

Nos. 08-4241, 08-4243, and 08-4244 (Consolidated)

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

National Rifle Association of America, Inc., et al., Plaintiffs-Appellants,

v.

City of Chicago, Defendant-Appellee.

National Rifle Association of America, Inc., et al., Plaintiffs-Appellants,

v.

Village of Oak Park and David Pope, President, Defendants-Appellees.

Otis McDonald, et al., Plaintiffs-Appellants,

v.

City of Chicago, Defendant-Appellee.

On Appeal From The United States District Court
For The Northern District of Illinois
Case Nos. 08-C-3645, 08-C-3696, 08-C-3697
Honorable Milton I. Shadur, Senior District Judge

**BRIEF OF ILLINOIS MUNICIPAL LEAGUE,
VILLAGE OF WINNETKA, AND VILLAGE OF SKOKIE
AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLEES AND IN
FAVOR OF AFFIRMING THE DISTRICT COURT'S JUDGMENT**

Roger Huebner
General Counsel
ILLINOIS MUNICIPAL LEAGUE
500 East Capitol Avenue
P.O. Box 5180
Springfield, Illinois 62705
(217) 525-1220

Katherine S. Janega
Village Attorney
VILLAGE OF WINNETKA
510 Green Bay Road
Winnetka, IL 60093
(847)501-6000

J. Patrick Hanley
Corporation Counsel
VILLAGE OF SKOKIE
5127 Oakton Street
Skokie, Illinois 60077
(847)933-8270

April 28, 2009

Charles F. Smith*
333 West Wacker Drive, Suite 2100
Chicago, IL 60606
(312) 407-0700
**Counsel of Record*

Clifford M. Sloan
1440 New York Avenue, N.W.
Washington, DC 20005
(202) 371-7000

Ryan Hagglund
Anand Viswanathan
Four Times Square
New York, NY 10036
(212) 735-3000

*Counsel for Amici Curiae
Illinois Municipal League, the Village of
Winnetka, and the Village of Skokie*

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To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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Attorney's Signature: /s/ Ryan Hagglund Date: _____

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Attorney's Signature: /s/ Cliff Sloan Date: _____

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Attorney's Signature: /s/ Anand Viswanathan Date: _____

Attorney's Printed Name: _____

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Attorney's Signature: /s/ J. Patrick Hanley Date: _____

Attorney's Printed Name: _____

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Attorney's Signature: /s/ Katherine S. Janega Date: _____

Attorney's Printed Name: _____

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Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, the Illinois Municipal League (“IML”), the Village of Winnetka (“Winnetka”), and the Village of Skokie (“Skokie”) respectfully submit this brief as *amici curiae* in support of Defendants-Appellees City of Chicago, the Village of Oak Park, and Oak Park President David Pope (“Defendants-Appellees”) and in favor of affirmance of the district court’s judgment. All parties to these consolidated appeals have consented to the filing of this brief. *See* Fed. R. App. P. 29(a).

STATEMENT OF INTEREST

Amicus IML is a non-profit, non-political association of 1134 Illinois cities, villages, and incorporated towns recognized by statute as the instrumentality of its members. *See* 65 Ill. Comp. Stat. Ann. 5/1-8-1 (West 2006). The IML articulates, defends, maintains, and promotes the interests and concerns of Illinois municipalities. These municipalities—rural, suburban, and urban—face diverse challenges. Some choose to regulate the possession and use of firearms, and others adopt relatively few firearms regulations. The municipalities adopt these varying regulatory positions in response to differing conditions that exist among the communities. IML files this brief because the outcome of this case could threaten the ability of its member municipalities to tailor firearms policies to respond to local conditions and problems.

Amici Winnetka and Skokie are municipal corporations of the State of Illinois, and possess “home rule” authority under the Illinois Constitution. The Court’s ruling in this matter may significantly affect the ability of these *Amici* to develop

firearms policy pursuant to their responsibility under the Illinois Constitution to protect the public health, safety, and welfare of their citizens in the manner that best suits the needs and desires of their communities.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Illinois Constitution grants qualifying municipalities the “home rule” right and responsibility “to regulate for the protection of the public health, safety, morals, and welfare.” Ill. Const. art. VII, § 6(a). In our federal system, within constitutional limits, state and local governments are permitted to adopt different responses to local conditions. As Justice Louis Brandeis famously explained about the value of discretion in grappling with vexing social problems, “[d]enial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting); accord *Chandler v. Florida*, 449 U.S. 560, 579 (1981) (quoting *Liebmann*); *Miller v. Sch. Dist. Number 167*, 495 F.2d 658, 667 n.33 (7th Cir. 1974) (same).

