

Nos. 95253, 95243, 95256, 95280

IN THE
SUPREME COURT OF THE STATE OF ILLINOIS

CITY OF CHICAGO and COUNTY OF COOK,
Plaintiffs-Appellees,

v.

BERETTA U.S.A. CORP., ET AL.,
Defendants-Appellants.

On Leave to Appeal from the Appellate Court of Illinois, First District, Case No. 00-3541.
There Heard on Appeal from the Circuit Court of Cook County,
County Department, Chancery Division, No. 98 CH 15596.
The Honorable Stephen A. Schiller, Judge Presiding.

BRIEF AMICUS CURIAE OF
AMERICAN JEWISH CONGRESS, CENTRO COMMUNITARIO JUAN DIEGO,
CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, CHICAGO
PROJECT FOR VIOLENCE PREVENTION, CHICAGO SINAI CONGREGATION,
COUNCIL OF RELIGIOUS LEADERS OF METROPOLITAN CHICAGO, ILLINOIS
COUNCIL AGAINST HANDGUN VIOLENCE, ILLINOIS LAWYERS OF LEGAL
COMMUNITY AGAINST VIOLENCE, INTERFAITH INITIATIVE AGAINST GUN
VIOLENCE, LEGAL COMMUNITY AGAINST VIOLENCE, LOYOLA UNIVERSITY
CHILDLAW CENTER, MILLION MOM MARCH UNITED WITH THE BRADY
CAMPAIGN TO PREVENT GUN VIOLENCE, NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE, ONTARGET COALITION, ST. JAMES
EPISCOPAL CATHEDRAL, UHLICH CHILDREN'S HOME, AND VOICES FOR
ILLINOIS CHILDREN

Ross B. Bricker
Matt D. Basil
Zubair A. Khan
JENNER & BLOCK, LLC
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

POINTS AND AUTHORITIES

	<u>Page No.</u>
I. STATEMENT OF INTEREST OF THE <i>AMICI CURIAE</i>	1
II. SUMMARY OF THE ARGUMENT	6
III. ARGUMENT	7
A. HANDGUN VIOLENCE CONSTITUTES AN IMMEDIATE, ONGOING, AND DEVASTATING THREAT TO PUBLIC HEALTH AND PUBLIC SAFETY IN CHICAGO, COOK COUNTY, AND ILLINOIS	7
1. Handguns Are The Weapon Of Choice In A Startling Percentage Of Local and State Crimes.	7
"Chicago, big-city murder capital," <u>Chicago Tribune</u> , (January 16, 2003)	8
"Homicide in Chicago, December 2002," Chicago Police Department (December 2002)	8
2001 Chicago Police Department Annual Report	8
Gary Washburn & David Heinzmann, "Daley hints police will go to hot spots," <u>Chicago Tribune</u> (Online Edition), (May 6, 2003)	9
"Firearm Injury Prevention State Status Report," <u>Handgun Epidemic Lowering Plan</u> <u>(HELP) Network</u> , (January 2001)	9
Eric Ferkenhoff, Darnell Little, & David Mendell, "Murders in Illinois jump by 10%; Violent crimes up in many suburbs." <u>Chicago Tribune</u> , (June 30, 2002)	9
"More than 400 firearms, ammo found in home," <u>Chicago Tribune</u> (Online Edition), (May 4, 2003)	9
"State police retiree charged in guns sales," <u>Chicago Tribune</u> (Online Edition) (May 14, 2003)	10
Frank Main, "Shootings of kids spur gun crackdown," <u>Chicago Sun-Times</u> , (May 20, 2003)	10

2.	Handgun Violence Destabilizes Neighborhoods And Disparately Impacts Children And Minorities	10
	John W. Fountain, "In Deadly Areas, Urge End to Killings - Pleas for Truce in Chicago Neighborhood," <u>The New York Times</u> , (March 2, 2003)	11
	"Homicide in Chicago, December 2002," Chicago Police Department (December 2002)	12
	2001 Chicago Police Department Annual Report	12
	Jenifer Cartland, Patricia Meleedy-Rey, & Katherine Kaufer Christoffel, "Child and Adolescent Injury in Illinois," <u>Children's Memorial Hospital, State & Community Reports on Injury Prevalence & Targeted Solutions</u>	12
	Frank Main, "Shootings of kids spur gun crackdown," <u>Chicago Sun-Times</u> , (May 20, 2003)	12
	"The Facts About Firearm Violence," <u>Illinois Council Against Handgun Violence</u> , (February 2003)	13
	"Kids in the Line of Fire – Children, Handguns, and Homicide," <u>Violence Policy Center</u> (2001)	13
	Eric Lotke & Vincent Shiraldi, "An Analysis of Juvenile Homicides: Where They Occur And The Effectiveness Of Adult Court Intervention," (July 1996)	14
	James Garbarino, Catherine Bradshaw, & Joseph Vorrasi, "Mitigating the Effects of Gun Violence on Children and Youth," <u>The Future of Children</u> (Summer/Fall 2002)	14, 15
	Tener Goodwin Veenema, "Children's Exposure to Community Violence," <u>Journal of Nursing Scholarship</u> (Second Quarter 2001)	14, 15, 16
3.	Juveniles and Criminals In Chicago And Cook County Have Easy Accessibility To Handguns	16
	Garen J. Wintemute, "Where the Guns Come From: The Gun Industry and Gun Commerce," <u>The Future of Children</u> , (Summer/Fall 2002)	17
	<u>Crime Gun Trace Analysis Report: The Illegal Youth Firearms Market in Chicago, Illinois</u> , United States Department of Treasury Bureau of Alcohol, Tobacco and Firearms (February 1999)	17

