

Gun Violence as an Obstacle to Educational Equality

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ABSTRACT:

This paper addresses the issue of school gun violence as both a result and a cause of ongoing educational inequality. First, gun violence and homicides have reached epidemic levels in recent years among minority teenagers in the United States, and the constant disruption, trauma, and fear that go along with such day-to-day violence significantly affect the educational and psychological development of urban youth, and thus their eventual educational and career achievements. Second, media attention and recent legislative initiatives to permit or require guns in schools (arming teachers, etc.) focus on the comparatively rare phenomenon of active shooter scenarios (school massacres or shooting rampages), which are predominantly a suburban phenomenon, while ignoring the causes and effects of routine, lower-fatality gun incidents in poorer urban schools. Measures designed to prevent, or thwart, suburban mass shootings may in fact have deleterious effects in inner-city schools that face daily issues with gangs, gun carrying, and outbreaks of interpersonal violence. This paper will suggest that comprehensive community solutions to reduce gun violence are inseparable from policies promoting educational equality, as decreased gun violence boosts educational achievement and helps the school environment, and at the same time, improvements in educational equality can help further reduce gun violence in the community—the two are intertwined. In addition, this paper offers some bold suggestions regarding increased age restrictions for the purchase of guns and ammunition, training of school guidance counselors regarding firearm access by minors, and reduced presence of armed security and other school personnel within the school.

I. INTRODUCTION

A novel class-action lawsuit is underway in federal court in Chicago. The plaintiffs, representing a class of Chicago African American school children, link inexcusably high levels of gun violence with

childhood learning disabilities and a lack of reasonable accommodations.¹ On September 30, 2019, Judge Joan Gotschall issued a breathtaking thirty-four-page opinion denying in part the defendants' motion to dismiss and allowing the case to move forward to discovery.² The statutory basis for the claim is the Americans with Disabilities Act (ADA),³ along with the Illinois Civil Rights Act;⁴ the children-class representatives suffer post-traumatic stress disorder (PTSD) and other learning disabilities due to daily exposure to gun violence, including witnessing the shooting deaths of immediate family members.⁵ The plaintiffs are seeking injunctive relief in the form of state gun regulations, primarily directed at gun dealers, "which they contend would appreciably stem the tide of gun violence in Chicago."⁶ As redress, the

1. See Complaint at ¶¶ 31–34, *Powell v. Illinois*, No. 18-CV-6675, 2018 WL 4828746, at *15–18 (N.D. Ill. Oct. 3, 2018). For in-depth coverage and commentary at the time of filing, see Brian Freskos, *Chicago Parents Sue Governor, Arguing Inaction on Gun Violence Violates Kids' Civil Rights*, THE TRACE (Oct. 4, 2018), <https://www.thetrace.org/2018/10/chicago-gun-violence-children-ptsd-lawsuit>; Joe Kelly, *Illinois Mothers Sue State for Stricter Gun Control*, COURTHOUSE NEWS (Oct. 4, 2018), <https://www.courthousenews.com/illinois-mothers-sue-state-for-stricter-gun-control>.

2. See *Powell v. Illinois*, No. 18-CV-6675, 2019 WL 4750265, at *1 (N.D. Ill. Sept. 30, 2019); see also Annie Sweeney, *Judge: Victims of Chicago Violence Can Proceed with Lawsuit Seeking Tighter Control of Gun Sales*, CHIC. TRIBUNE (Oct. 2, 2019, 4:58 AM), <https://www.chicagotribune.com/news/breaking/ct-chicago-gun-violence-court-ruling-20191001-jwvd5rrgarejmdx5iq4bhs7xi-story.html>; Ryan J. Farrick, *Chicago Gun Violence Victims' Lawsuit Goes Ahead*, LEGAL READER (Oct. 3, 2019), <https://www.legalreader.com/chicago-gun-violence-victims-lawsuit>.

3. 42 U.S.C. § 12131 (1990).

4. 740 ILL. COMP. STAT. 23 / 5 (2008).