One of the essential elements of the police power granted to home rule municipalities in Illinois is the right to regulate firearms. Firearms are lethal weapons. Regulation of firearms reflects democratic decisions and local conditions, taking into account the urban, suburban, or rural character of the community, as well as the needs, experiences, and desires of the local population. The conditions

in urban environments like Chicago are vastly different from the conditions in rural areas of Wyoming and Montana, where the need for citizens to protect themselves from wild animals may remain a pressing concern. *See, e.g.,* Michael Babcock, *Hunters Beware, There Are Ravenous Bears in Those Hills*, Great Falls Trib., Oct. 21, 2004 (Outdoors), at 20 (describing deadly bear attacks on Montana hunters and cautioning hunters “[y]ou need to have a way to defend yourself”) (quoting U.S. Fish and Wildlife Service special agent Tim Eicher).

In response to local conditions and local preferences, some Illinois communities choose to regulate firearms. Others conclude that the most effective firearms regulation is nearly none at all. Plaintiffs ask this Court to impose a uniform federal constitutional command that would restrict the authority of municipalities to regulate handguns. As set forth by Defendants-Appellees, binding precedent forecloses this result. (*See* Br. of Defs.–Appellees, at 14-20.) *Amici* respectfully submit that core principles of federalism in this context also counsel continued respect for the will of the people of Illinois to regulate lethal firearms at the local level.

Municipalities in Illinois exercise the authority that they have been granted in different ways. Given the diverse conditions across Illinois, and throughout the nation, communities should continue to be permitted to craft their firearms policies depending on current community circumstances, with a ready acknowledgement that those policies, and the circumstances on which they depend, may change over time. The question before this Court, therefore, is not “what” the ideal firearms

policy should be, but instead “who” should make it. Consistent with constitutional structure, and with longstanding practice and precedent, the development of local firearms policy should remain in the hands of state and local governments, which best respond to local needs.

For the assistance of the Court in understanding the nature and breadth of Illinois municipalities’ response to local conditions, this *amicus* brief will set forth examples of two responses that communities in Illinois, through their duly elected representatives, chose to adopt: (1) the Village of Winnetka, which decided to restrict handguns after a tragic shooting rampage in a schoolhouse, and (2) the City of Chicago, which decided to restrict handguns in the face of pervasive gun-related violence. *Amici* do not submit that these responses are necessarily the correct or only responses to these problems. Instead, *Amici* submit that these responses to one of the most pressing of all public policy issues—the safety of the community—were permissible exercises of legitimate authority, just as were the considered decisions of other communities not to regulate handguns (or to regulate them lightly).

I. The Winnetka Regulation

Winnetka, Illinois is an example of a community that chose to regulate deadly firearms after the searing tragedy of a shooting rampage in a schoolhouse and the murder of a school boy. Winnetka also is an example of a community that recently felt compelled to repeal its regulation in response to litigation brought by the National Rifle Association, one of the Plaintiffs-Appellants.

A. Winnetka's experience with an elementary school shooting rampage

On the morning of May 20, 1988, a mentally ill woman named Laurie Dann entered Hubbard Woods School in Winnetka with three handguns in the waistband of her shorts. She accosted a six-year-old boy at a drinking fountain, dragged him into a bathroom and shot him, leaving him gravely wounded. She then entered a classroom and attempted to herd the children into a corner. When a teacher attempted to wrest the gun from Ms. Dann's hand, she broke free and shot five more children, killing an eight-year-old boy.¹

Ms. Dann then fled in her car. After her vehicle struck a boulder, she entered a nearby home and took a family of three hostage, seriously wounding one of them. As police surrounded the home, Ms. Dann used one of her guns to take her own life.²

Ms. Dann had purchased her guns legally, starting in 1986. Nothing in federal or Illinois law prohibited her from obtaining or owning a handgun at any point prior to her rampage. She truthfully stated on her application for a Firearm Owner's Identification card that "she had never been institutionalized for a mental disorder or convicted of a serious crime."³ Although local police were sufficiently concerned

¹ See Lisa Black & Bonnie Miller Rubin, *Unshakable Anguish: Old Wounds and New Paths Emerge for 3 Two Decades After Dann Shooting Rampage*, Chi. Trib., May 20, 2008 (Metro), at 1; Joyce Egginton, *Day of Fury: The Story of the Tragic Shootings That Forever Changed the Village of Winnetka* (Wm Morrow & Co. 1st ed. 1991); Joel Kaplan et al., *Through the Cracks*, Chi. Trib., May 14, 1989 (Sunday Magazine), at 10.

