

12-15-2000

Individual Autonomy Versus Community: Is it All or Nothing? An Analysis of City of Chicago v. Morales

Keasa Hollister

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/plr>



Part of the [Civil Rights and Discrimination Commons](#), [Criminal Law Commons](#), [Criminal Procedure Commons](#), [Fourteenth Amendment Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Keasa Hollister *Individual Autonomy Versus Community: Is it All or Nothing? An Analysis of City of Chicago v. Morales*, 28 Pepp. L. Rev. Iss. 1 (2000)

Available at: <https://digitalcommons.pepperdine.edu/plr/vol28/iss1/7>

This Note is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized editor of Pepperdine Digital Commons. For more information, please contact bailey.berry@pepperdine.edu.

Individual Autonomy Versus Community: Is it All or Nothing? An analysis of *City of Chicago v. Morales*

I. INTRODUCTION

Five year old Jose Patino was riding his bicycle when he was caught in gang crossfire; a bullet pierced through his back, grazed his bladder, and came out his stomach before his father could pull him from the streets.¹

The City of Chicago ("Chicago") is a metropolis plagued by the high murder rates, drive-by shootings, drug dealings, and vandalism of criminal street gangs.² Neighborhoods are battle zones, where people are afraid to step outside their homes onto streets that were once safe to stroll down at any time of day.³ Each year serious crimes attributable to criminal street gangs have incessantly increased in number.⁴ In 1998, the Department of Justice estimated the existence of 23,000 gangs having 650,000 members, 100,000 or more of which exist in Chicago.⁵

In an attempt to explore criminal street gang activity, mainly that of loitering in public and the problems it creates, Chicago's city council conducted several hearings in 1992.⁶ During those hearings, people from the neighborhoods most effected by criminal street gangs testified, expressing their fear and frustration.⁷ Chicago's city council made a series of findings at the hearings and based on those findings, the City of Chicago's Gang Congregation Ordinance was enacted.⁸

After the enactment of Chicago's Gang Congregation Ordinance, Chicago police made thousands of arrests and gang activity seemed to be decreasing; the

1. See Bob Greene, *Even Capone Would be Disgusted*, CHI. TRIB., Oct. 10, 1999, at 2. "A study of children in Chicago day care centers found that 100% of them had seen a shooting by the age of five." Brief Amicus Curiae of the Chicago Neighborhood Organizations at 21, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121) (citing P. Bennett, *Growing Up, Skewed, with Violence*, BOSTON GLOBE, June 4, 1992, at 1).

2. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1854 (1999); *City of Chicago v. Youkhana*, 660 N.E.2d 34, 36 (Ill. App. Ct. 1995); *City of Chicago v. Morales*, 687 N.E.2d 53, 57 (Ill. 1997).

3. See Brief Amicus Curiae of the Chicago Neighborhood Organizations at 14-15, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121).

4. See *Morales*, 119 S. Ct. at 1854.

5. See James Kilpatrick, *Fine Line Between Liberty and Order*, ST. J.-REG. (Ill.), Dec. 22, 1998, at 6.

6. See *Morales*, 119 S. Ct. at 1854.

7. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1854 (1999).

8. See *City of Chicago v. Morales*, 687 N.E.2d 53, 58 (Ill. 1997).

people were hopeful.⁹ However, several arrestees, including Jesus Morales, challenged the constitutionality of the Ordinance, claiming that the Ordinance is a restraint on personal liberty.¹⁰ Even though Morales claims the Ordinance is unconstitutional because it restrains his personal liberty, an important question still remains; is it okay to do so to protect the greater community?

The historical background of this issue is discussed in part II.¹¹ Part III of this note outlines the facts of *City of Chicago v. Morales* and its procedural background.¹² Part IV analyzes the Supreme Court's decision, as well as the concurring and dissenting opinions, and the reasoning behind those decisions.¹³ Part V discusses the impact of the Court's decision and finally, part VI draws some brief conclusions.¹⁴

II. HISTORICAL BACKGROUND

The citizens of the United States are guaranteed due process by the Fourteenth Amendment of the Constitution.¹⁵ Thus, citizens have a constitutional right to partake in certain activities, as well as to be put on notice of which activities are prohibited.¹⁶ If these rights are not being upheld by a particular law, that law can be challenged, and may be found to be unconstitutional.¹⁷ There are two ways in which such laws can be challenged.¹⁸

A. *The Overbreadth Challenge*

If an enacted law encompasses a substantial amount of protected conduct while proscribing prohibited conduct, that law is "overbroad" and may be invalidated.¹⁹ As well as the protection of constitutionally guaranteed rights, a large concern of the overbreadth doctrine is the assurance that laws do not deter individuals from exercising those guaranteed rights.²⁰ However, even if a law encompasses protected conduct, the law cannot be invalidated unless the amount of protected conduct is substantial.²¹

9. See *Morales*, 119 S. Ct. at 1855; see also Tony Mauro, *City Ordinances Targeting Gangs to get First Supreme Court Review*, USA TODAY, April 21, 1998, at B10.

10. See generally *Morales*, 119 S. Ct. 1849.

11. See *infra* notes 15-59 and accompanying text.

12. See *infra* notes 60-72 and accompanying text.

13. See *infra* notes 73-206 and accompanying text.

14. See *infra* notes 207-296, 297-303 and accompanying text.

15. See U.S. CONST. amend. XIV.

16. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1855 (1999) (citing *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03 (1966)).

17. See generally *Morales*, 119 S. Ct. 1849.

18. See *Morales*, 119 S. Ct. at 1857 (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 612-15 (1973)).

19. See *Morales*, 119 S. Ct. at 1857; see also Angela L. Clark, *City of Chicago v. Morales: Sacrificing Individual Liberty Interests for Community Safety*, 31 LOY. U. CHI. L.J. 113, 122 (1999).

20. See Clark, *supra* note 19, at 121 (asserting that if individuals cannot distinguish protected from prohibited conduct, those individuals may refrain from conduct that is protected, due to fear).

21. See *Morales*, 119 S. Ct. at 1857 (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 612-15 (1973)).

B. The Void-for-Vagueness Challenge

If a law cannot be invalidated pursuant to the Overbreadth Doctrine, there is still another option.²² A law is capable of violating the Due Process Clause of the Fourteenth Amendment if that law is considered vague on its face.²³ The policy behind the void-for-vagueness doctrine is one of fairness,²⁴ and there are two ways in which vagueness can invalidate a statute; by either failing to provide adequate notice to citizens of what conduct is prohibited, or allowing or encouraging “arbitrary and discriminatory enforcement.”²⁵

1. Adequate Notice

“It is established that a law fails to meet the requirements of the Due Process Clause if [the law] is so vague and standardless that it leaves the public uncertain as to the conduct [that law] prohibits.”²⁶ A law must define the offense to which it pertains with sufficient definiteness, so that a reasonable person can be put on notice as to what conduct is protected pursuant to the law, and what conduct is prohibited.²⁷ “[I]t is unjust to punish a person without providing clear notice as to what conduct was prohibited.”²⁸

2. Arbitrary Enforcement

In addition to putting the reasonable person on notice, a law must be drafted “in a manner that does not encourage arbitrary and discriminatory enforcement.”²⁹

22. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1857 (1999).

23. See, e.g., *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926) (stating that a law is unconstitutionally vague when people “of common intelligence must necessarily guess at its meaning”).

24. Another concern of the Court is that if laws are overly vague, those laws may deter people from exercising constitutional rights, and thus, have a chilling effect. See *Clark*, *supra* note 19, at 121 (citing *NAACP v. Button*, 371 U.S. 415, 433 (1963)). But see Robert Batey, *Vagueness and the Construction of Criminal Statutes—Balancing Acts*, 5 VA. J. SOC. POL’Y & L. 1, 20 (1997) (stating that some justices have suggested that a chilling effect significant enough to justify a facial review would never result from a void-for-vagueness challenge).

25. See *Morales*, 119 S. Ct. at 1859.

26. *Id.*

27. See *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (holding that a statute requiring loiterers to provide credible and reliable identification is unconstitutional).

28. ERWIN CHEMERINSKY, *CONSTITUTIONAL LAW PRINCIPLES AND POLICIES* 763 (1997).

29. See *Kolender*, 461 U.S. at 357. A professor at Northern Illinois University School of Law believes that laws which give law enforcement officials too much discretion are passed because society is overreacting to street crimes. See Christy Gutowski, *Liberty vs. Safety DuPage’s Lawsuit Against Alleged Gang Pits Personal Freedoms Against Personal Protection*, CHICAGO DAILY HERALD, Dec. 6, 1999, at

It is this requirement that Justice O'Connor finds to be the most important aspect of any void-for-vagueness challenge,³⁰ asserting that the Court's concern for minimal guidelines is rooted as far back as 1875.³¹ If law enforcement officials are allowed too much discretion in the enforcement of laws, they are basically given a tool to discriminate against whomever they choose.³² Law enforcement officials achieve such discrimination through randomly exercising their own judgment in choosing who, out of all citizens encountered, is violating the law.³³ Although

6.

30. See *Kolender*, 461 U.S. at 358. ("Where the legislature fails to provide such minimal guidelines, a criminal statute may permit 'a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.'")

31. See *id.* (citing *United States v. Reese*, 92 U.S. 214, 221 (1875) (stating that it would be dangerous to give the courts unfettered discretion)).

32. See *Kolender*, 461 U.S. at 360 (citing *Papachristou v. City of Jacksonville*, 405 U.S. 156, 170 (1972)). "[T]he vagueness doctrine allows courts to reach hidden bias or prejudice in law enforcement." Peter W. Poulos, *Chicago's Ban on Gang Loitering: Making Sense of Vagueness and Overbreadth in Loitering Laws*, 83 CAL. L. REV. 379, 390-91 (stating that bias and prejudice break down the rule of law and are "inconsistent with evenhanded administration of the law"). "It furnishes a convenient tool for 'harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.'" *Papachristou*, 405 U.S. at 170 (citing *Thornhill v. Alabama* 310 U.S. 88, 97-98 (1940)). But see Tracey L. Meares and Dan M. Kahan, *The Wages of Antiquated Procedural Thinking: A Critique of Chicago v. Morales*, 1998 U. CHI. LEGAL F. 197, 201-09 (1998) (stating that the law in *Papachristou* is outdated because "institutionalized racism" was something that was fully justified during the era of *Papachristou*); David G. Savage, *High Court Rejects Ban on Gang Loitering*, L.A. TIMES, June 11, 1999, at A1 ("These people do not fear police discretion, they fear abuse, assault, and death.").

33. See *Kolender v. Lawson*, 461 U.S. 352, 360 (1983). The ACLU asserted that the Ordinance is "exemplary of what happens when politicians seek to appear tough on crime, ignoring the basic rights of individual citizens." See *Opinion Ruling Need Not Signal End of Anti-Gang Efforts*, ATLANTA J., June 14, 1999, at A8.

there are some who disagree,³⁴ many people believe minority groups are the ones chosen most often.³⁵

One particular area of law prone to this type of arbitrary enforcement is the area of loitering laws.³⁶

C. Loitering Laws

34. See Brief Amicus Curiae of the Chicago Neighborhood Organizations at 11, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121) (stating that political representation of minorities has increased, as well as support of the Ordinance given by minorities themselves). "New York, Washington D.C., and Los Angeles, for example, have all had black police chiefs accountable to black mayors." *Id.*; see also Meares and Kahan, *supra* note 32, at 207 ("African Americans are no longer excluded from the nation's democratic political life."). The current relationship between the supporters of the Ordinance and the arrestees versus that relationship in the 1960s is vastly different. See Brief Amicus Curiae of the Chicago Neighborhood Organizations at 11-12, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121) (discussing the fact that African-Americans are the driving force behind some anti-gang legislation). Those who are supporting the Ordinance are the "mothers and fathers, the sisters and brothers, and the neighbors and friends of the youths subject to the law." See *id.* at 2. "They support the Ordinance because it is a form of policing that secures order without destroying the lives of community youth who find themselves enmeshed in the complex social and economic forces that fuel gang criminality." *Id.*; see also Meares and Kahan, *supra* note 32, at 206 (discussing the change in social dynamics concerning African-Americans). In fact, of the 8,500 signatures collected in support of the Ordinance, over half were collected in predominantly Latino communities. See Brief Amicus Curiae of the Chicago Neighborhood Organizations at 11-12, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121). According to the Chicago Neighborhood Groups, "any suggestion that the Ordinance was adopted as a cover for harassing minority youths is completely misguided." See Brief Amicus Curiae of the Chicago Neighborhood Organizations at 16, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121). In defense of law enforcement, a man by the name of Justin Waters had this to say:

Funny; I have a job, I don't hang out on the streets, I don't sell drugs, I don't terrorize people and claim the neighborhood that I happen to live in is my "turf," and I've never been unconscious in a car with a firearm. And the couple of times I've dealt with police, I was cooperative and didn't give them a hard time, because I know how difficult and stressful their job is. Not once have I ever been shot or harassed by them. And I am black.