B. THE GOAL OF PUBLIC NUISANCE LAW IS TO ABATE AND REMEDY THE VERY TYPE OF HARM INFLICTED ON LOCAL COMMUNITIES AS A RESULT OF DEFENDANTS' ALLEGED SALES AND MARKETING PRACTICES	17
Restatement (Second) of Torts § 821B, cmt. b (1979)	17
<u>Donaldson v. Central Illinois Public Service Co.</u> , 199 Ill.2d 63, 767 N.E.2d 314 (2002)	17
<u>Gilmore v. Stanmar, Inc.</u> , 261 Ill. App. 3d 651, 633 N.E.2d 985 (1st Dist. 1994)	17, 19
W. Page Keeton, et. al, <u>Prosser & Keeton on the Law of Torts</u> , § 86 (5th ed. 1984)	18
W. Page Keeton, et. al, <u>Prosser & Keeton on the Law of Torts</u> , § 90 (5th ed. 1984)	18
Restatement (Second) of Torts § 821B, cmt. a (1979)	18
<u>Village of Des Plaines v. Pover</u> , 123 Ill. 348, 14 N.E. 677 (1888)	18
<u>Village of Wilsonville v. SCA Services, Inc.</u> , 86 Ill.2d 1, 426 N.E.2d 824 (1981)	18
W. Prosser, <u>Torts</u> , § 88 (4th ed. 1971)	18
Restatement (Second) of Torts § 821B, cmt. g (1979)	18
Restatement (Second) of Torts § 825 (1979)	19
Restatement (Second) of Torts § 825, cmt. c (1979)	19
Restatement (Second) of Torts § 834 (1979)	19
Restatement (Second) of Torts § 834, cmt. f (1979)	19
<u>Chicago, Wilmington and Vermillion Coal Co. v. Glass</u> , 34 Ill. App. 364 (2d Dist. 1889)	19
<u>Metropolitan City Railway Co. v. City of Chicago</u> , 96 Ill. 620 (1880)	20
<u>Chicago, Rock Island & Pacific Railway Co. v. People ex rel. Carter</u> , 120 Ill. App. 306 (2d Dist. 1905), <u>aff'd</u> , 222 Ill. 427 (1906)	20, 21

<u>People v. Northbrook Sports Club</u> , 53 Ill. App. 3d 331, 368 N.E.2d 663 (1st Dist. 1977)	20, 21
<u>Anderson, et al. v. Bryco Arms, et al.</u> , No. 00 L 7476 (Circuit Court of Cook County, County Department, Law Division April 10, 2002)	21
IV. CONCLUSION	22
Kathleen Reich, Patti L. Culross, & Richard E. Behrman, “Children, Youth, and Gun Violence: Analysis and Recommendations” <u>The Future of Children</u> (Summer/Fall 2002)	22

BRIEF AMICUS CURIAE

This brief is submitted in support of plaintiffs City of Chicago and County of Cook by American Jewish Congress, Centro Comunitario Juan Diego, Chicago Lawyers' Committee For Civil Rights Under Law, Chicago Project For Violence Prevention, Chicago Sinai Congregation, Council of Religious Leaders of Metropolitan Chicago, Illinois Council Against Handgun Violence, Illinois Lawyers of Legal Community Against Violence, Interfaith Initiative Against Violence, Legal Community Against Violence, Loyola University Childlaw Center, Million Mom March United With the Brady Campaign To Prevent Gun Violence, National Association for the Advancement of Colored People, OnTarget Coalition, St. James Episcopal Cathedral, Uhlich Children's Home, and Voices for Illinois Children to present the perspective of community groups throughout the City of Chicago, Cook County, the State of Illinois, and elsewhere that the injury, death, and other horrors caused by handgun violence have reached epidemic proportions. Individually and collectively, Amici possess a wealth of experience and information which they seek to present to assist the Court in its consideration of the issues presented in this appeal. Namely, that the plague that handgun violence undeniably inflicts on individuals, families, and communities in Chicago and the surrounding areas is the very kind of broad, general harm that public nuisance law is intended to abate and remedy.

I. STATEMENT OF INTEREST OF THE AMICI CURIAE

Amici Curiae are numerous civic groups and community, religious, and legal organizations committed to gun violence prevention. Each group and its members share a direct and personal stake in the controversy before this Court. Specifically, *Amici Curiae* seek to redress the degrading and traumatic effects of handgun violence, in part by preserving their common law right to invoke the public nuisance doctrine.

American Jewish Congress (“AJC”) is an organization of American Jews founded in 1918 to protect the civil, political, and religious rights of American Jews and all Americans. AJC has supported strong gun control laws in the past and has particular interest in this subject because one of its leaders, Jack Berman, was a victim of the July 1993 gun rampage in the San Francisco law firm of Pettit and Martin. Notably, AJC sponsors the “Stop the Guns: Protect Our Kids” campaign, which is committed to communicating the message that strict gun control to stop the proliferation of gun violence in our society is essential. AJC’s campaign calls for the implementation of certain minimum measures which will help begin to stem the tide of gun violence.

Centro Comunitario Juan Diego (“CCJD”) was founded in Chicago in January 1994 by women who were members of a Christian-based community. CCJD promotes safe communities, self-development, and leadership training.

Chicago Lawyers’ Committee for Civil Rights Under Law (the “Chicago Lawyers’ Committee”) has for over thirty years offered comprehensive legal services to poor communities and communities of color in Chicago. The mission of the Chicago Lawyers’ Committee is to promote and protect civil rights, particularly the civil rights of poor, minority, and disadvantaged people, who are disparately impacted by firearm violence, in order to facilitate their participation in the social, economic, and political systems of the United States.