² See authorities cited in note 1, *supra*.

³ Kaplan et al., *supra* note 1.

to discuss Ms. Dann's firearm purchase with her father, Laurie Dann was entitled to possess a handgun by law.⁴

By the time Ms. Dann bought two more handguns in late 1987, authorities suspected her of attacking her estranged husband with an ice pick and ransacking her parents' house before reporting the incident as a burglary. Ms. Dann also had been arrested twice for telephone harassment and had made false assault charges against her estranged husband. In the same time period, she was receiving outpatient psychiatric care. Ms. Dann also had set fires in dormitory rooms, slashed furniture belonging to babysitting clients, and exhibited a strange, ritual fascination with raw meat. By early 1988, Ms. Dann was gathering library books on poisoning and keeping lists of people she wanted to kill. Her telephone harassment had also escalated to death threats. She was investigated by the FBI for making threatening phone calls to a former boyfriend across state lines, but she was not prosecuted because the victim refused to sign a complaint. All the while, Ms. Dann remained lawfully in possession of three handguns.⁵

B. Winnetka's response

In the wake of Ms. Dann's shooting rampage and her schoolhouse murder of an eight year old boy, local residents campaigned to limit handguns in the Village.

⁴ See authorities cited in note 1, *supra*.

⁵ See *id.*

Winnetka residents voted 2125 to 1407 in favor of regulating handguns in a nonbinding advisory referendum.⁶

Soon after the vote by residents, the Village Council unanimously enacted an ordinance banning private ownership of handguns and adopting other requirements related to lethal firearms and ammunition. The ordinance stated, “Winnetkans have indicated ‘their desire that the village take further steps to regulate the possession of firearms in the village’ because of their use in violent crimes and because they contribute to accidental deaths and injuries.”⁷

Winnetka maintained its democratically adopted handgun regulation for nearly twenty years.

C. Forced repeal of the Winnetka ordinance

In June 2008, the Village President described the ordinance as “an expression of the kind of community we want to be.”⁸

A few months later, however, the National Rifle Association and three Winnetka residents named Winnetka as a defendant in a lawsuit much like this one. *See* Complaint, *Nat’l Rifle Ass’n of Am., Inc. v. Village of Winnetka*, No. 08 CV 5439 (N.D. Ill. Sept. 23, 2008). Winnetka concluded that it was compelled to repeal its

⁶ *See* John Lucadamo, *Winnetka Enacts Ban on Handguns*, Chi. Trib., Apr. 12, 1989 (Chicagoland), at 1.

⁷ *Id.* (quoting the ordinance).

⁸ James Kimberly & Andrew L. Wang, *Suburbs with Gun Bans Split on Court Ruling*, Chi. Trib., June 27, 2008, at 20 (quoting Winnetka Village President Ed Woodbury).

regulation.⁹ Although the Village’s trustees believed that the handgun ordinance benefited the community and reflected its values, they decided that they could not risk the litigation expenses necessary to defend the ordinance.¹⁰ In voting for repeal, one trustee noted the Council’s responsibility to “balance community values with community prudence.”¹¹ After the Village repealed the ordinance, the plaintiffs agreed to dismiss the action without prejudice, and it was dismissed the following day. See Stipulation of Dismissal, *Nat’l Rifle Ass’n of Am., Inc. v. Village of Winnetka*, No. 08 CV 5439 (N.D. Ill. Dec. 16, 2008); Order, *Nat’l Rifle Ass’n of Am., Inc. v. Village of Winnetka*, No. 08 CV 5439 (N.D. Ill. Dec. 17, 2008) (attached as Exhibit A).