5. See *Powell*, 2019 WL 4750265, at *1.

6. See *id.* The Complaint charges that Illinois law enforcement officials have delayed or neglected a clear statutory mandate under state statutes to promulgate a clearer regulatory regime for disrupting the trade in illegal firearms. The plaintiffs seek eleven specific items of injunctive relief, many of which focus on moderate regulations of gun stores. They begin with background checks—the same that would apply to gun purchasers—for gun store employees, and video recordings of the customers making purchases (to deter and detect traffickers and straw purchasers). The third item is a state ban for gun stores to sell to straw purchasers; this is already a requirement under federal law, but notoriously under-enforced by the ATF. An innovative measure listed in the Complaint is a requirement that gun stores keep a log of gun sales that later turn up as crime guns, so that the store can thereafter ban the orig-

plaintiffs are seeking, at least primarily, the promulgation of regulations rather than enforcement actions.⁷ Of course, the September 30 decision, though significant, is merely a ruling on a motion to dismiss,

inal purchaser from buying more guns—unless the purchaser demonstrates a legitimate break in the chain of custody. The plaintiffs also seek a training requirement for gun store employees to identify straw purchasers, mandatory reporting of stolen guns from licensed dealers, mandatory alarm systems and surveillance cameras, and annual audits of anti-theft measures—on top of quarterly inventory audits. (Plaintiffs mention an ATF-published statistic of 16,000 stolen guns annually from licensed dealers). Among the final measures sought by the plaintiffs is a regulation banning “off-book” sales by dealers that circumvent federal background checks, and a ban on new gun stores who have owners or principles whose state dealer license has been revoked. For law enforcement itself, the plaintiffs seek a “Safety plan” for regular gun store audits, and a state registry that would record and track sales from licensed dealers. *See* Complaint, *supra* note 1, at ¶ 28.

7. The relief sought does not target gun manufacturers or dealers directly, or even gun owners, but state law enforcement officials as *regulators*, rather than *enforcers* in the traditional sense of policing and crime investigation. “. . . [The] plaintiffs want defendants to enact regulations, and this is not a non-prosecution case because defendants have passed no regulations to enforce.” *Powell*, 2019 WL 4750265, at *10. In the field of administrative law, lawsuits to compel government agencies to undertake specific enforcement actions are notoriously difficult to win, both on the merits and on standing grounds. *See* Dru Stevenson, *Special Solitude for State Standing: Massachusetts v. EPA*, 112 PENN ST. L. REV. 1, 60–63 (2007). After *Massachusetts v. EPA*, 549 U.S. 497 (2007), however, a distinction has emerged between actions to compel agency enforcement, versus actions to compel agencies to promulgate rules. The latter, under *Massachusetts*, is a stronger claim, especially for purposes of plaintiffs establishing standing, but potentially also on the merits, if there is a clear enough statutory mandate for an agency to regulate. Another similarity to *Massachusetts* is the complex issue of standing to sue, which was the focus of the defendants’ motion to dismiss and a large section of the opinion. *Massachusetts* was a case about the EPA’s refusal to regulate carbon dioxide emissions and the resulting effects of rising sea levels. *See Massachusetts*, 549 U.S. at 526 (state had standing to challenge denial of petition for rulemaking to abate third parties’ release of greenhouse gases). Similarly, the plaintiffs can articulate concrete and particularized injury-in-fact (medically diagnosed post-traumatic stress disorder and its direct effects on school behavior and learning), but the alleged injury is the combined effect of innumerable independent actors and factors, which in the aggregate are an indirect but foreseeable result of a government agency’s refusal (or failure) to regulate the activities of these actors. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 490–94 (2009) (holding that, regardless of the merits, the plaintiff lacked standing to sue in order to challenge a government agency’s failure to regulate because the regulations sought would arguably have helped prevent forest fires).

so the merits of the case are still undecided.⁸ As the plaintiffs point out, the ADA’s statutory definition of disability includes impairments on “major life activities,”⁹ which the statute defines as including “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”¹⁰ The race component of the case, interestingly, is present not to show discriminatory treatment or impact, at least primarily, but to define the class of injured parties in this ADA claim. The racial impact component does come into play under the secondary claim under the Illinois Civil Rights Act.¹¹

The judge’s opinion opens with a simple, sad observation: “It is common knowledge that, as the plaintiffs in this proposed class action allege, gun violence has ravaged the City of Chicago for decades and that the violence is concentrated in predominately African-American neighborhoods.”¹² Other courts have acknowledged this as well.¹³

8. See *Powell*, 2019 WL 4750265, at *1. The motion to dismiss focused mostly on an unsuccessful assertion that the plaintiffs lacked standing to sue. A trial on the merits is still in the future. *Id.* Most cases settle before trial, so this case could end in a pre-trial settlement sometime in the next few months, without generating a verdict on the merits or subsequent appellate decisions. I have argued elsewhere that procedural mechanisms facilitating pre-verdict settlements, such as trial bifurcation, present a downside in terms of transparency—important social harms do not come into the public view, which prevents a deliberative, aggregate policy response. See generally Dru Stevenson, *Reverse Bifurcation*, 75 U. CIN. L. REV. 213, 224 (2006). In the present case, I would argue that it is more important to implement measures as quickly as possible to reduce gun violence, and this particular issue already receives intense public debate and advocacy.