Chicago Project for Violence Prevention (“Chicago Project”) was formed in 1995 as a strategic public health initiative to support accelerated community-based and citywide violence prevention. The Chicago Project partners with community-based organizations that take the lead in developing strategic plans to reduce all violence, including handgun violence. Under the Chicago Project, high-crime neighborhoods are declared “Cease-Fire” zones, outreach workers are recruited

from the targeted population, and a comprehensive public-education campaign is launched. According to JoinTogether Online, the Chicago Project's approach is working: in the first group of 10 neighborhoods designated as Cease-Fire zones, shootings have dropped between 30 and 67 percent.

Chicago Sinai Congregation ("Chicago Sinai") is a reform Jewish congregation in Chicago, with approximately 750 member families. Under the leadership of Senior Rabbi Michael Sternfield, Chicago Sinai has been a strong advocate for common sense solutions to gun violence. Chicago Sinai's Social Action Committee has been one of the driving forces in organizing the Interfaith Initiative Against Gun Violence, an organization of religious institutions and individuals in Chicago.

The Council of Religious Leaders of Metropolitan Chicago is comprised of chief leaders of Roman Catholic, Episcopal, Protestant, Eastern and Oriental Orthodox, Jewish, and Islamic communities. The Council represents approximately 4 million people in and around Chicago and has among its goals the promotion of safe communities and neighborhoods.

Illinois Council Against Handgun Violence ("ICHV") is the largest and oldest state-based gun violence prevention organization in the United States. Founded in 1975, ICHV is dedicated to educating the public about the epidemic of gun violence and reducing gun injuries and deaths caused by the easy accessibility of firearms in Illinois. ICHV realizes this mission through public education, research publications, and serving as an information source to concerned citizens, community groups, policy makers, health care professionals, and law enforcement officials. ICHV also works with community and professional organizations, including victims of firearm violence, to bring their perspective to violence prevention.

Illinois Lawyers of Legal Community Against Violence (“Illinois Lawyers of LCAV”) is a network of Illinois attorneys who volunteer their expertise to combat the epidemic of gun violence that plagues communities in the state.

Interfaith Initiative Against Gun Violence is dedicated to bringing the moral authority of the clergy and lay congregants to bear on the pervasive plague of gun violence in our society. Sponsoring institutions include: Chicago Sinai Congregation, Fourth Presbyterian Church, Chicago Temple (First United Methodist Church of Chicago), Holy Name Cathedral, and Annunciation Greek Orthodox Cathedral.

Legal Community Against Violence (“LCAV”) is an educational nonprofit organization that was formed by lawyers and others in the aftermath of the 1993 assault weapons massacre at a San Francisco office building. LCAV believes that community education and action are critical to achieving meaningful firearms policies and to ending America’s gun violence epidemic. LCAV’s project, the Firearms Law Center, provides free, nationwide assistance to communities, groups, and individuals seeking effective, legally defensible firearms regulations.

Loyola University Childlaw Center (the “Center”) houses the children’s law programs at Loyola University Chicago School of Law. The Center’s mission is to promote justice for children, including the right to be free from firearm violence, through interdisciplinary teaching, scholarship, and service.

Million Mom March United With The Brady Campaign To Prevent Gun Violence (“Million Mom March”) is a grass-roots advocacy organization dedicated to preventing gun death and injury and supporting victims and survivors of gun trauma. The mission statement of the Million Mom March calls for: (1) cooling off periods and background checks before guns may be purchased;

(2) licensing of handgun owners and registration of all handguns; (3) safety locks for all handguns; (4) limiting handgun purchases to one per month per person; and (5) no nonsense enforcement of existing gun laws. The Million Mom March has a regional office in Chicago, and chapters and members in Chicago and throughout Illinois.

The National Association for the Advancement of Colored People (“NAACP”) is the oldest and the largest civil rights organization in the United States. The mission of the NAACP is to improve the political, educational, and economic status of minority groups, including alleviating the disparate harm handgun violence has on minority communities; to eliminate racial prejudice; to keep the public aware of the adverse effects of racial discrimination; and to take lawful action to secure the elimination of racial discrimination.

OnTarget Coalition is comprised of hundreds of organizations involved in health care, law enforcement, religious and civil service, business, education, victim and child advocacy, and domestic violence prevention. The Coalition was launched in 1994 by ICHV to organize people affected by gun violence and to educate them about policy solutions that address the root causes of gun violence.

St. James Episcopal Church is located in Chicago and is at the forefront of interfaith and ecumenical efforts to stem all forms of violence, including handgun violence, in the City of Chicago. St. James is the “mother church” of the Episcopal Diocese of Chicago and is the seat of the bishop of the Diocese of Chicago, Right Rev. William D. Persell.

Uhlich Children’s Home was founded in 1869, helping Chicago’s children and families break cycles of violence and abuse. Uhlich’s Community Programs are diverse programs that develop and coordinate resources within communities to help more than 600 children and

families succeed through Professional Foster Parenting, Independent Living, Vocational Training, Family Centered Services, Hands Without Guns – Chicago, HomeWorks, and Teen Parenting Service Network.

Voices for Illinois Children (“Voices”) is a statewide, privately funded, non-profit organization that educates, engages, and inspires Illinoisans to take meaningful action to improve the lives of all children and their families, including preventing and/or dealing with firearm violence. Voices works throughout Illinois to ensure that children’s basic needs – family, education, physical and economic security, health, safety and the arts, recreation and culture – are public and private priorities.

II. SUMMARY OF THE ARGUMENT

Handgun violence in the City of Chicago, Cook County, and the State of Illinois has reached epidemic proportions. Neighborhoods and communities – especially minority communities – are under siege. Local youth, the building blocks and foundation of community development and growth, are killing and dying at alarming rates. And handguns, which are easily obtained by juveniles, criminals, and others who are prohibited by law from possessing them, are a significant contributing factor to the plague of violence that is sweeping Chicago and the surrounding areas.