See *LA Police CRASH Unit*, L.A. TIMES, Sept. 30, 1999, at B10.

35. The ACLU stated that the Court "has recognized that 'it is not a criminal activity simply to be a young man of color gathered with friends on the streets of Chicago.'" See *Opinion Ruling Need Not Signal End of Anti-Gang Efforts*, ATLANTA J., June 14, 1999, at A8. Racial profiling of motorists and unexplained police shootings are two examples of why some believe police discrimination toward minorities is prominent in today's society. See David G. Savage, *High Court Rejects Ban on Gang Loitering*, L.A. TIMES, June 11, 1999, at A1. Because those typically arrested pursuant to the Ordinance are members of minority groups, such as African-Americans and Latinos, many believe the Ordinance allows law enforcement officials to discriminate, by couching arrests in terms of the Ordinance. See Gerard Aziakou, *Latinos in Chicago Suburb Outraged by Anti-Gang Ordinances* AGENCE FR.-PRESSE, April 30, 1999, available in 1999 WL 2593738 (stating that seventy-five percent of Cicero residents are Latinos who feel singled out by the Ordinance).

36. See Clark, *supra* note 19, at 122-23.

Loitering laws have been used throughout history in an attempt to prevent crime by removing “undesirable persons” from the streets.³⁷ The problem arising from this type of preventative measure is that individuals may be punished for engaging in protected conduct,³⁸ and thus, many loitering ordinances have been found to be unconstitutional.³⁹ In fact, the only loitering ordinances that seem to withstand constitutional challenges, are those that combine loitering with some other criminal act.⁴⁰

In what has often been referred to as the “good old days,” juveniles hanging out on street corners never seemed to be an indication that neighbors should be concerned for their safety. But, as time has gone by, crime has increased and family values have decreased.⁴¹ The juveniles of today have changed dramatically and they are threatening to society.⁴² Today, crime in large cities is out of control; juveniles form criminal street gangs, take control of communities, and commit heinous crimes.⁴³

D. Criminal Street Gangs in Chicago

A substantial amount of crime in Chicago has been directly linked to criminal street gangs.⁴⁴ Chicago’s city council and police department, desperate to get a handle on criminal gang-related crime if not eliminate it altogether, held hearings in 1992, where they listened to city residents express their fears and frustrations towards criminal street gangs.⁴⁵ During the hearings, witnesses from the neighborhoods with a high volume of criminal gang activity, as well as aldermen

37. See *City of Chicago v. Morales*, 687 N.E.2d 53, 60 (Ill. 1997) (citing *Papachristou v. City of Jacksonville*, 405 U.S. 156, 161-63 (1972)).

38. See *Morales*, 687 N.E.2d at 60-61; see also Clark, *supra* note 19, at 123.

39. See *Coates v. City of Cincinnati*, 402 U.S. 611 (1971) (finding an ordinance making it a crime for three or more persons to assemble in a manner that is annoying to other people unconstitutionally vague); see also *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972) (finding a vagrancy ordinance attempting to prevent crime by removing “undesirable persons” from the streets unconstitutionally vague); *Kolender v. Lawson*, 461 U.S. 352 (1983) (finding a California anti-loitering statute unconstitutionally vague); *E.L. v. Florida*, 619 So.2d 252 (Fla. 1993) (finding a Florida ordinance intending to reduce drug related activity unconstitutionally vague); *City of Akron v. Rowland*, 618 N.E.2d 138 (Ohio 1993) (finding that an Ohio ordinance intending to reduce drug related activity violated the fourteenth amendment).

40. See *Morales*, 687 N.E.2d at 61 (listing several cases upholding loitering ordinances when the act of loitering is in combination with acts such as, begging, solicitation, or is done in a manner that would cause alarm); see also Clark, *supra* note 19, at 123-24 (discussing the Court’s opinion in *Shuttlesworth v. City of Birmingham*, 382 U.S. 87 (1965) (stating that the loitering ordinance gave law enforcement too much discretion)).

41. See Howard B. Eisenberg, *A Modest Proposal: State Licensing of Parents*, 26 CONN. L. REV. 1415, 1417-18 (1994) (stating that a decline in family values is a major concern facing this country).

42. See *id.* at 1422 (“While the population rose forty percent from 1960 to 1990, violent crime jumped 560 percent.”). Eisenberg also stated that thirty percent of those arrested for serious crimes in 1985 were juveniles. See *id.*

43. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1853 (1999). One of the saddest results of gang activity is the death of many innocent children. See Greene, *supra* note 1 (listing several instances of child deaths caused by criminal street gang activity).

44. See *Morales*, 119 S. Ct. at 1853.

45. See *City of Chicago v. Morales*, 687 N.E.2d 53, 57-58 (Ill. 1997).

for those areas, testified concerning the specific criminal gang activity.⁴⁶ These witnesses claimed that gang members “loiter as part of a strategy to claim territory, recruit new members, and intimidate rival gangs and ordinary community residents.”⁴⁷ Confirmed by the evidence presented, the city council found: (1) the increase in criminal street gang activity was “largely responsible” for Chicago’s increase in murder rates, violent crimes, and drug related crimes; (2) many neighborhoods were experiencing an increased presence of gang members, which “intimidated many law abiding citizens”; (3) gang members established control over public areas by “loitering in those areas and intimidating others from entering those areas”; (4) gang members avoided arrest by not committing crimes in the presence of police officers; (5) loitering of gang members “create[d] a justifiable fear for the safety of persons and property”; and (6) that “aggressive action” would be necessary to manage the situation.⁴⁸ Based on its findings, the city council felt there was an “obvious” connection between gang crime and loitering.⁴⁹ Thus, Chicago enacted the City of Chicago’s Gang Congregation Ordinance (“Ordinance”), which forbids an individual to loiter on the streets of Chicago with a known gang member and without an apparent purpose.⁵⁰

E. Police Guidelines

Because Chicago law enforcement felt police policy was the best manner in which to establish limitations on police discretion in the enforcement of the Ordinance, such limitations were not directly placed into the language of the

46. *See id.*

47. *See id.*

48. *See id.* at 58.

49. *See City of Chicago v. Youkhana*, 660 N.E.2d 34, 37 (Ill. App. Ct. 1995).

50. *See id.* The Ordinance states: (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 its 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. (5) “Public place” means the public way and any other location open to the public, whether publicly or privately owned.

Chicago, Ill., Municipal Code § 8-4-015 (1992).

Ordinance.⁵¹ Instead, the Chicago police department issued General Order 92-4, which sets forth enforcement standards, including, how to identify criminal street gangs and how to establish probable cause that a particular person is a criminal street gang member, in order to ensure the Ordinance would not be arbitrarily enforced.⁵² The general order further limits police discretion by giving only those who are “sworn ‘members of the Gang Crime Section’ and certain other designated officers,” the authority to arrest pursuant to the Ordinance, and by requiring those police to “establish detailed criteria for defining street gangs and members in such gangs.”⁵³ Even further, the general order limits police discretion by restricting the arrests to areas designated as those where gang activity has a “demonstrable effect on the activities of law abiding persons in the surrounding community.”⁵⁴ Although these guidelines were in place, once the police started enforcing the Ordinance, issuing over 89,000 dispersal orders and arresting over 42,000 people, only two trial court judges upheld the constitutionality of the Ordinance, while eleven others did not.⁵⁵

F. Anticipation of Crime

There is a fine line between preventing crime and violating an individual’s rights to exercise protected conduct, even if that individual is a known gang member.⁵⁶ The Ordinance is an effort to eliminate criminal street gang-related crime, by anticipating gang member conduct, so as to prevent the crime from ever being committed.⁵⁷ This anticipation of crime is where the Ordinance runs into problems.⁵⁸ As soon as police attempted to enforce the Ordinance, the arrestees challenged the constitutionality of the Ordinance and to the distress of the police department, the arrestees were usually the victors.⁵⁹ One prime example of where this occurred is in the case *City of Chicago v. Morales*, where the Supreme Court granted Certiorari to determine the constitutionality of the City of Chicago’s Gang Congregation Ordinance.

III. STATEMENT OF THE CASE

51. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1855 n.3 (1999); *City of Chicago v. Morales*, 687 N.E.2d 53, 58-59 (Ill. 1997).

52. See *Morales*, 687 N.E.2d at 59.

53. See *Morales*, 119 S. Ct. at 1855 (citing Chicago Police Department, General Order No 92-4 (1992)).

54. See *Morales*, 119 S. Ct. at 1855.

55. See *id.*; see also Meares and Kahan, *supra* note 32 at 201 (stating that the courts in *Morales* and *Youkhana* ignored the importance of the police guidelines and the limits the guidelines place on law enforcement).

56. Cf. *Kolender v. Lawson*, 461 U.S. 352 (1983) (stating that freedoms must be maximized, but order must also be maintained).

57. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1853 (1999).

58. See Tony Mauro, *City Ordinances Targeting Gangs to get First Supreme Court Review*, USA TODAY, April 21, 1998, at B10 (“People should have to be doing something criminal before they are arrested.”).

59. See *City of Chicago v. Morales*, 687 N.E.2d 53, 57 (Ill. 1997).

Jesus Morales (“Morales”) was found guilty of violating the Ordinance and was sentenced to jail.⁶⁰

Previous to Morales’s arrest, James Youkhana (“Youkhana”) was arrested for loitering in a public place with a group of people, one of whom was a member of the Latin Kings criminal street gang, and then failing to disperse after a police order to do so, in violation of the Ordinance.⁶¹ On September 29, 1993, after challenging the Ordinance on vagueness grounds, the circuit court for Cook County granted Youkhana’s motion to dismiss.⁶² Cook County appealed to the Appellate Court of Illinois, First District, First Division.⁶³ Chicago argued that the Ordinance is not overbroad, because it does not implicate any first amendment rights.⁶⁴ However, the Appellate Court of Illinois affirmed the circuit court’s opinion.⁶⁵ The appellate court held that the Ordinance violates the first amendment of the Illinois Constitution,⁶⁶ violates due process rights,⁶⁷ and violates the fourth amendment.⁶⁸

Based on the Youkhana decision, the Illinois Appellate Court reversed Morales’s conviction and Chicago appealed to the Supreme Court of Illinois.⁶⁹ Again, Chicago unsuccessfully argued that the Ordinance is not overbroad, vague, or a status offense.⁷⁰ The Supreme Court of Illinois Affirmed the Appellate Court of Illinois, holding that the Ordinance violates due process because “it is impermissibly vague on its face and an arbitrary restriction on personal liberties.”⁷¹ The United States Supreme Court granted Certiorari and affirms the Illinois Supreme Court on grounds of vagueness.⁷²

IV. ANALYSIS OF COURT’S OPINION

A. *The Plurality Opinion*

60. *See id.*

61. *See City of Chicago v. Youkhana*, 660 N.E.2d 34, 37 (Ill. App. Ct. 1995).

62. *See id.* at 36.

63. *See id.* at 34.

64. *See id.* at 38.