9. 42 U.S.C. § 12102(1)(A) (2016).

10. *Id.* § 12102(2)(A).

11. See Complaint, *supra* note 1, at ¶¶ 62–64.

12. *Powell v. Illinois*, No. 18-CV-6675, 2019 WL 4750265, at *1 (N.D. Ill. Sept. 30, 2019).

13. See, e.g., *Ezell v. City of Chicago*, 651 F.3d 684, 715 (7th Cir. 2011) (Rovner, J. concurring) (noting that Chicago “has legitimate, indeed overwhelming, concerns about the prevalence of gun violence within City limits.”); see also *Jennings v. Yillah-Chow*, 924 N.Y.S. 2d 519 (N.Y. App. Div. 2011) (holding that the best interests of children would be served by permitting custodial mother’s request to relocate children away from a neighborhood plagued with gun violence).

Chicago has one of the highest rates of gun homicides in the country,¹⁴ and twenty percent of the homicide victims in Chicago are teenagers or younger.¹⁵ The racial disparity among victims is striking: eighty percent of the murder victims in Chicago are African-American, even though African-Americans are only about one-third of Chicago's total population;¹⁶ African-American men from age fifteen to thirty-four are only 4% of the city's population, but they comprise half of the homicide victims.¹⁷ The national homicide rate is around 5 per 100,000, but the African-American neighborhoods in Chicago have rates from 87–180 per 100,000, while the predominately white neighborhoods have homicides very rarely, and in some years, none.¹⁸ Chicago is awash in guns. In recent years, Chicago police have been recovering roughly 7,000 guns from arrests and crime scenes per year on average, which is six times the rate in New York City.¹⁹ Nearly half of the firearms used in Chicago crimes come from licensed gun stores in suburbs around Chicago; seven dealers in particular sell the majority of guns used in crimes.²⁰ In addition, large quantities of guns leave the stores via theft—a few hundred per year.²¹

The three named plaintiffs in the original case each have a PTSD medical diagnosis.²² D.P. (Powell's child), the only remaining plaintiff in the case as it moves forward, hears gunshots on the block where he lives almost every night; during the first few months of 2018, four reported shootings occurred within two blocks of D.P.'s apartment, one of which resulted in a fatality.²³ In 2016, when D.P. was in kindergarten, his father died in a shooting; unfortunately, D.P. saw his father's

14. *See Powell*, 2019 WL 4750265, at *2. Note that there is some variation year-to-year both in terms of homicide rates and which city is unfortunate enough to claim first place; also note that other cities, such as St. Louis and Baltimore, may have higher murder rates in some years, even if Chicago has a higher rate of gun deaths.

15. *Id.*

16. *Id.* (citing Complaint, *supra* note 1, at ¶ 17).

17. *Id.*

18. *Id.*

19. *Id.* (citing Complaint, *supra* note 1, at ¶ 18).

20. *Id.* (citing Complaint, *supra* note 1, at ¶¶ 2, 19).

21. *Id.* (citing Complaint, *supra* note 1, at ¶ 20).

22. *Id.* at *3 (citing Complaint, *supra* note 1, at ¶¶ 4–6).

23. *Id.* (citing Complaint, *supra* note 1, at ¶ 4).

body—and the bullet wounds—when the body was found.²⁴ D.P. changed after that—when he returned to kindergarten a week later, he would yell and have angry outbursts in class, even though he had previously been a bright and well-behaved student.²⁵ He suffered from sleeplessness and nightmares and became physically aggressive at school, assaulting his teacher on one occasion.²⁶ D.P. started having problems “learning, reading, thinking, and communicating.”²⁷ The Complaint sets forth more facts than the judge recounts in her opinion²⁸—for example, six months after seeing his father’s bullet-ridden body as a kindergartner, D.P. observed a school at employee at his elementary school being shot in the head and killed immediately outside D.P.’s school.²⁹ Nine months after witnessing that murder, in March of his first-grade year, a popular eighth-grade student at D.P.’s school died in a drive-by shooting in D.P.’s neighborhood in the middle of the afternoon.³⁰ The next year, another student in his elementary school was shot, and on another occasion, D.P. and his second-grade classmates had to run inside the school to avoid a shootout in front of his school.³¹ During the following six months, three nonfatal shootings and one murder occurred within a two-block radius of D.P.’s home. D.P.’s heartbreaking story is not unique—in fact, the Complaint alleges that thousands of children in black Chicago neighborhoods suffer from PTSD as a result of the daily gun violence that surrounds them.³²

The crux of the plaintiffs’ case is that the widespread PTSD and other trauma-related disorders constitute a disability under the Americans with Disabilities Act. To this author’s knowledge, this is the first firearms-related lawsuit to frame its injuries under the ADA in terms of widespread childhood disabilities caused by environmental harm—

24. *Id.* (citing Complaint at ¶¶ 4, 37, Powell v. Illinois, No. 18-CV-6675, 2018 WL 4828746 (N.D. Ill Oct. 3, 2018)).