* * * * *

Unlike other Illinois communities that have chosen not to regulate handguns extensively, Winnetka decided to restrict handguns. It elected to do so after a handgun wielding-assailant invaded one of its elementary schools, shot six of its students, and murdered one of them in the sanctity of his school. For almost twenty

⁹ Winnetka Vill. Council, Regular Meeting Minutes (Nov. 18, 2008) (hereinafter “Meeting Minutes”), available at [http://www.amlegal.com/nxt/gateway.dll/Illinois/winnetka_minutes/winnetkavillagecouncilmeetingminutes?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:winnetkamins_il](http://www.amlegal.com/nxt/gateway.dll/Illinois/winnetka_minutes/winnetkavillagecouncilmeetingminutes?f=templates$fn=default.htm$3.0$vid=amlegal:winnetkamins_il) (last visited Apr. 27, 2009); Lisa Black, *Winnetka Repeals Gun Ban; Court Ruling, Suit Undo Law OKd After ‘88 Dann Shooting*, Chi. Trib., Nov. 20, 2008, at 30.

¹⁰ See Meeting Minutes, *supra* note 9; Black, *Winnetka Repeals Gun Ban*, *supra* note 9.

¹¹ Meeting Minutes, *supra* note 9.

years, the Village adhered to this democratic decision until it believed it was compelled to change its policy by the initiation of litigation.

II. The Chicago Regulation

Chicago is one of the largest and most densely-populated cities in the nation. It is home to nearly three million residents, and an approximately additional seven million people live in the surrounding metropolitan area.

Since 1982, acting pursuant to its home rule and police power authority, Chicago has maintained a ban on most handguns. (*See Br. of Defs.—Appellees*, at 6.) The City’s regulation, of course, is the subject of two of the three consolidated cases before the court.

Whatever one thinks of the wisdom of Chicago’s policy decision, three important facts related to firearms in Chicago are necessary to understand the local conditions that the regulation is intended to address. They shed light on the governmental decision that Chicago has made in response to those local conditions.

First, firearms violence is a prominent element of crime in Chicago. Second, handguns play a significant role in Chicago’s firearms violence. Third, Chicago is a city of high density and close proximity of its citizens in urban neighborhoods, which adds to the risks to the populace from firearms violence.

A. The prevalence of firearms violence

Over 70% of murders committed in Chicago in each year between 1993 and 2005 involved guns. *See Chi. Police Dep’t, 2005 Murder Analysis* 25, 27 (hereinafter “*2005 Murder Analysis*”), available at

<https://portal.chicagopolice.org/portal/page/portal/ClearPath/News/Statistical%20Reports/Homicide%20Reports/2005%20Homicide%20Reports/Murder2005.pdf> (last visited Apr. 27, 2009). In 2005, over 75% of Chicago murders were committed with firearms. *See id.* The number of murders involving the use of guns in Chicago rose by more than 80% between 1985 and 1994. *See Ray Risley, A Police Officer's Perspective on Gangs, Drugs, and Guns on the Streets of Chicago*, in 18 *The Compiler* 4, at 4 (Daniel Dighton, ed., Ill. Criminal Justice Information Auth. Fall 1998), available at <http://www.icjia.state.il.us/public/pdf/compfall98.pdf> (last visited Apr. 27, 2009).

Much of this violence results from local gang activity. Street gang altercations were the most frequent cause of murder in Chicago in 2005, accounting for over 31% of murders in the city. *See 2005 Murder Analysis, supra*, at 28-30. Altogether, gang activity caused over 38% of the murders committed in Chicago in 2005. *See id.* at 30. Firearms were at the center of these events. Between 1991 and 2005, approximately 95% of all gang-motivated murders in Chicago were committed using firearms. *See id.* at 50, 58. The local gang activity, with its extensive use of firearms, often involves the supply and distribution of illegal drugs. *See Risley, supra*, at 4-5; *2005 Murder Analysis, supra*, at 28-30.¹²

¹² Chicago's gangs are developing direct access to drug sources in Mexico. *See Nat'l Gang Intelligence Ctr., National Gang Threat Assessment 2009*, at 15 (2009), available at <http://www.fbi.gov/publications/ngta2009.pdf> (last visited Apr. 27, 2009).