Public nuisance law broadly protects the health, safety, and welfare of individuals and communities against the very evils defendants are alleged to inflict on residents of Chicago and Cook County: the creation and maintenance of a channel of distribution through which thousands of handguns became available in Chicago and Cook County and then were used to kill, injure, or

threaten others. The intentional creation and perpetuation of the illegal market for handguns in and around Chicago, as alleged by plaintiffs, exposes defendants to liability under public nuisance law.

Day in and day out, Amici are on the front line of the efforts to quell the ravages of handgun violence that significantly harm communities in the City of Chicago, Cook County, and the State of Illinois. These very injuries to the community at large are precisely the sort of harm that public nuisance law is intended to remedy. Defendants must be held to answer for the role they play in the epidemic of handgun violence that has injured and killed far too many people in Chicago and Illinois. The Appellate Court's decision should be affirmed.

III. ARGUMENT

A. HANDGUN VIOLENCE CONSTITUTES AN IMMEDIATE, ONGOING, AND DEVASTATING THREAT TO PUBLIC HEALTH AND PUBLIC SAFETY IN CHICAGO, COOK COUNTY, AND ILLINOIS.

Handgun violence represents a serious threat to the public health, safety, and welfare of citizens of the City of Chicago, Cook County, and the State of Illinois. This plague continues to inflict terrible harm on individuals, families, and communities in and around Chicago, with especially harmful effects on children and minority communities. Amici address these effects every day and are in a unique position to present this information for the Court's consideration.

1. Handguns Are The Weapon Of Choice In A Startling Percentage Of Local And State Crimes.

"Murder Capital of the United States" is not a title or designation any city or community strives to achieve. Yet Chicago unfortunately has earned that dubious distinction for most of the past 10 years. Hundreds of individuals fall prey to handgun violence in Chicago and Cook County every year.

In 2002, **and for the eighth time in the last nine years**, the City of Chicago suffered the highest homicide rate of any United States city with a population of more than 1 million people. See “Chicago, big-city murder capital,” Chicago Tribune, (January 16, 2003), at 1, Appendix (“App.”) at A-1. Over 640 homicides were committed in Chicago in 2002, marking an incomprehensible 35th straight year that the City recorded more than 600 homicides. Id. at 2.

Firearms, specifically handguns, indisputably play a central role in homicides and other crimes committed in Chicago. Of the over 640 homicides committed in Chicago in 2002, 79% of the victims were shot to death – an eleven-year high for firearm-related homicide in the City. See “Homicide in Chicago, December 2002,” Chicago Police Department (December 2002) at 1, App. at A-4; see also 2001 Chicago Police Department Annual Report at 15, App. at A-6.

And 2002 was not an aberration. Of the 666 homicides committed in the City in 2001, 514, or 77%, were committed with a firearm. Id. at 15. The 77% constituted a then 10-year high, a percentage that was eclipsed in 2002. Id. In 2000, firearms accounted for 75% of the 631 homicides committed in Chicago, a rate that remained constant in each of the previous seven years. Id.

Firearm-related crime in Chicago is not confined to homicide. According to Chicago Police Department records, in Chicago in 2001, over 11,100 armed robberies and over 7,600 aggravated batteries or assaults were committed with a firearm. Id. at 11. In 2000, there were over 11,800 armed robberies and approximately 7,660 aggravated batteries or assaults committed with a gun in the City. Id.

The rate of firearm violence in Chicago shows no signs of diminishing. Although the City had a staggering number of homicides in 2002, and the highest murder rate of any big city in

the United States, 2003 has seen an almost 10% increase in homicides committed in the City. According to recent news reports, as of May 6, 2003, 181 homicides had occurred in Chicago – including 11 over one weekend in April. See Gary Washburn & David Heinzmann, “Daley hints police will go to hot spots,” Chicago Tribune (Online Edition), (May 6, 2003) at 2, App. at A-58. The 181 City homicides constituted an almost 10% jump over the number of killings during the same time period in 2002. Id.

Nor are the horrors of handgun violence in Illinois confined to the City of Chicago. In 1998, 1,324 firearm deaths (including homicides, suicides, and unintentional shootings) occurred in Illinois, the fourth most of any state. See “Firearm Injury Prevention State Status Report,” Handgun Epidemic Lowering Plan (HELP) Network, (January 2001) at 1, App. at A-61. Seven-hundred and eighty of those firearm deaths were homicides and 435 of the homicide victims were under the age of 24. Id.

In 2001, the overall number of homicides committed in Illinois increased 10% over the previous year, to 986 from 898 homicides in 2000. See Eric Ferkenhoff, Darnell Little, & David Mendell, “Murders in Illinois jump by 10%; Violent crimes up in many suburbs.” Chicago Tribune, (June 30, 2002) at 1, App. at A-63. Between 2000 and 2001, the number of homicides committed in Cook, Lake, DuPage, and McHenry Counties increased. Id. Statewide during the same time period, homicides increased in 29 counties while decreasing in only 19. Id.

News of the prevalence of guns and gun crime is an almost daily occurrence. Only weeks ago, the Federal Bureau of Alcohol, Tobacco and Firearms (the “ATF”) confiscated more than 420 firearms – handguns, shotguns, and rifles – and thousands of rounds of ammunition from a home in the Chicago suburb of North Riverside, in Cook County. See “More than 400 firearms, ammo

found in home,” Chicago Tribune (Online Edition), (May 4, 2003) at 1, App. at A-68. On May 13, 2003, the North Riverside man, Dennis Kalinoski, a former Illinois State Police sergeant, was indicted by a federal grand jury for allegedly possessing and transferring firearms knowing the guns were going to be used to commit crimes of violence and drug trafficking. See “State police retiree charged in guns sales,” Chicago Tribune (Online Edition), (May 14, 2003) at 1, App. at A-69. The probe of Kalinoski began when police officers arrested an 18-year-old gang member for unlawful possession of a firearm. Id. When questioned, the teenager told police that he had obtained the gun from “Dennis,” which lead investigators to Kalinoski. Id.