25. *Id.* (citing Complaint at ¶ 40, Powell v. Illinois, No. 18-CV-6675, 2018 WL 4828746 (N.D. Ill Oct. 3, 2018)).

26. *Id.*

27. *Id.*

28. *See* Complaint at ¶¶ 37–45, Powell v. Illinois, No. 18-CV-6675, 2018 WL 4828746 (N.D. Ill Oct. 3, 2018)).

29. *Id.* at ¶ 41.

30. *Id.* at ¶ 42.

31. *Id.* at ¶ 43.

32. *Id.* at ¶ 8(a).

the environment being a violent, gun-saturated community. The plaintiffs in the case, citing numerous academic studies, argue that there is broad consensus in both the healthcare field and among educators that childhood exposure to gun violence results in substantial and enduring harm to development—brain development, social development, and personality development.³³ Sleep disturbance, inability to concentrate, difficulties with communication, and impaired reading and learning abilities are common symptoms³⁴—many of the children in these communities have diagnosed post-traumatic stress disorder (PTSD) and are under treatment, and many others presumably suffer from undiagnosed, untreated PTSD.³⁵

Gun violence is both a result and a cause of ongoing educational inequality. Gun violence and homicides have reached epidemic levels in recent years among minority teenagers in the United States,³⁶ and the constant disruption, trauma, and fear that go along with such day-to-day violence significantly affect the educational and psychological development of urban youth, and thus their eventual educational and

33. *Id.* at ¶¶ 31–36.

34. *Id.*

35. *Id.* (“In Chicago, there have been many studies linking exposure to gun violence directly to deficits in academic performance by African-American children.”). While the case focuses on Chicago, it highlights a pervasive problem for urban communities nationwide. Regular exposure to neighborhood gun violence is a significant factor in educational inequality because it interferes with learning, educational achievement, and school operations. Other cities have problems analogous to Chicago’s. For example, in St. Louis alone, 584 children have been killed since 1990, a rate ten times higher than the national average. See Erin Heffernan & Janelle O’Dea, *‘It Wrecked Us’: 584 Kids Killed in St. Louis Over 30 Years. This Grandma Knows the Cost*, ST. LOUIS POST-DISPATCH (Oct. 16, 2019), https://www.stltoday.com/news/local/metro/over-years-kids-have-been-killed-in-st-louis-this/article_81f1d742-4d2b-5a77-9afd-1d420393cc1e.html. Baltimore set a record in 2017 for its homicide rate. Julia Burdick-Will, *Neighborhood Violence, Peer Effects, and Academic Achievement in Chicago*, 91 SOC. OF ED. 205, 219 (2018). The concentration of gun violence in neighborhoods beset with poverty is the foreseeable and inevitable consequence of an overly abundant supply of easily accessible firearms.

36. See Briana Woods-Jaeger et al., *Mitigating Negative Consequences of Community Violence Exposure: Perspectives from African American Youth*, 38 HEALTH AFF. 1679, 1679 (2019) (“The burden of community violence on young African Americans includes disproportionate rates of physical and mental health consequences.”).

career achievements.³⁷ Media attention and recent legislative initiatives to permit or require guns in schools (arming teachers, etc.) focus on the comparatively rare phenomenon of active shooter scenarios (school massacres or shooting rampages), which are predominantly a suburban phenomenon,³⁸ while ignoring the causes and effects of routine, lower-fatality gun incidents in poorer urban schools.³⁹ “[S]treet violence in the country’s poorest neighborhoods is ‘far more costly in terms of human life, family disruption, and the destabilization of communities engendered by chronic fear and trauma.’”⁴⁰ Measures designed to prevent or thwart suburban mass shootings may actually have deleterious effects in inner-city schools that face daily issues with gangs, gun carrying, and outbreaks of interpersonal violence, making the schools feel like a prison. Since the late 1990’s, the federal government’s recommendations for schools regarding gun violence prevention have included “visual screening techniques to spot students