B. The role of handguns

Handguns play a dominant role in Chicago's firearms-related crimes. In 2005, over 96% of homicides committed using a firearm in Chicago and approximately 73% of Chicago's homicides overall involved handguns. *See 2005 Murder Analysis, supra*, at 25-26. Furthermore, handguns accounted for more than 86% of "crime guns," defined as guns used in a crime, suspected to have been used in a crime, or illegally possessed, that were recovered or traced by police in Chicago in 2000. *See Bureau of Alcohol, Tobacco & Firearms, U.S. Dep't of Treasury, Crime Gun Trace Reports (2000) Chicago, IL 6, A-3 (July 2002), available at <http://www.atf.gov/firearms/ycgii/2000/cityreports/chicagoil.pdf> (last visited Apr. 27, 2009).*

The significant role of handguns in Chicago's firearms-related violence does not, of course, detract from the city's authority to adopt and maintain its regulation of handguns. Indeed, some observers report that handguns and ammunition in Chicago, on a comparative basis, are difficult to obtain. We cite these reports not because we necessarily agree with them or their conclusions, but rather to show the importance of vesting discretion and judgment for public safety issues in the hands of duly elected local officials, who are best equipped to make judgments about the health and well-being of the local community.

According to one group of researchers, for example, guns in Chicago are now more difficult to obtain in Chicago than in other cities. *See Philip J. Cook et al., Underground Gun Markets*, 117 *Econ. J.* F558, F573 (2007). Accordingly, many young people and criminals in Chicago have a difficult time obtaining a gun. Philip

J. Cook et al., *Gun Control After Heller: Threats and Sideshows from a Social Welfare Perspective*, 36-37 (Law Sch., Univ. of Chi., John M Olin Law & Econ. Working Paper, Paper No. 56 (2d Series), 2009), 56 UCLA L. Rev. (forthcoming 2009), available at <https://www.law.uchicago.edu/files/454-259.pdf> (last visited Apr. 27, 2009) (citing Cook et al., *Underground Gun Markets*, *supra*). Underground gun markets in Chicago are characterized by high transaction costs and price mark-ups, as compared to gun markets elsewhere. See Cook et al., *Underground Gun Markets*, *supra*, at F558, F561, F564-65, F572, F580-81 (2007); Philip J. Cook & Jens Ludwig, *Aiming for Evidence-Based Gun Policy*, 25 J. Pol'y Analysis & Mgmt. 691, 713-14 (2006); Robert Blau, *Cop Death Resurrects Guns as Issue*, Chi. Trib., Jan. 11, 1991, at 1.

Furthermore, according to one study, approximately thirty to forty percent of attempted illegal gun transactions in Chicago fail. Reasons for this failure include the broker's inability to procure a gun from a supplier, failure of the customer and broker to agree on a place for the transaction, the broker's distrust of the customer's intentions, and the broker's suspicion that the customer is a law enforcement officer. See Cook et al., *Underground Gun Markets*, *supra*, at F565. Likewise, according to empirical research, ammunition (which, like handguns, is generally illegal in Chicago) carries a markup up to fifty times higher in Chicago than elsewhere. See *id.* at F567-68. Ammunition in Chicago reportedly is scarce: waits of one to four weeks in the underground market are not uncommon. See *id.* at F567.

Interviews with individuals arrested in Chicago conducted in 1996 and 1997 also demonstrate the difficulties prospective criminals face in obtaining a gun in Chicago. About 70% of surveyed Chicago arrestees who never owned a gun but said that they might want a gun said that it would take them at least one week to procure a gun or that they would be unable to obtain one. *See id.* at F574. Only about 60% of such arrestees surveyed in other cities said the same. *See id.* Likewise, around 15% of this group of Chicago arrestees—compared to around 20% of such arrestees surveyed in other cities—said that they could obtain a gun in one day. *See id.*

Along the same lines, gun ownership among arrestees in Chicago is lower than in other parts of the country. In Chicago, 21% of surveyed arrestees reported that they have owned a gun at some point prior to their arrest, while the respective mean and median percentages for twenty-two cities across the country in which arrestees were surveyed were 31% and 33%. *See id.* Among gang members arrested in Chicago and surveyed, 30% reported having owned a gun while 58% of gang members arrested in other cities stated that they had owned one. *See id.* at F577. In addition, some commentators have noted that Chicago's handgun ban may also have helped to reduce criminal access to guns by preventing licensed gun dealers from locating in high-crime neighborhoods in the city. *Id.* at F576.