65. *See id.*

66. *See id.* (stating that the Ordinance violates the freedom of association, assembly, and expression).

67. *See City of Chicago v. Youkhana*, 660 N.E.2d 34, 38 (Ill. App. Ct. 1995).

68. *See id.* (stating that the Ordinance criminalizes status).

69. *See City of Chicago v. Morales*, 687 N.E.2d 53, 57 (Ill. 1997).

70. *See id.* at 59.

71. *See id.* at 59. The Supreme Court of Illinois did not address the issues of status, probable cause, or overbreadth. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1856 (1999).

72. *See Morales*, 119 S. Ct. at 1856.

The plurality opinion of the Supreme Court, written by Justice Stevens, held that the City of Chicago's Gang Congregation Ordinance is unconstitutional because the Ordinance "affords too much discretion to the police [in the enforcement of the ordinance] and too little notice to citizens who wish to use the public streets."⁷³ Accordingly, the Court affirmed the Illinois Supreme Court's decision that the Ordinance is unconstitutionally vague.⁷⁴

1. Adequate Notice

Justice Stevens reiterates that a law must be created so as to put the reasonable person on notice of prohibited versus protected conduct.⁷⁵ Justice Stevens asserts that the vagueness of the Ordinance is not a product of uncertainty of the ordinary meaning of the word "loiter," but uncertainty of the meaning of the word "loiter" provided by the Ordinance.⁷⁶ In other words, no one will be able to discern if he or she has an "apparent purpose."⁷⁷ Justice Stevens states that the Supreme Court of Illinois followed state court precedent,⁷⁸ holding that the Ordinance fails to distinguish between what is innocent conduct versus what is threatening conduct.⁷⁹ Justice Stevens agrees with the Supreme Court of Illinois, asserting that the definition of "loiter" in the Ordinance, "to remain in any one place with no apparent purpose,"⁸⁰ makes it difficult for Chicago citizens standing in a group to determine if they have an "apparent purpose."⁸¹

Chicago responds to this concern by suggesting that any uncertainty is resolved when the police administer a dispersal order, which is what provides

73. See *Morales*, 119 S. Ct. at 1863.

74. See *id.* The Court does not rely on the overbreadth doctrine to invalidate the Ordinance because the Court believes the impact of the Ordinance on first amendment rights is not substantial. See *id.* at 1857. But see Clark, *supra* note 19, at 140-43 (stating that the Court neglected the conduct clearly encompassed by the Ordinance that is protected under the first amendment).

The Court does assert that there is a fundamental right to loiter, however the Court does not discuss whether the fundamental right to loiter, alone, would invalidate the Ordinance. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1857-59 (1999). The freedom to loiter was first recognized in *Papachristou*, which stated that loitering has been a historical part of life, even though it is not specifically in the Constitution. See *Papachristou v. City of Jacksonville*, 405 U.S. 156, 164 (1972). Clark states that the Court should have built on the idea of a fundamental right to loiter instead of mentioning it in passing. See Clark, *supra* note 19, at 142-43.

75. See *Morales*, 119 S. Ct. at 1859 (quoting *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03 (1966)); see also *Smith v. Goguen*, 415 U.S. 566, 574 (1974) (citing *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939)).

76. See *Morales*, 119 S. Ct. at 1859. "Loiter" means to remain in any one place with no apparent purpose." Chicago, Ill., Municipal Code § 8-4-015 (1992).

77. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1859 (1999).

78. The state courts upheld ordinances criminalizing loitering when some prohibited act was taking place in addition to the loitering. See *City of Chicago v. Morales*, 687 N.E.2d 53, 61 (Ill. 1997) (listing several cases upholding loitering ordinances when the act of loitering is in combination with acts such as, begging, solicitation, or is done in a manner that would cause alarm).

79. See *Morales*, 119 S. Ct. at 1859-60.

80. Chicago, Ill., Municipal Code 8-4-015 (1992).

81. See *Morales*, 119 S. Ct. at 1859; see also *Smith v. Goguen*, 415 U.S. 566, 574 (1974) (citing *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)).

citizens with “actual notice.”⁸² Chicago argues that no one is subject to penalty unless he or she fails to obey the dispersal order.⁸³ In other words, no one is subject to penalties until after he or she is given “actual notice” and continues to partake in the prohibited conduct. However, Justice Stevens is not swayed by Chicago’s argument and gives two reasons why Chicago’s argument fails the Court’s review.⁸⁴

a. Conformity to the Law

“[T]he purpose of the fair notice requirement is to enable the ordinary citizen to conform his or her conduct to the law”;⁸⁵ people should not be required to speculate as to a law’s meaning.⁸⁶ Justice Stevens claims that if the alleged loitering is harmless, then ordering a person to disperse would be an impairment of that person’s liberty.⁸⁷ Justice Stevens reasons that even if no one is subject to penalties until after he or she is given actual notice and then continues to partake in the prohibited conduct, the purpose of the Ordinance is to prohibit loitering, not to punish the refusal to obey a dispersal order.⁸⁸ Justice Stevens further reasons that if the police are allowed to randomly decide to whom the Ordinance applies, the Ordinance is “indistinguishable from the law [] held invalid in *Shuttlesworth*.”⁸⁹ Justice Stevens asserts that an ordinance should provide people with adequate warning of what conduct is prohibited in order to avoid police involvement altogether; an ordinance cannot work retroactively.⁹⁰

b. Vagueness within Vagueness

Justice Stevens believes that “the terms of the dispersal order compound the inadequacy of the notice afforded by the ordinance.”⁹¹ In other words, the terms

82. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1860 (1999).

83. See *id.*

84. See *id.*

85. *Morales*, 119 S. Ct. at 1860.

86. See *Lanzetta v. New Jersey*, 306 U.S. 451 (1939).

87. See *Morales*, 119 S. Ct. at 1860.

88. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1860 (1999).

89. See *id.* *Shuttlesworth* held that Birmingham’s loitering ordinance did not provide clearly defined rules for law enforcement officials to follow, and thus, law enforcement was afforded too much discretion in the enforcement of the ordinance. See generally *Shuttlesworth v. City of Birmingham*, 382 U.S. 87 (1965).

90. See *Morales*, 119 S. Ct. at 1860.

91. *Morales*, 119 S. Ct. at 1860. The Court lists questions the terms raise, concerning, the length of time loiterers must remain apart, the distance to which they must disperse, and whether they may leave and then return to the same exact place. See *id.*

of the dispersal order itself are vague. Although probably not enough on its own to render the Ordinance unconstitutionally vague, Justice Stevens asserts that the vague terms of the dispersal order only support Justice Stevens's conclusion that the entire Ordinance fails to give adequate notice.⁹² Justice Stevens states that the Constitution does not allow the legislature to apply such a broad application of an ordinance, leaving it to the courts to determine when the police correctly or incorrectly gave dispersal orders.⁹³ Therefore, Justice Stevens concludes that "[t]his ordinance is [] vague 'not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all.'"⁹⁴

2. Arbitrary and Discriminatory Enforcement

Minimum guidelines must be set to govern law enforcement; Justice Stevens asserts that there are "no such guidelines" present in Chicago's gang ordinance.⁹⁵ Because the police are not required to inquire into what the apparent purpose of a group of people may be before giving a dispersal order, Justice Stevens asserts that the ordinance gives total discretion to the police in determining whether someone actually has an apparent purpose.⁹⁶ Justice Stevens states that a substantial amount of innocent conduct is covered by the Ordinance, and therefore, the court must look to the language of the Ordinance, "to determine if it 'necessarily entrusts lawmaking to the moment-to-moment judgment of the policeman on his beat.'"⁹⁷

As stated previously, the concern with police discretion develops from the definition of the term "loiter," defined by the city of Chicago's Ordinance as "remain[ing] in any one place with no apparent purpose."⁹⁸ Because the Supreme Court must construe a state statute in the same manner as that State's highest court, Justice Stevens asserts that it must follow the interpretation of the term

92. See *Morales*, 119 S. Ct. at 1861.

93. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1861 (1999).

94. See *id.* (citing *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971) (stating that an ordinance prohibiting a group of three or more persons from conducting themselves in an annoying manner is vague because what annoys one may not annoy another, and thus, there is no standard of conduct to which people may conform)).

95. See *Morales*, 119 S. Ct. at 1861. *But see* Meares and Kahan, *supra* note 32, at 211 (stating that police discretion must be guided to minimize risks, but does not require "hyper-specific rules").

96. See *Morales*, 119 S. Ct. at 1861. Justice Stevens claims that a gang member may be loitering with his father by the baseball field either "to rob an unsuspecting fan or just to get a glimpse of Sammy Sosa leaving the ballpark," but if a police officer doesn't believe the gang member and his father have an apparent purpose, the police officer "'shall'" give a dispersal order. See *id.* Therefore, there are no guidelines for police officers to follow, and thus, the police have complete discretion in deciding whether there is an apparent purpose. See *id.*

97. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1861 (1999) (citing *Kolender v. Lawson*, 461 U.S. 352, 359 (1983) (expressing a concern with putting lawmaking in the hands of policemen)). However, could not the argument be made that all law enforcement is governed by the moment to moment judgment of the police officers?

98. See *Morales*, 119 S. Ct. at 1861.

“loiter” given by the Supreme Court of Illinois.⁹⁹ Therefore, according to the language of the Ordinance as interpreted by the Supreme Court of Illinois, police are given absolute discretion “to determine what activities constitute loitering.”¹⁰⁰

However, Chicago disputes this claim of total police discretion, claiming that officers are limited in three ways: first, officers may not give dispersal orders to people with an apparent purpose or those moving along, second, officers may not make arrests if the dispersal order is obeyed, and third, officers may not give a dispersal order at all unless the officer finds one of the loiterers to be a criminal street gang member based on that officer’s reasonably belief.¹⁰¹

Even if Justice Stevens was to put aside its requirement to defer to the Illinois Supreme Court’s construction of the statute, Justice Stevens finds all three of Chicago’s arguments insufficient.¹⁰² Justice Stevens rejects Chicago’s first argument, reasoning that even though people who are moving are not subject to the Ordinance, this limitation, as Chicago calls it, does not address the issue of the discretion afforded police in determining which stationary persons to order to disperse.¹⁰³ Justice Stevens also rejects Chicago’s second argument, reasoning that although people can not be arrested unless those people disobey a dispersal order, there is still no guidance as to when the dispersal order should be given.¹⁰⁴ Although Justice Stevens agrees that the reasonable belief requirement does place a limit on police discretion, Justice Stevens asserts that that limitation would only be sufficient if the Ordinance applied to loitering with an apparently harmful purpose.¹⁰⁵ Therefore, Justice Stevens further rejects Chicago’s third argument because it applies to everyone in the city and not just criminal street gang members.¹⁰⁶ Justice Stevens goes so far as to state that not only does the Ordinance cover innocent conduct, but the Ordinance fails to cover the intimidating conduct that inspired the very enactment of the Ordinance.¹⁰⁷

Finally, Justice Stevens asserts that the guidelines to the Ordinance provided by the police department were not a sufficient defense.¹⁰⁸ Justice Stevens reasons that even if the police are limited by designated areas, that limitation does not

99. *See id.*

100. *See id.*

101. *See id.*

102. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1861 (1999).

103. *See id.*

104. *See id.* at 1862. Justice Stevens asserts that the “no apparent purpose” standard is too subjective because it is placing all discretion in the judgment of the police officer. *See id.*

105. *See id.* Justice Stevens states that in his dissent, Justice Thomas overlooks the distinction between loitering, and loitering that threatened public peace. *See id.*

106. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1862 (1999).