News of two Chicago children victimized by gun violence also made recent headlines. See Frank Main, “Shootings of kids spur gun crackdown,” Chicago Sun-Times, (May 20, 2003) at 1, App. at A-71. In one shooting, Ashlee Poole, seven years old, was shot and wounded on Easter Sunday when a stray bullet hit her in the abdomen while she ate jelly beans on the front porch of her home in the Englewood neighborhood. Id. In another shooting, Rene Guillen, twelve years old, was shot and killed on April 26 after helping cleanup his Back of the Yards neighborhood. Id.

2. Handgun Violence Destabilizes Neighborhoods And Disparately Impacts Children And Minorities.

Neighborhoods and communities are the backbone of Chicago and Cook County. But handgun violence destabilizes communities by, among other things, making residents fearful of social interaction, discouraging business expansion, and forcing cultural institutions to consider safer neighborhoods. These effects are felt disproportionately in minority communities and among young people. Amici witness this devastation on a daily basis.

In March 2003, the New York Times carried an article that chronicled handgun violence in Englewood, a predominantly African-American community on Chicago's south side. See John W. Fountain, "In Deadly Areas, Urge End to Killings - Pleas for Truce in Chicago Neighborhood," The New York Times, (March 2, 2003) at 14, App. at A-73. The article characterized Englewood as a community "where guns keep blazing and bodies keep dropping." Id. According to the article, between 1993 and 2002, almost 700 people were killed in the small, four-square mile neighborhood. Id.

The New York Times acknowledged the efforts of Amicus Chicago Project for Violence Prevention, who, through its CeaseFire project, recruits outreach workers and attempts to educate residents of high crime areas, including Englewood. Id. But even Chicago Project's efforts in Englewood are not enough. The article told the story of one resident whose 28-year-old son was shot to death right in front of his home. Id. Revealing first-hand how handgun violence devastates community morale and often forces individuals to flee crime-stricken neighborhoods, the Englewood resident said "'When that child got killed . . . I was ready to pull out of here. People just said that they would stick with us, pray with us. It's been kind of tough.'" Id.

Apathy is another debilitating consequence handgun violence inflicts on local communities. The New York Times article told the frightening tale of Englewood children impervious to handgun violence. One local religious leader stated:

"When I witnessed my first homicide, outside my door; and I saw how half the side of the face of a young man was just blown off, my stomach just curled up." Then a crowd gathered. The youngsters played the radio and ate popcorn and candy in the street while the boy's body lay there.

Id.

In Chicago, as in other urban areas, the impact of handgun violence is felt disproportionately in minority communities. As noted above, of the over 640 homicides committed in Chicago in 2002, 79% of the victims were shot to death. See "Homicide in Chicago, December 2002," Chicago Police Department (December 2002) at 1, App. at A-4. Twenty percent of the 640 homicides occurred in only two police districts, the Seventh and the Eleventh districts. Id. City of Chicago population figures indicate that these two districts are almost completely populated by African-Americans. The Seventh District is 98% African-American; the Eleventh District is 92%. See 2001 Chicago Police Department Annual Report at 23, App. at A-6. The Seventh District includes the Englewood neighborhood discussed in the New York Times article. Id. at 22.

Local communities are further harmed by the significant long-term consequences of handgun violence on children and youth. Children in Chicago, Cook County, and Illinois fall victim to firearm-related violence at an alarming rate. Between 1994 and 1996, firearms were the **single leading cause of injury-related death** to children and adolescents in Chicago. See Jenifer Cartland, Patricia Meleedy-Rey, & Katherine Kaufer Christoffel, "Child and Adolescent Injury in Illinois," Children's Memorial Hospital, State & Community Reports on Injury Prevalence & Targeted Solutions, at 38, App. at A-75. During the three-year period ending in 1996, 598 children and adolescents under the age of 20 fell victim to firearm-related homicides in Chicago. Id. at 36.

The shooting of children has become such a significant problem in Chicago and Cook County that the Cook County State's Attorney's Office recently announced that one prosecutor and two investigators will be assigned to work solely on pursuing criminal charges against traffickers of handguns and other weapons used in crimes that kill or wound children. See Frank Main, "Shootings of kids spur gun crackdown," Chicago Sun-Times, (May 20, 2003) at 1, App. at A-71.

Among the team's top priorities will be the recent shootings of Ashlee Poole and Rene Guillen, described more fully above. Id.

The problem of youth firearm violence is felt throughout Illinois. In 2000 alone, firearm violence killed 187 children and adolescents under the age of 19 across Illinois. See "The Facts About Firearm Violence," Illinois Council Against Handgun Violence, (February 2003) at 1, Appendix at A-81. According to a comprehensive five-year study conducted by the Violence Policy Center, between 1995 and 1999, 353 children aged one to 17 years were the victims of handgun homicides in Illinois. See "Kids in the Line of Fire – Children, Handguns, and Homicide," Violence Policy Center (2001) at 5, App. at A-82. Of these children, almost one-third were murdered by another child with a handgun, where the ages of the offender and victim were known. Id. Illinois thus had the third-highest rate of child handgun homicide victims in the United States between 1995 and 1999 – 2.24 per 100,000. Id. at 2.