37. See Patrick Sharkey, *The Long Reach of Violence: A Broader Perspective on Data, Theory, and Evidence on the Prevalence and Consequences of Exposure to Violence*, 1 ANN. REV. CRIMINOLOGY 85, 93 (2018) [hereinafter Sharkey, *Long Reach of Violence*] (“[V]iolent victimization [is] associated with psychological symptoms related to stress and trauma and with negative outcomes related to physical and mental health, problem behaviors, academic performance and educational attainment, and cognitive development.”); see also Burdick-Will, *supra* note 35, at 205; Jillian J. Turanovic, *Heterogeneous Effects of Adolescent Violent Victimization on Problematic Outcomes In Early Adulthood*, 57 CRIMINOLOGY 105, 105–06 (2018) (violent victimization, when it happens to young people in particular, causes a wide array of negative consequences in the individual’s life); Patrick Sharkey, *The Acute Effect of Local Homicides on Children’s Cognitive Performance*, 107 PROC. NAT’L. ACAD. SCI. 11733, 11733–34 (2010) (hereinafter Sharkey, *Acute Effects*); Joy D. Osofsky, *The Impact of Violence on Children*, 9 FUTURE OF CHILD. 33, 33 (1999); Carl W. Chamberlin, *Johnny Can’t Read ‘Cause Jane’s Got a Gun: The Effects of Guns in Schools, and Options After Lopez*, 8 CORNELL J.L. & PUB. POL’Y 281, 283–84 (1999).

38. GIANNI PIRELLI ET AL., *THE BEHAVIORAL SCIENCE OF FIREARMS: A MENTAL HEALTH PERSPECTIVE ON GUNS, SUICIDE, AND VIOLENCE* 201 (2019) (explaining how rural areas are more vulnerable to “mass murder and rampage-style attacks” than urban areas).

39. See *id.* at 217 (noting that “crime victimization is more likely to occur in urban locales compared to suburban and rural environments” and “African Americans have report higher rates of violent victimization than other groups, which is also consistent with broader community violence research.”).

40. *Id.* at 221.

with weapons, random searches, and strictly enforced sanctions for bringing guns to school.”⁴¹

The abundance of guns and the resulting gun violence impact the education of minority students from two directions. There is the trauma from daily exposure to gun violence on the one side and the trauma of the misguided, heavy-handed response on the other, which reinforces feelings of fear, racial subjugation, and misdirected community resources.⁴² “In predominantly black or Latino schools, where metal detectors, police officers, and zero-tolerance discipline policies are the norm, students might be seen as delinquent by default. Research suggests that constant surveillance and presence of police, many of whom harbor racial biases, can actually exacerbate such violence.”⁴³ Jonathan Stith, the national coordinator for Alliance for Educational Justice, contends that “[b]lack and brown people in this country are often criminalized by the violence of white students” because the skewed emphasis on a small subset of gun violence ends up inadvertently punishing the wrong individuals.⁴⁴

Gun violence presents threats not just to students’ physical safety but also their psychological wellbeing. Many schools now employ a variety of security measures to protect students from the physical threats of gun violence, including armed guards and staff members, metal detectors, and security cameras.⁴⁵ Schools also conduct lock-

41. DAVID HEMENWAY, *PRIVATE GUNS, PUBLIC HEALTH* 105 (2d ed. 2017) (summarizing and quoting 1998 reports and guidance from the Departments of Education and Justice).

42. See Alia Wong, *The Gun Violence That’s a Bigger Threat to Kids than School Shootings*, *THE ATLANTIC* (Feb. 19, 2019), <https://www.theatlantic.com/family/archive/2019/02/gun-violence-children-actually-experience/582964/>.

43. *Id.*

44. *Id.* See also Anna Aizer, *Neighborhood Violence and Urban Youth*, in *THE PROBLEMS OF DISADVANTAGED YOUTH: AN ECONOMIC PERSPECTIVE* 275, 278 (Jonathan Gruber, ed., 2009) (“Children exposed to high levels of violence were more likely to be black and/ or Latino and more likely to receive free lunch.”).

45. See NAT’L ASS’N OF SCH. PSYCHOLOGISTS, *RESEARCH SUMMARY: SCHOOL SECURITY MEASURES AND THEIR IMPACT ON STUDENTS 1* (2018) (describing security measures most commonly used in schools). Yet these security measures are “consistently ineffective in protecting students.” *Id.* See also Todd A. Demitchell, *Locked Down and Armed: Security Responses to Violence in Our Schools*, 13 *CONN. PUB. INT. L.J.* 275, 284–85 (2014).

down drills to prepare students and teachers for active-shooter situations—again, to prevent physical harm.⁴⁶ These security measures do not always make students feel safer, and can even make students more