107. *See id.*

108. *See Morales*, 119 S. Ct. at 1862.

protect the person who may be arrested somewhere other than the designated areas.¹⁰⁹

Although Justice Stevens asserts that “the preservation of liberty depends in part on the maintenance of social order,” Justice Stevens claims that the Ordinance at issue in this case does not give adequate notice, and affords law enforcement officials too much discretion in the enforcement of the Ordinance.¹¹⁰

B. *The Concurring Opinions*

1. Justice O’Connor

Justice O’Connor joined the plurality’s decision that the Ordinance is unconstitutionally vague, reiterating her opinion in *Kolender*, that the establishment of minimal guidelines is the most important aspect of the void-for-vagueness doctrine.¹¹¹ Although Justice O’Connor agrees with Justice Thomas that police should be afforded some discretion in order to perform their duties, Justice O’Connor also believes there is a limit and police should not be given the ability to do standardless sweeps “to pursue personal predilections.”¹¹²

Justice O’Connor also agrees with the plurality that the Ordinance lacks minimum standards sufficient to discern “apparent purpose.”¹¹³ According to Justice O’Connor, law enforcement officials need not determine if someone is threatening public order, but can order people to disperse at their own whim.¹¹⁴ Further, Justice O’Connor asserts that the Ordinance applies to too many innocent people.¹¹⁵

Justice O’Connor’s analysis is important because it contends that the Ordinance can be corrected.¹¹⁶ Justice O’Connor suggests that if the Ordinance would only apply to persons “reasonably believed to be gang members,” the Ordinance may not be vague because the Ordinance would give the police direction in issuing dispersal orders, by specifically stating to whom the Ordinance applies.¹¹⁷ Justice O’Connor also suggests the Ordinance’s definition of the word “loiter” could have been constructed more narrowly, so as to avoid vagueness.¹¹⁸ As simple as this modification would be, Justice O’Connor states that the Court

109. *See id.* This argument seems weak because if a person were arrested somewhere other than the designated area in conjunction with the Ordinance, that person could challenge the arrest based on the fact that the Ordinance is inapplicable. In other words, if the arrest took place outside of the designated area, then the Ordinance could not be used as a basis for that arrest.

110. *See id.* at 1863 (quoting *Houston v. Hill*, 482 U.S. 451, 471-72 (1987)).

111. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1863 (1999) (O’Connor, J., concurring).

112. *See id.* (O’Connor, J., concurring) (quoting *Kolender v. Lawson*, 461 U.S. 352, 358 (1983)).

113. *See id.* (O’Connor, J., concurring). Justice O’Connor believes that anyone has an apparent purpose, even if it is merely to stand. *See id.* (O’Connor, J., concurring).

114. *See id.* at 1864 (O’Connor, J., concurring).

115. *See id.* (O’Connor, J., concurring).

116. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1864 (1999). (O’Connor, J., concurring).

117. *See id.* (O’Connor, J., concurring).

118. *See id.* at 1864-65 (1999) (O’Connor, J., concurring).

cannot interpret the Ordinance in such a manner.¹¹⁹ Justice O'Connor reiterates that the Court can only take the construction of the Ordinance given by the Supreme Court of Illinois,¹²⁰ even though Justice O'Connor acknowledges that the Supreme Court of Illinois misapplied the Court's precedent.¹²¹ Although Justice O'Connor asserts that the Court has never looked to the drafters' intent to determine vagueness, the Court "cannot impose a limiting construction that a state supreme court has declined to adopt."¹²²

Further in her discussion of vagueness, Justice O'Connor restates the plurality's opinion that the Ordinance's requirement that a group of loiterers contains a person the police officer "reasonably believes to be a gang member," does limit the dispersal authority of police.¹²³ However, Justice O'Connor believes that that limitation would only be sufficient if it "restricted the ordinance's criminal penalties to gang members or [] more carefully delineated the circumstances in which those penalties would apply to nongang members."¹²⁴

Finally, Justice O'Connor asserts that it is important to characterize the plurality's narrow holding, stating that although this Ordinance is vague, Chicago still has alternatives.¹²⁵

2. Justice Kennedy

Justice Kennedy joins the plurality's decision, but writes separately to express his concern with the issue of proper notice.¹²⁶ Justice Kennedy admits that some police commands will be given where citizens will be penalized if the command is not obeyed, even if the citizens do not know why the order was give.¹²⁷ However, Justice Kennedy asserts that that does not mean every police order

119. *See id.* (O'Connor, J., concurring).

120. *See id.* at 1864 (O'Connor, J., concurring).

121. *See id.* at 1865 (O'Connor, J., concurring) (stating that the Supreme Court of Illinois misapplied *Papachristou*, "as requiring [the Illinois Supreme Court] to hold the ordinance vague in all of its applications because it was intentionally drafted in a vague manner").

122. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1865 (1999) (O'Connor, J., concurring) (citing *Kolender v. Lawson*, 461 U.S. 352, 355-56 n.4 (1983)).

123. *See Morales*, 119 S. Ct. at 1864 (O'Connor, J., concurring).

124. *See id.* at 1865 (O'Connor, J., concurring).

125. *See id.* (O'Connor, J., concurring). Justice O'Connor refers to Illinois statutes concerning intimidation, drug conspiracy, the Illinois Streetgang Terrorism Omnibus Act, and mob action, as well as Chicago's general disorderly conduct provision. *See id.* (O'Connor, J., concurring) (citing the plurality at 1857 n.17). In fact, Justice Stevens pointed out that of the criminal street gang conduct complained about at the hearings, ninety percent of that conduct is actual criminal conduct where people can be arrested. *See Morales*, 119 S. Ct. at 1857 n.17 (Stevens, J., plurality).

126. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1865 (1999) (Kennedy, J., concurring).

127. *See id.* (Kennedy, J., concurring).

should be followed “without notice of the lawfulness of the order.”¹²⁸ Justice Kennedy does not believe the dispersal order is enough to remove uncertainty as to what conduct is prohibited by the Ordinance.¹²⁹ Justice Kennedy asserts that a citizen has no way to discern what an officer may perceive, whether in regards to the citizen’s conduct or to characteristics of someone with whom the citizen is congregating, and thus, the notice requirement is not satisfied.¹³⁰

3. Justice Breyer

Justice Breyer joins the plurality’s decision, and writes separately to express his belief that the Ordinance creates a major limit on the free state of nature.¹³¹ Justice Breyer begins his opinion by disregarding Justice Scalia’s sentiment that the Ordinance is only a minor limitation.¹³² Justice Breyer reasons that the Ordinance is not a minor limitation, but a major limitation, because the Ordinance delegates unfettered discretion to the police.¹³³ Further, Justice Breyer states that neither the requirement of the presence of a gang member in the group of loiters, nor the “no apparent purpose” requirement saves the Ordinance.¹³⁴ In fact, Justice Breyer says, “Chicago may no more apply [the Ordinance] to the defendant, no matter how [he] behaved, than could it apply an (imaginary) statute that said, ‘[i]t is a crime to do wrong,’ even to the worst of murderers.”¹³⁵ Justice Breyer concludes that the Ordinance is invalid in all its applications, not because of insufficient notice, but because of insufficient minimum standards to guide the police.¹³⁶

Finally, Justice Breyer states that an ordinance needs to be drafted with reasonable specificity as to which conduct is prohibited, instead of giving law enforcement total discretion, which in effect allows the police to give dispersal orders whenever the police are annoyed with any particular person.¹³⁷

128. *See id.* (Kennedy, J., concurring).

129. *See id.* (Kennedy, J., concurring).

130. *See id.* (Kennedy, J., concurring).

131. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1865 (1999) (Breyer, J., concurring).

132. *See id.* (Breyer, J., concurring).

133. *See id.* at 1865 (Breyer, J., concurring).

134. *See id.* (Breyer, J., concurring). Justice Breyer states that the requirement that a gang member be present limits police discretion to a point, but it still encompasses too many innocent people. *See id.* (Breyer, J., concurring). Also, Justice Breyer states that an individual always has some purpose, and therefore, the Ordinance requires the police to “interpret the words ‘no apparent purpose’ as meaning ‘no apparent purpose except for . . .’” *See id.* (Breyer, J., concurring).

135. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1866 (1999) (Breyer, J., concurring) (citing *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939)).

136. *See Morales*, 119 S. Ct. at 1866 (Breyer, J., concurring). Justice Breyer contends that Justice Scalia reaches a different conclusion, because Justice Scalia is applying a different basis to determine constitutional invalidity. *See id.* (Breyer, J., concurring).

137. *See Morales*, 119 S. Ct. at 1865 (1999) (Breyer, J., concurring) (comparing *Morales* to *Coates v. Cincinnati*, 402 U.S. 611 (1971) (holding that an ordinance prohibiting individuals from conducting themselves in an annoying way violates the due process standard of vagueness)).

C. *The Dissenting Opinions*

1. Justice Scalia

Justice Scalia wrote a dissenting opinion,¹³⁸ “mock[ing] the notion of ‘the Fundamental Freedom to Loiter’ and scorn[ing] the plurality’s decision as ‘entirely irrational.’”¹³⁹ Justice Scalia begins his analysis with examples of past situations where the people of Chicago were willing to restrict constitutional freedoms, in order to reap a larger benefit.¹⁴⁰ Justice Scalia believes that the people of Chicago are more than willing to restrict a few personal freedoms in order to eliminate, or at least reduce, the gang problems that are plaguing some Chicago neighborhoods, which would be a small price to pay for liberation of Chicago streets.¹⁴¹ Justice Scalia asserts that the plurality invalidated a perfectly sound measure, attacking the plurality on several grounds.¹⁴²

a. *Facial Challenges*

Justice Scalia looks far back into precedent, and questions whether the Court even has a right to determine that a law is invalid in all its applications, pursuant to a facial challenge.¹⁴³ Referencing Tocqueville, Justice Scalia asserts that judicial power is to be exercised in relation to each case before the Court, and not to general principles.¹⁴⁴ Justice Scalia reasons, that if the Court “‘directly attacks a general principle without having a particular case in view, [the Court] leaves the circle in which all nations have agreed to confine [the Court’s] authority; [the court] assumes a more important, and perhaps a more useful influence.’”¹⁴⁵ Justice Scalia goes on to say that “‘[w]e have no power per se to review and annul acts of

138. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1867 (1999) (Scalia, J., dissenting).

139. David G. Savage, *High Court Rejects Ban on Gang Loitering*, L.A. TIMES, June 11, 1999, at A1.

140. See *Morales*, 119 S. Ct. at 1867 (Scalia, J., dissenting). Justice Scalia states that prophylactic speed limits were imposed to ensure safe operation of cars, which was a constitutional restriction on a freedom, and that laws were enacted allowing police to order people to disperse from the scene of an accident in an attempt to prevent more accidents, and this was also a constitutional restriction on a freedom. See *id.* (Scalia, J., dissenting).

141. See *id.* (Scalia, J., dissenting).

142. See *id.* (Scalia, J., dissenting).

143. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1867-68 (1999) (Scalia, J., dissenting) (citing *Marbury v. Madison*, 1 Cranch 137 (1803) (stating that the Court has power to review federal legislation only to decide the specific case before the Court)).

144. See *Morales*, 119 S. Ct. at 1868 (Scalia, J., dissenting).

145. See *id.* (Scalia, J., dissenting).

Congress on the ground that they are unconstitutional.”¹⁴⁶ Justice Scalia states that the Court must follow two rules: (1) never anticipate a constitutional law question before the need to decide that question, and (2) never formulate a constitutional law broader than necessary for any set of particular facts.¹⁴⁷ Justice Scalia reasons that going beyond how a statute is applied to the case before the Court does not mesh with the system, asserting that the Court should not even give its opinion as to whether a statute would be constitutional in other contexts.¹⁴⁸ Although Justice Scalia feels strong on this matter, he does acknowledge that the Court has been doing exactly what Justice Scalia says it should not do for quite some time.¹⁴⁹

b. Loitering as a Fundamental Right

Justice Scalia believes that there is no fundamental right to loiter, stating that in fact, there has been a long history of criminalizing such activity.¹⁵⁰ Going back to history, Justice Scalia strongly asserts it is not maintainable that the framers intended loitering to be a fundamental liberty, and accuses the plurality of using “the historical practices of our people [as] nothing more than a speed bump on the road to the ‘right’ result.”¹⁵¹ Justice Scalia criticizes the plurality’s application of substantive due process, stating that it “leaps far beyond any substantive-due-process atrocity [the Court has] ever committed.”¹⁵²

c. Mens Rea

Justice Scalia disagrees with the plurality’s opinion that loitering is part of the offense requiring mens rea.¹⁵³ Justice Scalia states that the only act made punishable by the Ordinance is that of the failure to obey a dispersal order, not the act of loitering, and therefore, “[t]he willful failure to obey a police order is wrongful intent enough.”¹⁵⁴

146. *See id.* (Scalia, J., dissenting) (citing *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923)).