For homicides committed in Illinois between 1995 and 1999 in which a child was the victim and the weapon could be identified, 81.5% were committed with a firearm. Id. at 5. Of those homicides, 85% were committed with a handgun. Id. For homicides in which both the victim and the offender were children, almost 87% involved a firearm and 81% of those involved a handgun. Id. Between 1995 and 1999, therefore, a handgun was used in over 66% of all homicides in Illinois with a child victim, the second highest rate in the nation. Id. at 10.

Yet another side to this tragedy is reflected in the startling number of handgun crimes committed by children under the age of 18. Between 1995 and 1999, Illinois had the third-highest rate of all states for child handgun homicide offenders – 1.72 per 100,000. See id. at 8. A study conducted by the National Center on Institutions and Alternatives ("NCIA") revealed that in 1994,

Chicago had the most juvenile homicide arrests of any city in the United States – 288. See Eric Lotke & Vincent Shiraldi, “An Analysis of Juvenile Homicides: Where They Occur And The Effectiveness Of Adult Court Intervention,” (July 1996) at 3, App. at A-93. In their study, Messrs. Lotke and Shiraldi also reported that six states, including Illinois, accounted for more than half of all juvenile homicide arrests in the United States and that only four cities, including Chicago, accounted for almost one third of the country’s juvenile homicide arrests, even though those cities accounted for only 5.3% of the country’s juvenile population. Id. at 3-4.

Rather than participating in the stabilization and revitalization of their communities, local youth are increasingly falling victim to – or carrying out – handgun violence. Many Amici, including Chicago Project for Violence Prevention, ICHV, Interfaith Initiative Against Gun Violence, and Uhlich Children’s Home, through its Hands Without Guns program, witness first-hand the psychological impact handgun violence has on children who are victimized by, who witness, or who carry out such violence. Amici have found that these long-term psychological effects contribute to the perpetuation of the cycle of violence in communities hardest hit by handgun crime.

Numerous researchers have concluded that prolonged and continual exposure to acts of chronic community violence, including the use of guns, has significant negative implications, both physical and psychological, on children and youth. See, e.g., James Garbarino, Catherine Bradshaw, & Joseph Vorrasi, “Mitigating the Effects of Gun Violence on Children and Youth,” The Future of Children (Summer/Fall 2002), at 73-85, App. at A-181; Tener Goodwin Veenema, “Children’s Exposure to Community Violence,” Journal of Nursing Scholarship (Second Quarter 2001) at 167-73, App. at A-288.

Several epidemiologic studies conducted in the last 10 years have confirmed that children, particularly children living in urban neighborhoods, often are victims of and/or witnesses to severe acts of violence and that these traumatic experiences often cause more than physical scarring. For example, one study of children living on the South Side of Chicago found up to 30% of them reported witnessing a stabbing or a shooting. Id. at 168. Researchers have concluded that prolonged exposure to such violent acts leads to significant stress and depression in children, as well as substantial negative consequences on children's intellectual growth, school performance, and decision-making ability. Id. at 167.

Equally troubling are those studies which suggest that youth who are exposed to handgun violence often exhibit heightened levels of aggression themselves and an increased likelihood that they will use violence as a means of resolving problems or expressing emotions. For example, one recent study revealed that third- through eighth-grade children exposed to gun violence reported heightened levels of anger and aggression, withdrawal, and posttraumatic stress disorder. See Garbarino, Bradshaw, & Vorrasi, "Mitigating the Effects of Gun Violence on Children and Youth," The Future of Children (Summer/Fall 2002), at 74, App. at A-181.

A 1994 study of almost 400 grammar school-aged, African-American and Hispanic children in Chicago revealed some of the long-term harms exposure to violence, including handgun violence, causes Chicago youth. Researchers asked the children several questions, including "Has a family member been robbed or attacked?" and "Have you been around someone shooting guns?" See Tener Goodwin Veenema, "Children's Exposure to Community Violence," Journal of Nursing Scholarship (Second Quarter 2001) at 170, App. at A-288. Among the study's many findings was

that exposure to violence was significantly related to children's aggression towards peers, thus substantially increasing the likelihood of future aggressive or violent acts by those children. Id.

Such findings expose the cycle of violence that Chicago-area communities face as a result of the underground market for handguns. Rather than focusing their energies on the education, development, and betterment of youth in Chicago and Cook County, Amici are forced to allocate a substantial amount of their limited time and resources to the issue of handgun violence through legislation and other policy initiatives, and counseling youth and others who fall victim to or witness handgun violence, or who themselves become the perpetrators of such violence.

3. Juveniles and Criminals In Chicago And Cook County Have Easy Access To Handguns.

The epidemic of violence that victimizes local communities has been perpetuated by the easy accessibility of handguns in and around Chicago. Defendants' conduct, as alleged by plaintiffs, has permitted a steady flow of handguns to enter Chicago through improper channels, such as through "straw purchasers" and purchases from "kitchen table" dealers or at unregulated gun shows. Plaintiffs' complaint clearly alleges that defendants' conduct has armed those individuals who lay siege on local communities.

Robert Haas, defendant Smith & Wesson's former senior vice president of marketing and sales, has previously testified under oath that:

The company and the industry as a whole are fully aware of the extent of criminal misuse of firearms . . . that the black market in firearms is . . . due to the seepage of guns into the illicit market from multiple thousands of unsupervised federal firearms licensees. In spite of their knowledge, however, the industry's position has consistently been to take no independent action to insure responsible distribution practices [and] to maintain that the present federal regulation . . . is adequate.

See Garen J. Wintemute, “Where the Guns Come From: The Gun Industry and Gun Commerce,” The Future of Children, (Summer/Fall 2002) at 60, App. at A-163.