Some researchers also highlight other characteristics about gun violence in Chicago. For instance, according to one study, once factors such as race, urbanicity, population, and the burglary rate are controlled for, the proportion of homicides and robberies between 1994 and 1996 that involved guns was about six percentage

points lower in Cook County, Illinois, which is dominated by Chicago, compared to the other 200 largest counties in the country. *Id.* at F580. The result is similar when the burglary rate is not controlled for. *See id.* at F580 & n.39. According to another report, in 1982, the year when Chicago's handgun ban came into effect, the number of handgun homicides in Chicago dropped significantly and remained at similar low levels for the next seven years, followed by a short spike, and a return to levels nearly as low as those observed in 1982. *See* Carolyn Rebecca Block & Antigone Christakos, Ill. Crim. Just. Info. Auth., *Major Trends in Chicago Homicide* 18 (Sept. 1995).

In short, handguns continue to play a prominent role in firearms-related crime in Chicago, and the role of guns in Chicago crime has been extensively monitored and studied.

C. Population density

Chicago has an exceptionally high population density. As many as 12,522 people per square mile live in Chicago – a density over 160 times greater than that of the country as a whole.¹³ The number of people likely to be in range when a gun is fired in a densely populated city like Chicago thus is much higher than in most parts of the country. *See, e.g., United States v. Cavera*, 550 F.3d 180, 204 (2d Cir. 2008) (en

¹³ *See* infoplease, *Profiles of the 50 Largest Cities of the U.S.: Chicago, Ill.*, <http://www.infoplease.com/ipa/A0108493.html> (last visited Apr. 27, 2009); *United States v. Lucania*, 379 F. Supp. 2d 288, 295 n.3 (E.D.N.Y. 2005) (gathering data showing that the population density of the United States as a whole is 78 people per square mile), *aff'd sub nom., United States v. Cavera*, 550 F.3d 180 (2d Cir. 2008) (en banc).

banc) (Raggi, J., concurring) (explaining the risk of injuries from firearms in a high-density urban environment).

Therefore, Chicago’s policy decision to exercise its home rule authority by prohibiting the general availability of handguns, which is a policy decision different from that of many Illinois communities facing different local conditions, arises in the specific local context of extensive firearms violence, the prominence of handguns in criminal assaults, and a high density of citizens living and working in close proximity.

* * * * *

Pursuant to longstanding authority, different communities in Illinois have regulated deadly firearms with different policies. The decision about whether, and how extensively, to regulate such lethal weapons is a fundamental concern of community governance. Permitting local governments to continue to exercise this cardinal authority, which is central to decisions about the protection of life and safety within the community, powerfully advances the principles and values of ordered liberty and a civil society.

CONCLUSION

For the foregoing reasons, and those advanced in the Brief of Defendants-Appellees, *Amici* urge this Court to affirm the district court's judgment.

Dated: April 28, 2009
Chicago, Illinois

Respectfully submitted,

Roger Huebner
General Counsel
ILLINOIS MUNICIPAL LEAGUE
500 East Capitol Avenue
P.O. Box 5180
Springfield, Illinois 62705
(217) 525-1220

By: /s/ Charles F. Smith
Charles F. Smith

333 West Wacker Drive, Suite 2100
Chicago, IL 60606
(312) 407-0700

Katherine S. Janega
Village Attorney
VILLAGE OF WINNETKA
510 Green Bay Road
Winnetka, IL 60093
(847)501-6000

Clifford M. Sloan
1440 New York Avenue, N.W.
Washington, DC 20005
(202) 371-7000

J. Patrick Hanley
Corporation Counsel
VILLAGE OF SKOKIE
5127 Oakton Street
Skokie, Illinois 60077
(847)933-8270

Ryan Hagglund
Anand Viswanathan
Four Times Square
New York, NY 10036
(212) 735-3000

*Counsel for Amici Curiae
Illinois Municipal League, the Village of
Winnetka, and the Village of Skokie*

EXHIBIT A

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Rebecca R. Pallmeyer <i>RRP</i>	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 C 5439	DATE	12/17/2008
CASE TITLE	National Rifle Association of America, Inc., et al vs. Village of Winnetka		

DOCKET ENTRY TEXT

Status hearing held on 12/17/2008. The parties stipulate that this cause be dismissed without prejudice, each party to bear its own costs and fees, and Defendant's motion to dismiss [20] is stricken as moot. Rule 16 conference stricken.

Notices mailed by Judicial staff.