147. *See Morales*, 119 S. Ct. at 1868-69 (Scalia, J., dissenting).

148. *See id.* at 1869 (Scalia, J., dissenting).

149. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1869 (1999) (Scalia, J., dissenting).

150. *See id.* at 1872 (Scalia, J., dissenting).

151. *See id.* (Scalia, J., dissenting).

152. *See id.* at 1873 (Scalia, J., dissenting). Justice Scalia goes so far as to regard substantive due process as “judicial usurpation.” *See id.* (Scalia, J., dissenting). The Court actually places the burden on the Plaintiff to show that loitering is not a fundamental liberty. *See id.* (Scalia, J., dissenting). Justice Stevens says that Scalia is wrong for mentioning this because Justice Stevens evaluates *Morales* under procedural due process. *See id.* at 1863 n.35 (Stevens, J., plurality). However, Justice Scalia replies that he is merely pointing out that liberty cannot mean one thing for procedural due process and another for substantive. *See id.* at 1873 (Scalia, J., dissenting). Justice Scalia also criticizes the concurring opinions, stating that they “make no pretense at attaching their broad ‘vagueness invalidates’ rule to a liberty interest. *See id.* at 1874 (Scalia, J., dissenting).

153. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1874 (1999) (Scalia, J., dissenting).

154. *See id.* (Scalia, J., dissenting).

d. Vagueness

In considering the issue of vagueness, Justice Scalia has but one thing to say; the Ordinance is not vague.¹⁵⁵ Even if the Court were to apply the overbreadth standard, Justice Scalia still believes the Ordinance would not be considered vague.¹⁵⁶ In his analysis, Justice Scalia examines the two aspects of the void-for-vagueness doctrine, and comments on why he believes the plurality is wrong.¹⁵⁷

e. Adequate Notice

In his consideration of the first aspect of the void-for-vagueness doctrine, Justice Scalia reiterated the plurality's opinion that loitering is the conduct the Ordinance prohibits.¹⁵⁸ However, Justice Scalia asserts that the focus of vagueness analysis should be on what the Ordinance actually subjects to criminal penalty, which Justice Scalia believes to be the failure to obey a dispersal order, and not on what the ordinance prohibits.¹⁵⁹ Justice Scalia asserts there can be no doubt that adequate notice is given by the dispersal order.¹⁶⁰ Although the plurality claims the dispersal order itself is vague, Justice Scalia practically laughs at the plurality's opinion, stating that the plurality's opinion "scarcely requires a response."¹⁶¹ Justice Scalia contends that if the dispersal order was in fact vague, than many of the Presidential proclamations issued pursuant to Title ten, section 334 of the United States Code would also be vague, and thus, unconstitutional.¹⁶²

f. Arbitrary and Discriminatory Law Enforcement

While evaluating the second aspect of the void-for-vagueness doctrine, Justice Scalia asserts that the plurality [hid] behind an artificial construct of judicial

155. *See id.* at 1875 (Scalia, J., dissenting).

156. *See id.* (Scalia, J., dissenting). If a law reaches a substantial amount of protected activity, that law is unconstitutional under overbreadth analysis. *See id.* (Scalia, J., dissenting). Justice Scalia contends that the Ordinance would not be vague in most applications. *See id.* (Scalia, J., dissenting).

157. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1875-79 (1999) (Scalia, J., dissenting).

158. *See id.* (Scalia, J., dissenting).

159. *See id.* (Scalia, J., dissenting).

160. *See id.* (Scalia, J., dissenting).

161. *See id.* (Scalia, J., dissenting).

162. *See id.* at 1875-76 (Scalia, J., dissenting). Section 334 requires the President to order insurgents to disperse before using the militia or the Armed Forces. *See* 10 U.S.C. § 334. As an example, Justice Scalia cites President Eisenhower's proclamation, relating to the enrollment of black students in a white school, which states, "I . . . command all persons engaged in such obstruction of justice to cease and desist therefrom, and to disperse forthwith." *See Morales*, 119 S. Ct. at 1875 (Scalia, J., dissenting).

restraint.”¹⁶³ Just as Justice Scalia accuses the plurality of using the history of the people as a bump in the road to get to the “right result,”¹⁶⁴ Justice Scalia appears to be taking the same type of approach to arrive at his own right result.¹⁶⁵

Although it is true that the Court must adhere to the construction of the Ordinance given by the Supreme Court of Illinois, Justice Scalia interprets the situation differently than the plurality.¹⁶⁶ Justice Scalia contends that the Supreme Court of Illinois did not construct the language as giving police total discretion, but made a conclusion of law.¹⁶⁷ To conclusions of law, Justice Scalia states, the Court is not bound.¹⁶⁸

Justice Scalia states that the dispersal order criteria could not be more clear; first because it says “reasonably believe,” and second, because of the “no apparent purpose” requirement.¹⁶⁹ Further, Justice Scalia states that the real problem Justice Stevens has with the ordinance, is that the Ordinance proscribes too much harmless conduct.¹⁷⁰ However, Justice Scalia asserts that that is not a decision to be made by the Court; the Court has no business “second-guessing either the degree of necessity or the fairness of the trade.”¹⁷¹

2. Justice Thomas

“[T]he Court has unnecessarily sentenced law-abiding citizens to lives of terror and misery.”¹⁷²

Justice Thomas wrote a dissenting opinion, expressing his concern that the Court does not give enough consideration to the terror criminal street gangs inflict upon poor and vulnerable citizens, “often relegating [those citizens] to the status of prisoners in their own home.”¹⁷³

Justice Thomas believes that “[t]he ordinance does nothing more than confirm the well-established principle that the police have the duty and the power to maintain the public peace, and, when necessary, to disperse groups of individuals who threaten [the public peace].”¹⁷⁴

163. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1876 (1999) (Scalia, J., dissenting).

164. *See id.* at 1872 (Scalia, J., dissenting).

165. *See id.* at 1876 (Scalia, J., dissenting).

166. *See id.* (Scalia, J., dissenting).

167. *See id.* (Scalia, J., dissenting).

168. *See id.* (Scalia, J., dissenting).

169. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1876 (1999) (Scalia, J., dissenting).

170. *See id.* at 1879 (Scalia, J., dissenting).

171. *See id.* (Scalia, J., dissenting).

172. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1879 (1999) (Thomas, J., dissenting).

173. *See id.* at 1980 (Thomas, J., dissenting).

174. *See id.* at 1881 (Thomas, J., dissenting).

a. Loitering as a Constitutional Right

Justice Thomas asserts that the freedom to loiter is in no way deeply rooted in history or tradition.¹⁷⁵ Justice Thomas contends that the plurality accounts for anti-loitering laws by suggesting the anti-loitering laws are out of their proper historical time frame, referring back in time to a less sophisticated era.¹⁷⁶ However, Justice Thomas believes that the plurality's sweeping conclusion, based only on the citation of three cases,¹⁷⁷ "withers when exposed to the relevant history."¹⁷⁸ One of the cases the plurality cites is *Papachristou*.¹⁷⁹ Justice Thomas states that the Court in *Papachristou* did not apply the now-accepted analysis applied in substantive due process cases, which is looking to tradition to define the rights protected by the Due Process Clause.¹⁸⁰ But, Justice Thomas reasons that is irrelevant because a careful reading of *Papachristou* reveals that the Court never claimed loitering was a constitutional right.¹⁸¹ Justice Thomas asserts that "[we] should be extremely reluctant to breathe still further substantive content into the Due Process Clause so as to strike down legislation adopted by a State or city to promote its welfare."¹⁸² Justice Thomas reasons that the Judiciary is without constitutional authority to do so.¹⁸³

b. Unconstitutionally Vague

Justice Thomas believes that the Ordinance is not vague, disagreeing with the plurality's opinion that the Ordinance does not limit police discretion or afford residents with adequate notice.¹⁸⁴

175. *See id.* (Thomas, J., dissenting). Justice Stevens believes loitering is one of the liberties protected by DPC of the 14th, yet the Court acknowledges that "anti-loitering ordinances have long existed in this country." *See id.* at 1857 n.20 (Stevens, J., plurality). Justice Thomas contends that Justice Stevens disregards past case law that should guide the Court's analysis. *See id.* at 1883 n.5 (Thomas, J., dissenting) (citing *Michael H. v. Gerald D.*, 491 U.S. 110, 127 n.6, (1989)).

176. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1881 (1999) (Thomas, J., dissenting).

177. *See id.* at 1857-58 (Stevens, J., plurality).

178. *See Morales*, 119 S. Ct. at 1881-82 (Thomas, J., dissenting).

179. *See id.* at 1882-83 (Thomas, J., dissenting).

180. *See id.* at 1881-82 (Thomas, J., dissenting).

181. *See id.* at 1883 (Thomas, J., dissenting).

182. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1883 (1999) (Thomas, J., dissenting).

183. *See id.* (Thomas, J., dissenting).

184. *See id.* (Thomas, J., dissenting).

c. *Arbitrary Enforcement*

Justice Thomas believes the Ordinance adequately channels police discretion.¹⁸⁵ Justice Thomas asserts that the Ordinance is not a criminalization of the act of loitering, but a penalty for those loiterers who fail to obey a dispersal order.¹⁸⁶ The Ordinance is a tool for law enforcement officials to fulfill one of the many traditional duties for which law enforcement is responsible; preserving the public peace.¹⁸⁷ Justice Thomas asserts that police officers “wear other hats,” stating that enforcement of criminal laws is not the sole responsibility of law enforcement.¹⁸⁸ And it is in the role of peace officer, that the Justice Thomas believes the police have had the authority, and duty, to order people to disperse.¹⁸⁹ Justice Thomas refers to police officers as peace-makers and inherent in that position is the law’s trust that the police officers will be responsible when exercising discretion.¹⁹⁰

Though Justice Thomas agrees there must be guidelines, he also states there must not be rigid constraints.¹⁹¹ Justice Thomas believes the Ordinance is an effective balance between total discretion, and rigid constraints. Justice Thomas reasons that because the police are trusted to exercise discretion when making spur of the moment decisions about legal standards, so to should the police be trusted to exercise their discretion reasonably when determining whether a group of loiterers threaten the public peace.¹⁹² “[T]he Courts conclusion that the ordinance is impermissibly vague because it ‘necessarily entrusts lawmaking to the moment-to-moment judgment of the policeman on his beat,’ cannot be reconciled with common sense, longstanding police practice, or this Court’s Fourth Amendment jurisprudence.”¹⁹³ Further, Justice Thomas does not believe the plurality’s suggestion on how to correct the Ordinance is an adequate alternative, stating that the plurality’s suggestion lacks the scienter requirement the plurality claims is required.¹⁹⁴ Because of this lack of scienter element, Justice Thomas states that the Hoffman Estates¹⁹⁵ standard is not satisfied, nor is police discretion channeled.¹⁹⁶ Justice Thomas goes so far to state that Justice Stevens’s alternative,

185. *See id.* (Thomas, J., dissenting).

186. *See id.* (Thomas, J., dissenting).

187. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1883 (1999) (Thomas, J., dissenting).

188. *See id.* at 1883 (Thomas, J., dissenting).

189. *See id.* at 1884 (Thomas, J., dissenting).

190. *See id.* at 1885 (Thomas, J., dissenting).

191. *See id.* (Thomas, J., dissenting).

192. *See id.* (Thomas, J., dissenting).

193. *See City of Chicago v. Morales*, 119 S. Ct. 1849, 1885 (1999) (Thomas, J., dissenting).