For handguns traced by the ATF after recovery by Chicago police between August 1997 and July 1998 following a crime, and where the gun possessor’s age was determined, 94% of the guns recovered from juveniles were semiautomatic pistols and other handguns, even though it is illegal for juveniles to possess handguns in Illinois. See Crime Gun Trace Analysis Report: The Illegal Youth Firearms Market in Chicago, Illinois, United States Department of Treasury Bureau of Alcohol, Tobacco and Firearms (February 1999), at 3, App. at A-295. For crime guns recovered from young persons aged 18 to 24, the percentage of handguns was equally disturbing: 96%. Id.

B. THE GOAL OF PUBLIC NUISANCE LAW IS TO ABATE AND REMEDY THE VERY TYPE OF HARM INFLICTED ON LOCAL COMMUNITIES A RESULT OF DEFENDANTS’ ALLEGED SALES AND MARKETING PRACTICES.

Public nuisance is a broad, fluid concept designed to redress “unreasonable interference with a right common to the general public,” such as the right to unpolluted air or clean drinking water. See Restatement (Second) of Torts § 821B, cmt. b (1979); Donaldson v. Central Illinois Public Service Co., 199 Ill.2d 63, 101, 767 N.E.2d 314, 337 (2002); Gilmore v. Stanmar, Inc., 261 Ill. App. 3d 651, 661, 633 N.E.2d 985, 993 (1st Dist. 1994). The right to enjoy one’s neighborhood or community, free from the serious harms caused by the intentional creation and perpetuation of an underground market for handguns in Chicago and Cook County, is the very type of harm that public nuisance law is intended to abate and remedy.

Present-day public nuisance law is rooted in the historic law of England. As early as the thirteenth century, English law recognized the monarchy’s authority to pursue claims against any

individual or group who committed “an infringement of the rights of the crown, or of the general public.” W. Page Keeton, et. al, Prosser & Keeton on the Law of Torts, § 86 at 617 (5th ed. 1984). The earliest public nuisance claims involved purprestures – encroachments upon the royal domain or the public highway – which were redressed by a suit by the crown. Id.

As nuisance law evolved, however, the principle of public nuisance was greatly enlarged to include conduct that interfered with the interests of the community at large, such as interference with a market, smoke from a lime-pit, diversion of water from a mill, and “any act not warranted by law, or omission to discharge a legal duty, which inconveniences the public in the exercise of rights common to all Her Majesty’s subjects.” Id. §§ 86, 90, at 616-19, 643-45; see also Restatement (Second) of Torts § 821B, cmt. a (1979). Thus, for hundreds of years, the law has recognized the right of government units to protect the general welfare from conduct that is so hostile to so many people as to constitute a public nuisance.

Illinois courts similarly have recognized for over 100 years that there is a public right to be “free from disturbance and reasonable apprehension of danger to person and property.” Village of Des Plaines v. Poyer, 123 Ill. 348, 351, 14 N.E. 677, 678 (1888). Conduct that “injuriously affects the safety, health or morals of the public, or works some substantial annoyance, inconvenience or injury to the public” is compensable as a public nuisance. Village of Wilsonville v. SCA Services, Inc., 86 Ill.2d 1, 21-22, 426 N.E.2d 824, 834 (1981) (quoting W. Prosser, Torts, § 88, at 583 n.29 (4th ed. 1971)).

The public rights protected by nuisance law are those common to all members of the general public. See Restatement (Second) of Torts § 821B, cmt. g (1979). Importantly, though, it is not necessary that the entire community be affected by a public nuisance, as long as the nuisance

interferes with those who come in contact with it in the exercise of a public right, or the nuisance otherwise affects the interests of the community at large. Id.

Interference with a public right is intentional, and thus actionable as a public nuisance, if the defendant “(a) acts for the purpose of causing it, or (b) knows that it is resulting or is substantially certain to result from his conduct.” See Restatement (Second) of Torts § 825 (1979). Notably, to be “intentional” for purposes of public nuisance law, interference with the public health, safety, or welfare need not be inspired by malice or ill will. Id. at cmt. c; see also Gilmore, 261 Ill. App. 3d at 661-62, 633 N.E.2d at 992-93. Rather, conduct that an actor knowingly engages in “in the pursuit of a laudable enterprise without any desire to cause harm” may nonetheless constitute an actionable public nuisance where the actor “act[s] for the purpose of causing [a nuisance] or know[s] that it is substantially certain to result from his conduct.” See Restatement (Second) of Torts § 825, cmt. c (1979).

Additionally, “one is subject to liability for a nuisance caused by an activity, not only when he carries on the activity but also when he participates to a substantial extent in carrying it on.” See Restatement (Second) of Torts § 834 (1979). Thus, where an actor’s conduct substantially contributes to the interference with the public health, safety, or welfare, the actor may face public nuisance liability even though other forces – “the act of another person or force of nature” – also contributes to the public harm. Id. at cmt. f; see also Chicago, Wilmington and Vermillion Coal Co. v. Glass, 34 Ill. App. 364, 367 (2d Dist. 1889) (“we do not think it necessary that the proof should show any immediate and direct agency on the part of the appellant causing the injury, when the original or primary cause was the establishment of a public nuisance by it, from which the mischief finally came, and but for which nuisance no harm would have resulted.”).

