen), 12-6 (intimidation), 12-6.1 (compelling organization membership of persons), 12-11 (home invasion), 12-14 (aggravated criminal sexual assault), 18-1 (robbery), 18-2 (armed robbery), 19-1 (burglary), 19-3 (residential burglary), 19-5 (criminal fortification of a residence or building), 20-1 (arson), 20-1.1 (aggravated arson), 20-2 (possession of explosives or explosive or incendiary devices), subsection (a) (6), (a) (7), (a) (9) or (a) (12) of Section 24-1 (unlawful use of weapons), 24-1.1 (unlawful use or possession of weapons by felons or persons in the custody of the Department of Corrections facilities), 24-1.2 (aggravated discharge of a firearm), subsection (d) of Section 25-1 (mob action-violence), 33-1 (bribery), 33A-2 (armed violence); Sections 5, 5.1, 7 or 9 of the Cannabis Control Act where the offense is a felony (manufacture or delivery of cannabis, cannabis trafficking, calculated criminal cannabis conspiracy and related offenses); or Sections 401, 401.1, 405, 406.1, 407 or 407.1 of the Illinois Controlled Substances Act (illegal manufacture or delivery of a controlled substance, controlled substance trafficking, calculated criminal drug conspiracy and related offenses).

(4) "Pattern of criminal gang activity" means two or more acts of criminal gang activity of which at least two such acts were committed within five years of each other and at least one such act occurred after the effective date of this Section.

(5) "Public place" means the public way and any other location open to the public, whether publicly or privately owned.

(d) Any person who violates this Section is subject to a fine of not less than $100 and not more than $500 for each offense, or imprisonment for not more than six months, or both.

In addition to or instead of the above penalties, any person who violates this Section may be required to perform up to 120 hours of community service pursuant to Section 1-4-120 of this Code.

SECTION 2. Chapter 8-16 of the Municipal Code of Chicago is hereby amended in Section 8-16-020 by inserting the language in italics and by deleting the language in brackets, and by adding new Sections 8-16-022 and 8-16-024, as follows:

8-16-020.

It shall be unlawful for any person under the age of 17 years to be present at, or upon any public assembly, building, place, street or highway, in the city between the hours of 11:30 P.M. Friday and 6:00 A.M. Saturday, [or] between the hours of 11:30 P.M. Saturday and 6:00 A.M. Sunday, *and* [or] between the hours of 10:30 P.M. and 6:00 A.M. on any other day of the week, *provided, however, that the provisions of this section shall not apply when:*

(a) the minor is accompanied and supervised by his or her parent, legal guardian or other adult having the legal care or custody of such minor, or by the minor's spouse if the spouse is 18 years of age or older, or by any other responsible companion at least 21 years of age or older approved by the minor's parent or legal guardian or other adult having the legal care or custody of such minor;

(b) the presence of such minor in said place is required by an occupation or business in which the minor is lawfully engaged; or

(c) the minor is going directly to or from any adult-supervised activity sponsored by any school, church, civic or not-for-profit organization.

[unless accompanied and supervised by a parent, legal guardian or other responsible companion at least 21 years of age approved by a parent or legal guardian, or unless engaged in some occupation or business in which such child may lawfully engage under the statutes of this state.]

[Any police officer finding a child violating the provisions of this section shall warn the child to desist immediately from such violation and shall promptly report the violation to his superior officer who shall cause a written notice to be served upon the parent, guardian, or person in charge of such child, setting forth the manner in which this section has been violated. Any parent, guardian, or person in charge of such child who shall knowingly permit such child again to violate the provisions of this section after receiving notice of the first violation shall be fined not less than $5.00 nor more than $100.00 for each offense.]

8-16-022.

Any police officer who finds a minor in violation of section 8-16-020 is authorized to take such minor into custody until such time as the minor's parent, legal guardian, or other adult having legal care or custody of the minor is located and notified of the violation, and takes custody of the minor from the police. If no such person can be located within a reasonable period of time, the minor shall be referred to the appropriate juvenile authorities.

8-16-024.

Any parent, legal guardian or other adult having the legal care or custody of a minor who shall knowingly permit such minor to violate any provision of section 8-16-020 shall be fined not less than $25.00 nor more than $100.00 for each offense.

SECTION 3. This ordinance shall take effect 30 days after its passage and publication.