194. *See id.* (Thomas, J., dissenting). The plurality suggests that the Ordinance would be sufficient if it applied only to loitering that “had an apparently harmful purpose or effect.” *See id.* at 1862 (Stevens, J., plurality). But, “[T]he criminality of the conduct would continue to depend on its external appearance, rather than the loiterer’s state of mind.” *Id.* at 1885 (Thomas, J., dissenting).

195. 455 U.S. 489 (1982).

196. *See id.* at 1885 (Thomas, J., dissenting).

requiring police officers to ascertain the existence of “an apparently harmful purpose,” gives police more discretion instead of less.¹⁹⁷

Justice Thomas does acknowledge there is a possibility that mistakes will be made and some police may act in bad faith.¹⁹⁸ However, Justice Thomas feels these possibilities are rare and “best addressed when (and if) they arise, rather than prophylactically through the disfavored mechanism of a facial challenge on vagueness grounds.”¹⁹⁹

d. Adequate Notice

Justice Thomas believes there is nothing vague about a dispersal order, and that almost everyone should have little difficulty understanding how to comply.²⁰⁰ Concerning the respondent’s burden to prove the Ordinance is unconstitutional in all its applications to satisfy a facial challenge, Justice Thomas states that his view is the same as retired Justice White’s dissenting opinion in *Kolender*, which is, an enactment is not unconstitutional “[i]f any fool would know that a particular category of conduct would be within the reach of the [Ordinance]”²⁰¹ Justice Thomas agrees with the Supreme Court of Illinois, contending that the term “loiter” has a common meaning among intelligent people, and the Ordinance is exactly the type of ordinance where “any fool” would know what conduct is within the Ordinance’s reach.²⁰² Justice Thomas asserts that although the meaning of the word “loiter” may be imprecise, it is similar to other legal terms, such as, “fraud,” bribery,” and “perjury,” the meaning of which the Court expects people to know.²⁰³

197. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1885 (1999) (Thomas, J., dissenting). Justice Thomas also believes the Ordinance afford police less discretion as is, because police officers are only required to determine that one person in the group is a gang member. See *id.* (Thomas, J., dissenting). If police were to determine that all persons in the group were gang members, that would require the police officers to make several determinations instead of one, thus affording the police even more discretion. See *id.* (Thomas, J., dissenting).

198. See *id.* at 1885-86 (Thomas, J., dissenting).

199. See *id.* 1886 (1999) (Thomas, J., dissenting).

200. See *id.* at 1886 (Thomas, J., dissenting). Justice Thomas suggests that if the plurality’s opinion were followed, the police will ever be able to issue dispersal orders. See *id.* at 1886 n.9 (Thomas, J., dissenting).

201. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1886 (1999) (Thomas, J., dissenting).

202. See *id.* (Thomas, J., dissenting). Justice Thomas states that Justice Stevens’s assertion that the Ordinance covers too much protected or innocent conduct is erroneous because there is no fundamental right to loiter; it is conduct that has consistently been criminalized. See *id.* (Thomas, J., dissenting).

203. See *id.* at 1886 & n.10 (Thomas, J., dissenting). Justice Thomas believes that Justice Stevens is underestimating Chicago citizens, stating that individuals are perfectly capable of discerning how they are perceived by others. See *id.* at 1887 (Thomas, J., dissenting) (citing *Smith v. Goguen*, 415 U.S. 566, 584 (1974) (White, J., concurring)).

When determining if the Ordinance is vague, Justice Thomas answers with a firm “no.”²⁰⁴

Justice Thomas concludes by stating that the plurality has the ability to concentrate on the “rights” of gang members, because the Justices will not feel the impact of their decision; they do not live gang territory.²⁰⁵ The people who will feel the impact of the Morales decision are those who are afraid to leave their homes, afraid to step onto the streets, and afraid to shop.²⁰⁶

V. IMPACT OF COURT’S DECISION

“Too much freedom breeds anarchy; too much order breeds tyranny.”²⁰⁷ There is a constant tension between individual autonomy and the community.²⁰⁸ Although some claim constitutional rights should not be restrained at any cost,²⁰⁹ many others believe there must be a certain level of restriction on liberty to maintain law and order.²¹⁰ Society as a whole takes interest in the conduct of its citizens because of the desire to maintain a civilized society that all people can live in and enjoy. Thus, “[b]y entering society, individuals give up the unrestrained right to act as they think fit; in return, each has a positive right to society’s protection.”²¹¹ The function of the state is to create the laws, from which the people derive these positive rights of protection.²¹² Therefore, “[t]he state has not only a right to ‘maintain a decent society,’ but an obligation to do so.”²¹³

As is the situation with any case involving a constitutional issue, the decision handed down in Morales has made its mark and opinions have varied drastically regarding the result.

Justice Thomas states in his dissenting opinion, that “the Court today has denied our most vulnerable citizens the very thing that Justice Stevens elevates above all else—the ‘freedom of movement.’ And that is a shame.”²¹⁴ Others believe that gang members’ liberties should be secondary to the liberties of local residents who are living in fear.²¹⁵ Two professors of law at the University of

204. See *Morales*, 119 S. Ct. at 1887 (Thomas, J., dissenting).

205. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1887 (1999) (Thomas, J., dissenting).

206. See *id.* (Thomas, J., dissenting).

207. See James Kilpatrick, *Fine Line Between Liberty and Order*, ST. J.-REG. (Ill.), Dec. 22, 1998, at 6; see also *ex rel. Gallo v. Acuna*, 929 P.2d 596, 603 (Cal. 1997) (“Liberty unrestrained is an invitation to anarchy.”).

208. See Kilpatrick, *supra* note 207.

209. See Thomas L. Doerr, Jr., *A Failed Attempt to Take Back Our Streets—A Constitutional Triumph for Gangs: City of Chicago v. Morales*, 82 MARQ. L. REV. 447, 469 (1999) (“[C]onstitutional rights are guaranteed to every U.S. citizen, regardless of whom they decide to associate with.”).

210. See generally *Kolender v. Lawson*, 461 U.S. 352 (1983) (“Our Constitution is designed to maximize individual freedoms within a framework of ordered liberty.”).

211. See *ex rel. Gallo v. Acuna*, 929 P.2d 596, 603 (Cal. 1997).

212. See *id.* at 618.

213. See *id.* at 603 (citation omitted).

214. See *Morales*, 119 S. Ct. at 1887 (Thomas, J., dissenting).

215. See Christy Gutowski, *Liberty vs. Safety DuPage’s Lawsuit Against Alleged Gang Pits Personal Freedoms Against Personal Protection*, CHICAGO DAILY HERALD, Dec. 6, 1999, at 6. “Dupage State’s Attorney Joseph Birkett said[,] [n]o community should ever be required to endure the outrageous conditions

Chicago Law School believe that the Morales decision “demonstrates respect for individual liberty by destroying ever greater amounts of it.”²¹⁶ The Chicago Neighborhood Organizations feel the Ordinance “strikes a reasonable balance between liberty and order.”²¹⁷ Even a parent, whose child is in jail for a gang-style murder, supports the Ordinance “as a morally responsible way to steer community youth away from gang life and to counter . . . young lives wasted in prison.”²¹⁸

Those who oppose the Ordinance assert that it ignores citizens’ basic rights in an attempt to appear tough on crime.²¹⁹ Many believe that sacrificing liberties guaranteed by the Constitution “open[s] the door too wide”; denying too many rights of law-abiding citizens.²²⁰ One commentator asserts that the Latin Kings of Chicago, a resident gang, has “the same right of peaceable assembly that the Constitution accords to us all,” stating that the Ordinance is “not a tolerable solution to an intolerable situation.”²²¹

In light of these opinions, it is clear that the aftermath of the Morales decision will greatly impact the lives of many people, and leave law enforcement officials with few options.

A. Burden on Law Enforcement

The Morales decision will most likely be a hindrance upon the ability of law enforcement to continue cracking down on criminal gang activity. Chicago claims that the violence attributable to criminal gang activity dropped substantially while

these gangs’ members pursue.” *Id.*

216. See Meares and Kahan, *supra* note 32, at 213 (stating that the elimination of crime prevention measures subjects gang members to more severe punishment).

217. See Brief Amicus Curiae of the Chicago Neighborhood Organizations at 5, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121). The Chicago Neighborhood Organizations state that safeguards exist against abusive enforcement because of the guidelines set out in the Ordinance’s regulations. See *id.*; see also Meares and Kahan, *supra* note 32, at 200. The Chicago Neighborhood Organizations further assert that the Ordinance is a means of reforming the community, instead of “trying to bludgeon gang members into submission through severe punishment.” See Brief Amicus Curiae of the Chicago Neighborhood Organizations at 22, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121).

218. See Brief Amicus Curiae of the Chicago Neighborhood Organizations at 17, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121).

219. See Steve Lash, *High-Court Ruling Says Anti-Gang Law is Unconstitutional*, HOUSTON CHRON., June 11, 1999, at 2.

220. See Gutowski, *supra* note 215; see also Doerr, *supra* note 209, at 469 (stating that the Ordinance jeopardizes the constitutional rights guaranteed to every citizen).

221. See James Kilpatrick, *Do Gang Members Have the Right to Loiter?*, ST. J.-REG. (Ill.), Aug. 27, 1998, at 5.

the Ordinance was in effect.²²² Homicides attributable to criminal street gangs decreased by twenty-six percent after the Ordinance was in effect, yet increased after the Ordinance was found unconstitutional.²²³ Victor Borrego, a former member of the Satan Disciples gang, admitted that some gang members have left towns in order to avoid the penalty for violating the Ordinance.²²⁴ Barbara Sternik of the Northwest Neighborhood Federation also noted that gang members would only congregate for a few minutes before moving on while the Ordinance was in effect.²²⁵ By ruling the Ordinance unconstitutional, the Supreme Court has severely limited the Chicago law enforcement officials' abilities to deter and maintain criminal street gang activity. The Court has also restricted the options police have for dealing with gang members, forcing police to develop other time consuming and burdensome alternatives for monitoring criminal street gangs. In the meantime, gang members are probably more likely to engage in criminal activity they may have been apprehensive to commit while the Ordinance was in place.

B. Anti-Gang Legislation

1. California's Street Terrorism Enforcement and Prevention Act

With nearly 600 criminal street gangs and a steady increase in the number of gang related murders, California is in a state of crisis.²²⁶ In an effort towards eliminating criminal street gang activity, California enacted the Street Terrorism Enforcement and Prevention Act ("STEP").²²⁷ STEP punishes "any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang."²²⁸ Further, STEP declares any building used for criminal street gang activity a nuisance,²²⁹ punishes adults who use "physical violence to coerce,

222. Tony Mauro, *City Ordinances Targeting Gangs to get First Supreme Court Review*, USA TODAY, April 21, 1998, at B10.

223. See Scott Ritter, *Chicago Loitering Law Targeting Gangs Draws Skepticism of Some on High Court*, WALL ST. J., Dec. 10, 1998, at B22; see also Fran Spielman, *Supreme Court to Review City's Gang Loitering Law*, CHICAGO SUN TIMES, April 21, 1998, at 18.

224. See Rob D. Kaiser, *Suits Targeting Gangs Have Town Split in Two*, CHI. TRIB., May 13, 1999, at 1.

225. See Fran Spielman, *Supreme Court to Review City's Gang Loitering Law*, CHICAGO SUN TIMES, April 21, 1998, at 18.

226. See CAL. PENAL CODE § 186.21 (West 2000).

227. See CAL. PENAL CODE §§ 186.20-186.28 (West 2000). Several other states have also enacted statutes similar to STEP. See David R. Truman, *The Jets and Sharks are Dead: State Statutory Responses to Criminal Street Gangs*, 73 WASH. U. L.Q. 683, 735 n.27 (1995) (discussing different approaches to dealing with criminal street gangs); see also Bart H. Rubin, *Hail, Hail, the Gangs are All Here: Why New York Should Adopt a Comprehensive Anti-Gang Statute*, 66 FORDHAM L. REV. 2033, 2063-71 (1998) (analyzing several state anti-gang statutes).