46. Lockdowns and active-shooter drills have also come under scrutiny for traumatizing students and teachers rather than helping to prepare them for an actual emergency. See Lauren Rygg, *School Shooting Simulations: At What Point Does Preparation Become More Harmful Than Helpful?*, 35 CHILD. LEGAL RTS. J. 215, 221–22 (2015) (discussing consequences from poorly-executed active shooter drills); see also Joseph A. Hendry Jr., *Rethinking Lockdown: A Law Enforcement Official Explains Why Lockdown May Not Be “Best Practice” and How Underwriters Can Help to Mitigate Risk From Assailants*, BEST’S REV. 30, 33 (2016) (“[I]f you take the time to read the [lockdown] plans and policies of many K-12 facilities, [students] are never mentioned in the actual survival portion of the document.”). But see Kenneth Trump, *In Support of Lockdown*, BEST’S REV. 57 (April 2019), <http://news.ambest.com/ArticleContent.aspx?pc=1009&altsrc=158&refnum=283685> (stating that lockdown is the best way to respond to an active shooter in a school setting); Katie Zezima & Susan Svrluga, *The legacy of Newtown: Lockdowns, Active-Shooter Training and School Security*, WASH. POST (December 10, 2017), https://www.washingtonpost.com/national/the-legacy-of-newtown-lockdowns-active-shooter-training-and-school-security/2017/12/10/cc538e74-dacd-11e7-a841-2066faf731ef_story.html. No one was hurt when Rancho Tehama Elementary went into lockdown mode after teachers heard gunfire outside. The teachers and students locked down in their classrooms, and the gunman was unable to enter the school.

fearful.⁴⁷ Fear of violence and victimization at school, fueled by increasingly visible school security methods,⁴⁸ can negatively affect “morale, effectiveness, and academic performance for students, teachers, and administrators.”⁴⁹ Because fear of crime corresponds with actual victimization and exposure to crime, black and inner-city youth

47. See NAT’L ASS’N OF SCH. PSYCHOLOGISTS, *supra* note 45, at 2. Visible school security measures can also be a reminder to students that gun violence could happen. See Christopher J. Schreck & J. Mitchell Miller, *Sources of Fear of Crime at School: What is the Relative Contribution of Disorder, Individual Characteristics, and School Security?*, 2 J. OF SCH. VIOLENCE 57, 62 (2003) (“Although it appears to be ‘common sense’ to believe that security ought to relieve student fear, it is possible that visible security . . . might worsen fear beyond what other effective predictors of fear would explain.”) (internal quotation marks omitted); see also Ronet Bachman et al., *Predicting Perceptions of Fear at School and Going To and From School for African American and White Students: The Effects of School Security Measures*, 43 YOUTH & SOC’Y 705, 707 (2011) (“Understanding the emotional impact of security measures is important since some contend that intrusive security measures may actually ‘cause more harm by creating a social climate that interferes with the educational process.’”); James Garbarino, Catherine P. Bradshaw & Joseph A. Vorrasi, *Mitigating the Effects of Gun Violence on Children and Youth*, 12 THE FUTURE OF CHILD. 72, 82 (2002) (“[E]mergency drills may send the message to expect a shooting, creating a climate of suspicion and anxiety among students and faculty.”). Because a poorly-designed or executed lockdown drill can be just as traumatic for students, schools should work with psychologists to develop “trauma-informed” active shooter drills. Terri A. Erbacher & Scott Poland *School Psychologists Must Be Involved in Planning and Conducting Active Shooter Drills*, 48 COMMUNIQUÉ 10, 10 (2019).

48. Visible security measures might well be classified as a form of incivility. An incivility is a cue that criminal activity or victimization is likely to occur. See Schreck & Miller, *supra* note 47, at 57–58 (finding a positive correlation between security measures and fear of victimization at school); see also Bachman et al., *supra* note 47, at 707 (“Fear also affects other quality-of-life indicators such as students restricting their activities [maybe even avoiding going to school altogether] to avoid fearful situations.”).

49. Garbarino et al., *supra* note 47, at 78. See also Schreck & Miller, *supra* note 47, at 58 (“Those who are afraid of becoming victims are more likely to suffer from numerous psychological and health problems . . . and handicaps the ability of students to succeed in school.”); Bachman, Randolph & Brown, *supra* note 47, at 707 (“Being fearful of victimization at school can obviously affect the receptiveness and capacity for student learning. In addition, being fearful has other negative psychological effects such as causing psychological distress, anxiety, and posttraumatic stress disorder.”). The psychological harms that can result from increased security in schools are often the same as those resulting from gun violence itself. See Garbarino,

may be more likely to experience the negative effects from increased security because they are more likely to have been victimized or witnessed crime in their communities.⁵⁰

Comprehensive community solutions to reduce gun violence are inseparable from policies promoting educational equality. Decreased gun violence boosts educational achievement and helps the school environment. Part II moves on to the growing body of current academic research about the disproportionate prevalence of gun violence in inner-city minority neighborhoods, and the measurable impact that this daily exposure to community violence has on children's learning and long-term educational achievement. Part III takes a step back to situate the problem of daily gun violence and educational inequality within the cultural phenomenon of school shootings more generally, especially the disparate attention given to suburban school massacres or random shooting rampages, and the neglect of more common, lower-fatality gun incidents in poorer urban schools. Part IV focuses on solutions, like Operation Ceasefire, CureViolence, and most recently Oakland's Lock-It-Up initiative, which have produced impressive measurable results in reducing gun violence in their communities.⁵¹ Part V offers a brief conclusion.