Illinois courts have historically relied upon public nuisance law to ensure the right of Illinois citizens to freedom of passage on public roads. In invalidating an ordinance granting a license to operate a horse railroad on certain Chicago streets, the Illinois Supreme Court affirmed the notion that any obstruction of a public street is a public nuisance subject to abatement. Metropolitan City Railway Co. v. City of Chicago, 96 Ill. 620, 628 (1880). The Court further noted that cities “should have power to keep the streets free and clear from obstruction, and must be permitted the use of the appropriate remedies to that end.” Id. The rationale behind this rule is that “the fundamental idea of a street is not only that it is public, but that it is public in all its parts, for free and unobstructed passage thereon by all persons desiring to use it.” Chicago, Rock Island & Pacific Railway Co. v. People ex rel. Carter, 120 Ill. App. 306, 312 (2d Dist. 1905) (affirming invalidation of city ordinance allowing railroad to use part of the public street as a dumping ground and holding that “we are of opinion that the uses made and proposed to be made of the street under the ordinance constitute a purpresture or public nuisance, and that equity affords a remedy by injunction at the suit of the state’s attorney in behalf of the public.”), aff’d, 222 Ill. 427 (1906).

Illinois courts likewise have declared firearm-related activities public nuisances where the activities intentionally or unreasonably interfered with the general public’s rights to use and enjoy public spaces. For example, in People v. Northbrook Sports Club, the court reversed the dismissal of a suit alleging that defendant’s operation of a skeet and trap shooting range was a public nuisance. 53 Ill. App. 3d 331, 334-35, 368 N.E.2d 663, 666-67 (1st Dist. 1977). Plaintiffs alleged that noise and sound emissions generated by skeet and trap shooting at defendant’s shooting area “unreasonably interfere[d] with the enjoyment of life and with lawful activities by endangering the physical and emotional health and well-being of others, interfering with legitimate recreational

activities, depressing property values, offending the senses, creating a public nuisance, and reducing the quality of the environment in the state of Illinois.” Id. at 332, 368 N.E.2d at 665.

If “interfering with legitimate recreational activities [and] depressing property values” is compensable conduct under a public nuisance theory, surely conduct which allegedly causes the ravaging horrors of handgun violence constitutes a public nuisance. Almost 100 years ago, an Illinois court acknowledged the rationale underlying public nuisance claims: “the fundamental idea of a street is not only that it is public, but that it is public in all its parts, for free and unobstructed passage thereon by all persons desiring to use it.” Chicago, Rock Island & Pacific Railway Co., 120 Ill. App. at 312. Defendants are accused of knowingly flooding the City of Chicago with handguns, which were then used to kill and injure others, thereby robbing citizens of their communities and neighborhoods. This conduct, and the ensuing harm, is the very type of activity that public nuisance law is intended to abate and remedy.

As set forth above, neighborhoods and communities in Chicago and Cook County are being held hostage by handgun violence. This epidemic significantly interferes with the public health, safety, and welfare of local communities and their residents. Amici, as well as all who call Chicago and Cook County home, are relying on this Court to hold that public nuisance law permits Illinois residents to seek and obtain justice through the courts for injury and death caused by the intentional flood of handguns into Chicago and the surrounding areas. See, e.g., Anderson, et al. v. Bryco Arms, et al., No. 00 L 7476 (Circuit Court of Cook County, County Department, Law Division April 10, 2002) (court denied defendants’ motion to dismiss and permitted plaintiffs, relatives of individuals killed and wounded by handgun violence, to pursue public nuisance claim against manufacturers, distributors, and dealers of handguns).

IV. CONCLUSION

Day in and day out, Amici face the ravages of handgun violence in Chicago and Cook County. As the United States Surgeon General reported in 2001:

The epidemic of violence from 1983 to 1993 does not seem to have resulted from a basic change in the offending rates and viciousness of young offenders. Rather, it resulted primarily from a relatively sudden change in the social environment – the introduction of guns into violent exchanges among youth. The violence epidemic was, in essence, the result of a change in the presence and type of weapon used, which increased the lethality of violent incidents.¹

Public nuisance law seeks to remedy the very type of harm to the community at large that defendants knowingly inflicted on communities in Chicago and Cook County.

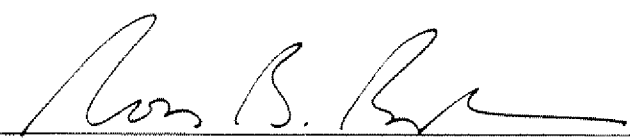
For the reasons set forth above, Amici respectfully request that this Court affirm the decision of the Illinois Appellate Court.

Respectfully submitted,

AMERICAN JEWISH CONGRESS, CENTRO
COMMUNITARIO JUAN DIEGO, CHICAGO LAWYERS'
COMMITTEE FOR CIVIL RIGHTS UNDER LAW, CHICAGO
PROJECT FOR VIOLENCE PREVENTION, CHICAGO SINAI
CONGREGATION, COUNCIL OF RELIGIOUS LEADERS OF
METROPOLITAN CHICAGO, ILLINOIS COUNCIL AGAINST
HANDGUN VIOLENCE, ILLINOIS LAWYERS OF LEGAL
COMMUNITY AGAINST VIOLENCE, INTERFAITH
INITIATIVE AGAINST GUN VIOLENCE, LEGAL
COMMUNITY AGAINST VIOLENCE, LOYOLA UNIVERSITY
CHILDLAW CENTER, MILLION MOM MARCH UNITED
WITH THE BRADY CAMPAIGN TO PREVENT GUN
VIOLENCE, NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE, ONTARGET
COALITION, ST. JAMES EPISCOPAL CATHEDRAL, UHLICH

¹ See Kathleen Reich, Patti L. Culross, & Richard E. Behrman, "Children, Youth, and Gun Violence: Analysis and Recommendations" The Future of Children (Summer/Fall 2002), at 7, App. at A-113.

CHILDREN'S HOME, AND VOICES FOR ILLINOIS
CHILDREN

By: 
One of Their Attorneys

Ross B. Bricker
Matt D. Basil
Zubair A. Khan
JENNER & BLOCK, LLC
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350