228. CAL. PENAL CODE § 186.22(a) (West 2000).

229. See CAL. PENAL CODE § 186.22a(a) (West 2000).

induce, or solicit” minors to participate in criminal street gang activity,²³⁰ and allows for sentence enhancements for gang related crimes.²³¹ Although STEP is a successful tool for fighting criminal gang activity, a problem still exists.²³² When a gang member is punished pursuant to STEP, the crime has already been committed; a right has been violated or someone has been injured.²³³ As can be discerned from this note, law enforcement officials are striving to find ways to prevent criminal street gang activity, not just another way to punish gang members for such activity. Punishment for crimes pursuant to STEP, although gang specific, does not appear to be any different than punishment for other crimes pursuant to statutes already in place. Therefore, creating anti-gang legislation similar to STEP would not be a helpful alternative to Chicago law enforcement because it is time consuming, expensive, and not a preventative measure.²³⁴

2. Racketeering Influenced and Corrupt Organizations Act

Another method that has been successful in combating criminal gang activity is through the Racketeering Influenced and Corrupt Organizations Act (“RICO”).²³⁵ RICO prohibits the use of any income derived from racketeering activities to gain an interest in,²³⁶ or maintain an enterprise.²³⁷ Further, RICO requires the forfeiture of all proceeds gained from such racketeering activities upon conviction.²³⁸ RICO is used against criminal street gangs, by classifying its activity as “racketeering.”²³⁹ Thus, the benefit to RICO is that in addition to punishing specific gang members for their personal offenses, RICO attacks the criminal street gang as a whole, by reducing that gang’s economic control over its criminal enterprise.²⁴⁰

Although criminal forfeiture provisions such as RICO have proven to be a powerful tool against criminal street gangs, it too faces the problem that STEP

230. See CAL. PENAL CODE § 186.26(a) (West 2000).

231. See CAL. PENAL CODE § 186.22(b)(1) (West 2000).

232. See Bergen Herd, *Injunctions as a Tool to Fight Gang-Related Problems in California: After People ex rel Gallo v. Acuna: A Suitable Solution?*, 28 GOLDEN GATE U. L. REV. 629, 676 (1998) (analyzing the California Supreme Court’s decision in *ex rel. Gallo v. Acuna*, 929 P.2d 596 (Cal. 1997)).

233. See *id.*

234. See Truman, *supra* note 227, at 706-10 (discussing STEP and its requirements).

235. 18 U.S.C. §§ 1961-1968 (West 2000).

236. See 18 U.S.C. § 1962(a) (West 2000).

237. See 18 U.S.C. § 1962(c) (West 2000).

238. See 18 U.S.C. § 1963(a)(3) (West 2000).

239. See Herd, *supra* note 232, at 633; see also Rubin, *supra* note 227, at 2048-54 (discussing how criminal street gangs qualify for RICO prosecution).

240. See Truman, *supra* note 227, at 687-88; see also Herd, *supra* note 232 at 633 (discussing anti-gang legislation).

faces; it punishes gang members after the offenses have been committed, instead of preventing the offense from ever taking place.²⁴¹ Using RICO as a tool against gangs would not be a helpful alternative for Chicago law enforcement, because it is time consuming, expensive, and not a preventative measure.²⁴²

3. Public Nuisance Injunctions

The purpose of the public nuisance doctrine is to protect the common interests of society in order to maintain an ideal civil life,²⁴³ and there is nothing civil about the lives of citizens living in cities plagued by criminal street gangs.²⁴⁴

Rocksprings, California is a town that has been taken over by the “[m]urder, attempted murder, drive-by shootings, assault and battery, vandalism, arson, and theft” of criminal street gangs, who have used neighborhood homes as urinals and escape routes.²⁴⁵ A Rocksprings resident stated that “gang members had threatened to cut out the tongue of her nine-year old daughter if [the daughter] talked to the police.”²⁴⁶ In an attempt to control the public safety and order in Rocksprings, injunctions were issued against criminal street gangs and gang members constituting a public nuisance.²⁴⁷

*People ex rel. Gallo v. Acuna*²⁴⁸ was the first case to address a public nuisance injunction that prohibited both legal and illegal activity of criminal street gang members.²⁴⁹ The *Acuna* court determined that the injunction did not violate the defendant’s first amendment right to associate or fifth amendment guarantee of due process, the injunction was not vague or overbroad, and the criminal street gang activity fit within the definition of a public nuisance.²⁵⁰ After the public nuisance injunction was implemented, improvements in Rocksprings were evident; 911 calls decreased by forty-five percent, narcotic crime arrests fell from sixty-two to sixteen, and in one year the violent crime rate dropped by eighty-four percent.²⁵¹

Unlike STEP and RICO, the importance of public nuisance injunctions is that the injunctions encompass legal activity, allowing law enforcement officials to focus on the prevention of crime instead of punishment for crimes already

241. See 18 U.S.C. §§ 1961-1968 (West 2000).

242. See generally Truman, *supra* note 227. Truman points out that RICO is time consuming and expensive because prosecutors must rely on wiretaps, informants, and the likelihood of gang members turning states evidence. See Truman, *supra* note 227, at 735 n.228.

243. See *ex rel. Gallo v. Acuna*, 929 P.2d 596, 603 (Cal. 1997).

244. See *id.* at 601-03.

245. See *id.* at 601.

246. See *id.* at 613.

247. Public health, safety, peace, comfort, and convenience are five categories of rights, the unreasonable interference of which may constitute a public nuisance. See RESTATEMENT (SECOND) OF TORTS § 821B, subd. (2)(a) (1999); see also CAL. CIV. CODE § 3479 (West 2000).

248. 929 P.2d 596 (Cal. 1997).

249. See *id.*; see also Herd, *supra* note 232, at 641; Gregory S. Walston, *Taking the Constitution at its Word: A Defense of the Use of Anti-Gang Injunctions*, 54 U. MIAMI L. REV. 47 (1999) (discussing the decision in *People ex rel. Gallo v. Acuna*).

250. See generally *Acuna*, 929 P.2d 596; see generally also Herd, *supra* note 232.

251. See Herd, *supra* note 232, at 674-75.

committed.²⁵² However, similar to STEP and RICO, public nuisance injunctions must be very specific, and they are extremely time consuming and expensive.²⁵³ Although California has had much success with the public nuisance injunctions, Chicago's anti-gang ordinance would have made the fight against gangs much easier.²⁵⁴ The Ordinance was drafted with the intent to cover a larger area of the city of Chicago, and in an attempt to avoid the burdensome process of targeted court orders.²⁵⁵ With the Ordinance in effect, Chicago would be able to avoid the difficulties of the public nuisance injunctions, streamlining the anti-gang effort.²⁵⁶

C. Desperate Times, Desperate Measures?

Although police in other areas have attempted different alternatives for dealing with gang activity, such as the 18th Street Gang²⁵⁷ in Los Angeles, those efforts have proven to do more damage than good.²⁵⁸ In an attempt to eliminate gang activity, the Los Angeles Police Department created an elite anti-gang unit called Community Resources Against Street Hoodlums ("CRASH").²⁵⁹ The duties of the specialized CRASH officers were to collect intelligence on gang members and destroy gang activity.²⁶⁰ Unfortunately, what was intended to be a cure turned into its own problem. CRASH, also known as "TRASH," Total Resources Against

252. See Herd, *supra* note 232, at 637-38; see also Walston, *supra* note 249, at 74 ("Anti-gang injunctions are one of the most promising methods of curbing urban violence."). Even Harvey Grossman of the ACLU acknowledges the success of public nuisance injunctions because they "are targeted with 'surgical precision' to a small number of people and a particular area." See David G. Savage, *Anti-Gang Loitering Bad Worries Justices Supreme Court: Law Allowing Arrests in Chicago of Suspected Members who Stand on the Street in Assailed. 'There are no Standards for Police' Kennedy Says*, L.A. TIMES, December 10, 1998, at A3.

253. See David G. Savage, *High Court Rejects Ban on Gang Loitering*, L.A. TIMES, June 11, 1999, at A1. Public nuisance injunctions are limited to specific blocks, must identify specific gang members, and take an average of four to five months of court hearings before they can be issued. See *id.*; see also David G. Savage, *Supreme Court to Rule on Gang Loitering Curbs*, L.A. TIMES, April 21, 1998, at A1. Further, if the gangs move outside of the specific blocks, law enforcement officials have to spend more time in court. See David G. Savage, *High Court Rejects Ban on Gang Loitering*, L.A. TIMES, June 11, 1999, at A1.

254. See David G. Savage, *High Court Rejects Ban on Gang Loitering*, L.A. TIMES, June 11, 1999, at A1.

255. See David G. Savage, *Supreme Court to Rule on Gang Loitering Curbs*, L.A. TIMES, April 21, 1998, at A1.

256. See *id.*

257. 18th Street Gang is Los Angeles's biggest and most violent gang. See L.A. 's Dirty War on Gangs: A Trail of Corruption Leads to Some of the City's Toughest Cops, NEWSWEEK, Oct. 11, 1999, available in 1999 WL 19355092.

258. See *infra* notes 259-264 and accompanying text.

259. See *The LAPD: Over-Creative Policing*, ECONOMIST, September 25, 1999, available in 1999 WL 7364657.

260. See *id.*

Street Hoodlums, is now best known for its ultra-aggressive tactics and has been referred to as acting like a gang themselves.²⁶¹ Accusations have been made that CRASH members have dropped gang members in rival territory, participated in police brutality, perjury, and the planting of evidence, and have even gone as far as shooting an unarmed 18th Street gang member, at point blank range, and then planting a weapon on the gang member to claim self defense.²⁶² Law enforcement, as well as city council members across the country see an increase in criminal street gang activity and feel the pressure from the communities to make it go away.²⁶³ It is quite possible to assume that the decision handed down in Morales could lead the police of Chicago to the same type of vigilante attitudes as the police in Los Angeles; they may give up on legislature and take matters into their own hands.²⁶⁴

D. Time to Take the Law into Our Own Hands?

In Cicero, a Chicago suburb, criminal street gang members loiter, intimidate, and establish control over the neighborhood, and they do so with indifference.²⁶⁵ Roberto Padilla, a member of the Latin Kings, laughed while perusing a Cicero lawsuit with his name and the names of fellow gang members, commenting that Cicero “don’t even got half of them.”²⁶⁶ Another member, Antonio Ascencio, claims that his civil rights are being violated, stating, “[w]hat do they want us to be, the town of Pleasantville?”²⁶⁷ All of the homicides in Cicero in 1998 were gang related.²⁶⁸

Garlen Gean, a neighbor in a community that has been all but taken over by criminal street gangs, has two review mirrors he uses to monitor for the presence

261. See *L.A.’s Dirty War on Gangs: A Trail of Corruption Leads to Some of the City’s Toughest Cops*, NEWSWEEK, Oct. 11, 1999, available in 1999 WL 19355092 (quoting defense lawyer Dennis Chang).

262. Rafeal A. Perez has confessed to just such actions because he was caught stealing drugs from the police evidence locker. See *L.A.’s Dirty War on Gangs: A Trail of Corruption Leads to Some of the City’s Toughest Cops*, NEWSWEEK, Oct. 11, 1999, available in 1999 WL 19355092. In return for a better sentence, Perez is cooperating with police by whistleblowing on his partners. See *id.* The questions still remains whether what he says is completely accurate, or a simple attempt to stay out of jail. Perez has also claimed police have lied in court. See *id.*

263. See, e.g., Brief Amicus Curiae of the Chicago Neighborhood Organizations at 21, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121) (discussing the testimony during Chicago’s city council meetings).

264. Cf. *L.A.’s Dirty War on Gangs: A Trail of Corruption Leads to Some of the City’s Toughest Cops*, NEWSWEEK, Oct. 11, 1999, available in 1999 WL 19355092 (stating that Los Angeles police are acting like gangs).