Bradshaw & Vorrasi, *supra* note 47, at 75–76 (discussing psychological impacts associated with exposure to gun violence).

50. See generally Bachman, Randolph, and Brown, *supra* note 47; Schreck and Miller, *supra* note 47, at 60 (“[B]lack students have more fear than those in other racial groups [because they] are more likely to have to travel through high-risk areas to go to and return from school, and thus the fear of black students [experience] might originate with disorder in the community and earlier victimization.”).

51. The most current reference book for mental health practitioners about gun violence restates the emerging consensus among experts that of “prevention-oriented programs should include having a network of involved students who understand their own peer culture and serve as a resource themselves, providing alternatives for anti-social, violent, and delinquent behavior.” PIRELLI ET AL., *supra* note 38, at 110. See also Woods-Jaeger et al., *supra* note 36, at 1679 (“Youth-identified priorities included increasing proactive responses from multiple community sectors; reducing racial discrimination; and creating safe environments, including access to mental health care and other supportive services.”).

II. THE IMPACT OF GUN VIOLENCE ON EDUCATION AND LEARNING

Gun violence is concentrated in the inner cities, where young people fall victim to gun violence at far higher rates than the national averages.”⁵² As a result, inner city youth suffer suppressed educational outcomes resulting from the psychological harms caused by gun violence.⁵³ African Americans suffer the highest rates of violent victimization of any racial group.⁵⁴ A survey of children ages six to nine years old revealed that 47.6% had experienced a physical assault in the past year and 10.7% had witnessed community violence.⁵⁵ One survey of

52. Joseph F. Sheley et al., *Gun-related Violence in and Around Inner-City Schools*, 146 AM. J. OF DISEASES OF CHILDREN 677, 681 (1992) (“[S]chools themselves to not generate gun-related violence as much as they represent the location where violence spawned outside of the institution . . . violence spills into the schools from the world outside.”); see also CTRS. FOR DISEASE CONTROL, *Violence-Related Firearm Deaths Among Residents of Metropolitan Areas and Cities*, 60 MORBIDITY AND MORTALITY WKLY REP., May 13, 2011, at 577 (“Gun violence historically has been a problem in cities, and youths have been affected disproportionately.”); Jeffrey Fagan & Deanna L. Wilkinson, *Guns, Youth Violence, and Social Identity in Inner Cities*, 24 CRIME & JUST. 105, 106 (1998) (Youth gun violence has become “overwhelmingly concentrated demographically and spatially among African American males in urban areas.”).

53. See Leila Morsy & Richard Rothstein, *Toxic Stress and Children’s Outcomes*, ECON. POL’Y INSTITUTE (May 1, 2019), www.epi.org/164823 (“Since children from low-income families are more likely to experience frightening or threatening events, and since African American families fall disproportionately lower on the income distribution than white families, it is more likely that black children will experience such events[.]”); see also Kathleen Reich et al., *Children, Youth, and Gun Violence: Analysis and Recommendations*, 12 THE FUTURE OF CHILD. 4, 11 (2002) (“[T]he children and youth at highest risk for psychological trauma from gun violence are those exposed to it directly: children who are injured, who witness gun violence at close proximity, or who are exposed to high levels of gun violence in their homes, schools, or communities.”).

54. PIRELLI ET AL., *supra* note 38, at 217. At one urban school in Philadelphia, 97% of the students had experienced gun violence in at least one of three categories: knowing a victim, witnessing an event, or being a victim of violence themselves. Kimberly Quick, *Gun Violence Puts Education Under Fire, Stifling Achievement*, THE CENTURY FOUND. (Jan. 8, 2016), <https://tcf.org/content/commentary/gun-violence-puts-education-under-fire-stifling-achievement/?session=1>.

55. Catherine P. Bradshaw et al., *Multitiered Approaches to School-Based Mental Health, Wellness, and Trauma Response*, in KEEPING STUDENTS SAFE AND HELPING THEM THRIVE 85, 86 (David Oshner et al. eds., 2019).