00:01

Courtroom Deputy Initials:	ETV
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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS**

I hereby certify that the foregoing brief complies with the type-volume limitation specified by Fed. R. App. P. 29(d) and Fed. R. App. P. 32(a)(7)(B). This brief contains 3,852 words, excluding portions of the brief excluded by Fed. R. App. P. 32(a)(7)(B)(iii). In preparing this certificate, I relied on the word count of the word-processing system used to prepare the brief, which was Microsoft Word 2003.

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 7th Cir. R. 32(b), and the type-style requirements of Fed. R. App. P. 32(a)(6). This brief has been prepared in proportionately spaced typeface using Microsoft Word 2003 in 12-point Century Schoolbook font with footnotes in 12-point Century Schoolbook font.

By: /s/ Charles F. Smith
Charles F. Smith

*Attorney for Amici Curiae
Illinois Municipal League, the Village of
Winnetka, and the Village of Skokie*

Dated: April 28, 2009
Chicago, Illinois

CERTIFICATE OF COMPLIANCE WITH 7TH CIR. R. 31(e)(1)

In accordance with 7th Cir. R. 31(e)(1), I hereby certify that a digital version of the Brief of *Amici Curiae* Illinois Municipal League, Village Of Winnetka, and Village Of Skokie has been furnished to the court. I further certify that the digital version has been submitted to the Court and to Counsel on a CD-ROM that has been checked for viruses and is virus free.

By: /s/ Charles F. Smith

*Attorney for Amici Curiae
Illinois Municipal League, the Village of
Winnetka, and the Village of Skokie*

Dated: April 28, 2009
Chicago, Illinois

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2009, I caused two bound paper copies of the foregoing Brief of *Amici Curiae* Illinois Municipal League, Village Of Winnetka, and Village Of Skokie and one computer disc containing a digital version of the same to be served by United States mail on counsel of record at the addresses listed below.

By: /s/ Charles F. Smith
CHARLES F. SMITH, Attorney

Persons served:

Stephen P. Halbrook
Attorney at Law
Suite 403
3925 Chain Bridge Road
Fairfax, VA 22030

Alan Gura
Gura & Possessky, PLLC
Suite 405
101 N. Columbus Street
Alexandria, VA 22314

David G. Sigale
Law Firm of David G. Sigale, P.C.
Corporate West I, Suite 300-3
4300 Commerce Court
Lisle, IL 60532

David B. Kopel
Independence Institute
Suite 400
13952 Denver West Parkway
Golden, CO 80401

Anthony B. Sanders
Arnold & Kadjan
19 West Jackson Blvd., Suite 300
Chicago, IL 60604

Stephen A. Kolodziej
Brenner, Ford, Monroe & Scott, Ltd.
33 North Dearborn St., Suite 300
Chicago, IL 60602

William N. Howard
Freeborn & Peters
311 S. Wacker Drive, Suite 3000
Chicago, IL 60602

Maureen Martin
The Heartland Institute
Suite 903
19 S. LaSalle Street
Chicago, IL 60603

Professor Nelson Lund
George Mason University
School of Law
3301 Fairfax Drive
Arlington, VA 22201

William H. Mellor
Clark M. Neily III
Robert J. McNamara
Institute for Justice
901 N. Glebe Road, Suite 900
Arlington, VA 22203

Stefan Bijan Tahmassebi
3117 Woodland Lane
Alexandria, VA 22309

Professor Robert Cottrol
George Washington University
Law School
2000 H Street, N.W.
Washington, D.C. 20052

Elizabeth B. Wydra
Douglas T. Kendall
David H. Gans
Constitutional Accountability Center
Suite 502
1301 Connecticut Avenue, N.W.
Washington, D.C. 20036

John Daniel Reaves
General Counsel
United States Conference of Mayors
1620 I Street, N.W.
Washington, D.C. 20006

Gaines & Puljic, Ltd.
Of Counsel: Peter Ordower
10 S. LaSalle Street, Suite 3500
Chicago, IL 60613

Suzanne M. Loose
Room 800
30 North LaSalle Street
Chicago, IL 60602

Raymond L. Heise
123 Madison Street
Oak Park, IL 60302

Hans Germann
Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606

Charles Dyke
Nixon Peabody LLP
18th Floor
One Embarcadero Center
San Francisco, CA 94111-3600

Matthew M. Shors
O'Melveny & Myers, LLP
1625 Eye Street, N.W.
Washington, D.C. 20006