265. Cf. Betty Loren, *Ridding Cicero of Gangs*, CHI. TRIB., May 4, 1999, at 14, and Rob D. Kaiser, *Suits Targeting Gangs Have Town Split in Two*, CHI. TRIB., May 13, 1999, at 1.

266. See Rob D. Kaiser, *Suits Targeting Gangs Have Town Split in Two*, CHI. TRIB., May 13, 1999, at 1.

267. See *id.*

268. See Betty Loren, *Ridding Cicero of Gangs*, CHI. TRIB., May 4, 1999, at 14.

of gang members before stepping outside onto the streets.²⁶⁹ Gean has lived in his house for twenty years, he is fed up with the gang problem, and he wants to do something about the problem.²⁷⁰ The Morales decision may indirectly force Chicago residents to develop an “if you can’t beat them, join them” attitude, take on the problem themselves, and start committing their own crimes.²⁷¹ The Court seems to be very liberal in giving liberties to people, without first considering the possible adverse effects of that decision; people are petrified to leave their homes and walk the streets.²⁷²

People who live in these neighborhoods are frustrated, they are afraid, and they want to take action.²⁷³ Unfortunately, the Supreme Court has just taken away what seemed to be the only legal opportunity the people had to take such action.²⁷⁴

E. Legislative Impact

The Morales decision may create a lot of problems for legislation. Because the Ordinance in Morales was ruled unconstitutional, states that have enacted or are drafting ordinances similar ordinances will also have to come up with some other means of anti-gang legislation. Also, because the Court was overly particular with its analysis of the wording of the Ordinance, it will be even more difficult for Chicago and other states to redraft their ordinances.²⁷⁵ But, is that necessarily true?

As the Ordinance stands, a police officer may issue a dispersal order if there is a group of loiterers, one of whom the police officer “reasonably believes to be a criminal street gang member.”²⁷⁶ Even though Justice O’Connor asserts that this requirement does not correct the Ordinance’s vagueness, she also asserts that the Ordinance’s vagueness may be eliminated if the Ordinance is modified to apply

269. Rob D. Kaiser, *Suits Targeting Gangs Have Town Split in Two*, CHI. TRIB., May 13, 1999, at 1. Some residents are even being driven out of the neighborhoods. See *id.* (“I probably will move out of Cicero just to get rid of the headaches.”).

270. See *id.*

271. Cf. Brief Amicus Curiae of the Chicago Neighborhood Organizations at 19-21, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121) (discussing the effects of gang intimidation on children).

272. “Allowing gang members to exercise their full rights makes life hell for people who live in the area.” Tony Mauro, *City Ordinances Targeting Gangs to get First Supreme Court Review*, USA TODAY, April 21, 1998, at 1A.

273. See Tony Mauro, *City Ordinances Targeting Gangs to get First Supreme Court Review*, USA TODAY, April 21, 1998, at 1A.

274. See *id.*

275. See generally *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999); see generally also *Morales*, 119 S. Ct. 1849 (O’Connor, J., concurring).

276. See Chicago, Ill., Municipal Code § 8-4-015 (1992).

only to those “reasonably believed to be gang members.”²⁷⁷ Is Justice O’Connor suggesting that all Chicago has to do to correct the Ordinance is remove the words “shall order all such persons to disperse” and replace them with the words “shall order the person reasonably believed to be a criminal street gang member to disperse”?²⁷⁸ Is it that easy? If this is what Justice O’Connor is suggesting, Morales seems to be a case of form over substance, where Chicago simply has not made it past the red tape of a proper ordinance.²⁷⁹ Further, if this is what Justice O’Connor is suggesting, is she then in agreeance with those who believe criminal street gang members do not have a right to loiter, while those who are not criminal street gang members do, thus suggesting the liberties of some should be restricted to protect the majority?²⁸⁰

If Chicago redrafts the Ordinance in the manner suggested by Justice O’Connor, and it is brought before the Court, Justice O’Connor will likely approve of the new Ordinance, as well as Justice Kennedy, who is also concerned with putting people on notice concerning to whom the Ordinance applies, and thus, a different outcome.²⁸¹

F. Any Suggestions?

1. Tolerate Vagueness

It has been contended that a certain amount of vagueness is acceptable when outweighed by the pursuit of a significant legislative end.²⁸² A certain amount of negative consequences due to the enforcement of a statute should be tolerated because of the severity of the crime.²⁸³ An example of where this idea has occurred in the past is with an obscenity law, discussed in *Paris Adult Theatre I v. Slaton*,²⁸⁴

277. See *Morales*, 119 S. Ct. at 1864 (O’Connor, J., concurring).

278. See *id.*

279. See Betty Loren, *Ridding Cicero of Gangs*, CHI. TRIB., May 4, 1999, at 14.

280. See Tony Mauro, *City Ordinances Targeting Gangs to get First Supreme Court Review*, USA TODAY, April 21, 1998, at 1A (“Allowing gang members to exercise their full rights makes life hell for people who live in the area.”). Cf. *Kolender v. Lawson*, 461 U.S. 352 (1983) (stating that public order must be maintained to maximize freedoms).

281. “[W]hen this Court is confronted with a more specifically worded ordinance, which avoids the mire of vagueness, the Court will likely find that community safety concerns outweigh an individual’s fundamental liberty interests.” Clark, *supra* note 19, at 146 (stating that the Justices are keenly aware of the gang problems facing the communities). Clark also states that those in favor of the Ordinance will be encouraged because of the Court’s seeming willingness to accept a more specifically worded ordinance. See *id.* at 146 (“This Court, in opting for the middle ground, in all likelihood has placed the value of community safety above that of individuals and their personal freedom to move freely throughout their community.”). However, Clark says that it is not clear what the tradeoff will be between individual liberty and community because the Court did not fully discuss the issue of whether loitering is a fundamental right. See *id.* at 148.

282. See generally *Batey*, *Supra* note 24.

283. See *id.*

284. 413 U.S. 49 (1973).

where the justices balanced many factors.²⁸⁵ In *Slaton*, the justices “invoke ‘the quality of life and the total community environment, the tone of commerce in the great city centers, and, possibly, the public safety itself,’” to express the importance of obscenity laws, and thus, justify the toleration of some vagueness.²⁸⁶ “Core crimes,” such as homicide and rape, are examples of statutes drafted with substantial ambiguity, yet the courts tolerate such ambiguity because of the severity of such crimes.²⁸⁷ Therefore, the courts must look to the severity of the crime, as well as the significance of the legislative goal.²⁸⁸ In no way discrediting obscenity laws, could it not be said that the murders committed by criminal street gangs are just as severe as the crimes committed by the obscene, if not more?²⁸⁹ If the courts are willing to accept vagueness in a statute that protects people who suffer no physical injury, should they not also accept vagueness in a statute meant to save the lives of many citizens?²⁹⁰ I would venture to say that the people living on the south side of Chicago would say yes.

2. Factor in Burdens on Community Residents

The Chicago Neighborhood Organizations suggest that the precision of an ordinance’s wording should depend upon the breadth of the burden placed upon the liberties of residents of the community, by that ordinance.²⁹¹ If the community is internalizing the weight of the ordinance, then the level of scrutiny applied by the Court should be reduced.²⁹² The Chicago Neighborhood Organizations suggest that *Papachristou*²⁹³ and *Shuttlesworth*²⁹⁴ are examples of where precision in an ordinance is necessary because the ordinance is focused upon politically

285. See *Batey*, *Supra* note 24, at 10-11 (citing *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 58 (1973)).

286. See *id.* at 11 (discussing *Slaton*, 413 U.S. 49).

287. See *id.* at 12.

288. See generally *id.* *Batey* believes the Court “implicitly undervalued the state’s necessity argument [in *Kolender*] and the California statute on which the argument was based.” See *id.* at 14.

289. Cf. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 58 (1973) (quoting Alexander Bickel, *On Pornography: Concurring and Dissenting Opinions*, 22 PUB. INTEREST 25, 26 (1971) (stating that to grant a person the right to be obscene in public would be to grant that person a right “to affect the world about the rest of us, and to impinge on other privacies”)).

290. See *id.*

291. See Brief Amicus Curiae of the Chicago Neighborhood Organizations at 4, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121).

292. Brief Amicus Curiae of the Chicago Neighborhood Organizations at 5, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121). See also *Meares and Kahan*, *supra* note 32, at 209 (stating that the court should ask whether the community has taken on part of the burden that particular policing laws have on individual liberties, and if so, the court should assume those laws are not a violation on individual rights).

293. 405 U.S. 156 (1972).

294. 382 U.S. 87 (1965).

disadvantages minorities.²⁹⁵ However, the Chicago Neighborhood Organizations assert that that is not the situation today, and that the Court should be more flexible in its vagueness analysis.²⁹⁶

VI. CONCLUSION

Few people can truly grasp the lifestyle residents of gang-dominated neighborhoods in Chicago must endure.²⁹⁷ Even though the Justices in *City of Chicago v. Morales* recognize the problems created by criminal street gangs, the Justices read the Chicago Gang Congregation Ordinance with particularity, and denied the Ordinance's constitutionality.²⁹⁸ Although personal liberty should be protected for everyone, it seems inherently unfair for people to live in fear, constantly looking out their windows and over their shoulders.²⁹⁹ In its discussion of whether the use of a public nuisance injunction against criminal street gangs is constitutional, the court in *People ex rel. Gallo v. Acuna*³⁰⁰ concluded:

To hold that the liberty of the peaceful, industrious residents of Rocksprings must 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.³⁰¹

Yet, there are some who believe that gang member or not, everyone should be entitled to all the rights guaranteed by the Constitution.³⁰²

After Justice O'Connor's concurring opinion, it seems possible that the Ordinance can be modified so as to remove the vagueness and withstand constitutional scrutiny.³⁰³ However, when all is said and done, the original

295. See Brief Amicus Curiae of the Chicago Neighborhood Organizations at 6, *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999)(No. 97-1121).

296. See *id.* at 10-11.

297. See *Opinion Ruling Need Not Signal End of Anti-Gang Efforts*, ATLANTA J., June 14, 1999, available in 1999 WL 3778106; see also Walston, *supra* note 249, at 74 (stating that criminal street gangs are an unreasonable interference with public rights). However, there is one misguided individual who firmly defends street gangs, going so far to state that gangs are the equivalent of college fraternities and the Boy Scouts. See Matthew Mickle Werdegar, *Enjoining the Constitution: The Use of Public Nuisance Abatement Injunctions Against Urban Street Gangs*, 51 STAN. L. REV. 409, 431-32 (1999) (stating that anti-gang injunctions are a flawed and ineffective measure against crime).

298. But see Betty Loren, *Ridding Cicero of Gangs*, CHI. TRIB., May 4, 1999, at 14 ("It seems as if whenever certain municipalities or governmental leaders try to do some good for their constituents, they automatically come under fire."). See generally *City of Chicago v. Morales*, 119 S. Ct. 1849 (1999).

299. See Gerard Aziakou, *Latinos in Chicago Suburb Outraged by Anti-Gang Ordinance*, AGENCE FRANCE-PRESSE, April 30, 1999, available in 1999 WL 2593738 (quoting Cicero town president, Betty Loren, who stated that "[I]f [the ordinance] is unconstitutional, then somebody ought to look at the Constitution," when discussing the restraining of liberties).

300. 929 P.2d 596 (1997).

301. See *ex rel. Gallo v. Acuna*, 929 P.2d 596, 618 (Cal. 1997) (claiming to be reaffirming the fundamental values of order and liberty expressed by Tocqueville).

302. See generally Werdegar, *supra* note 297 (expressing his disapproval of the anti-gang injunctions).

303. See *City of Chicago v. Morales*, 119 S. Ct. 1849, 1864 (1999).

question is once again asked; is it ok to restrain personal liberty to protect the greater community? Unfortunately, there is no concrete answer and it is not likely that a consensus will ever be reached.

KEASA HOLLISTER³⁰⁴

304. J.D. Candidate, 2001. Special thanks to my mom, dad, and big sib. Without them, I would accomplish nothing.