246 inner city, predominantly black youth found that two in five witnessed someone shot or knifed and one in five witnessed someone killed.⁵⁶ Homicide was the leading cause of death for black males between the ages of 15 and 34, and the second-leading cause of death for Hispanic males in the same age group.⁵⁷ The homicide rate for whites is half the national average, whereas it is three times higher for blacks.⁵⁸ As one prominent sociologist noted in 2010, “Despite the national decline in homicides that has occurred since the mid-1990s, homicide remains among the leading causes of death among 15- to 24-y-olds nationally and is the top cause of death among African-Americans in this age range.”⁵⁹ More recently, in 2018, Julia Burdick-Hill observed, “Violent crime rates in major U.S. cities have declined substantially over the past two decades, but this decline has spread unevenly across and within cities. Some cities, neighborhoods, and demographic groups continue to face extremely high rates of violence.”⁶⁰ She notes further that in some places, the upward trend for violence is a reversal of a downward trend in prior years.⁶¹

56. Howard Schubiner et al., *Exposure to Violence Among Inner-City Youth*, 14 J. ADOLESCENT HEALTH 214, 215–16 (1993).

57. URBAN INST., *ENGAGING COMMUNITIES IN REDUCING GUN VIOLENCE: A ROAD MAP FOR SAFER COMMUNITIES* 4 (2016).

58. The firearm-related homicide rates are 49% higher in large metro areas than the rate nationwide. Ctr. for Disease Control, *About Underlying Cause of Death, 1999-2017*, <https://wonder.cdc.gov/ucd-icd10.html> (last visited Oct. 6, 2019). The same disparities apply to violence within social networks: while 44% of Americans reported personally knowing someone who has been shot, that number increases to 57% for black adults. See Kim Parker et al., *America’s Complex Relationship with Guns*, PEW RESEARCH CENTER (June 22, 2017) <https://www.pewsocial-trends.org/2017/06/22/americas-complex-relationship-with-guns/>.

59. Sharkey, *Acute Effect*, *supra* note 37, at 11733 (internal citation omitted).

60. Burdick-Will, *supra* note 35, at 219.

61. See *id.* This is not to downplay the seriousness of gun violence in other communities, of course. Recently published studies suggest firearm-related mortality rates have been increasing nationwide, after a period of several years when gun violence rates had leveled off or were declining. See Jason E. Goldstick et al., *US Firearm-Related Mortality: National, State, And Population Trends, 1999–2017*, 38 HEALTH AFFAIRS 1646, 1646 (2019) (“Nationwide firearm-related mortality rates increased in 2015–17 after remaining relatively stable in 1999–2014. Recent increases are reflected across most states and demographics to varying degrees, which suggests a worsening epidemic of firearm mortality that is geographically and demographically broad.”). “Recently firearm homicide rates in large metro areas and the nation overall

Children and youth exposed to gun violence are at risk for significant short- and long-term psychological effects.⁶² Exposure to gun violence, whether at home, school, in the community, or through media, can cause psychological harm.⁶³ Children and youth with PTSD can suffer a “broad range of problems with memory, including gaps in memory, problems with declarative memory . . . and intrusive memories.”⁶⁴ Intrusive thoughts about traumatic experiences with gun violence often interfere with sleep, which has measurable, negative effects

began increasing, reaching levels comparable to those a decade ago.” Scott R. Kegler et al., *Firearm Homicides and Suicides in Major Metropolitan Areas — United States, 2012–2013 and 2015–2016*, 67 CDC MORBIDITY & MORTALITY WKLY. REP. (Nov. 9, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/mm6744a3.htm>. Gun violence is affecting all segments of our society, though my focus here is on the disproportionate impact gun violence has on inner-city children, and particularly on their educational process and outcomes.

62. See Reich et al., *supra* note 53, at 11 (“[C]ommon effects associated with exposure to gun violence, include[e] sleep disturbance, anger, withdrawal, posttraumatic stress, poor school performance, lower career aspirations, increased delinquency, risky sexual behaviors, substance abuse, and desensitization to violence.”); see also *id.* at 11 (“[E]xposure to higher levels of violence was correlated with more anxiety, greater likelihood of depression, lower self-esteem, lower grade point average, and more absences from school.”); Chamberlin, *supra* note 37, at 292–95 (describing long-term effects of gun violence in school, including medical costs, diminished employment prospects, and psychological effects).

63. See Reich et al., *supra* note 53, at 10 (2002) (“[C]hildren do not have to be injured themselves to experience these negative effects.”). Negative psychological effects resulting from exposure to gun violence can also “make children and youth more prone to violence themselves, feeding a continuing cycle of violence within some families, peer groups, and communities.” *Id.* at 11. See also Sheley et al., *supra* note 52, at 677 (“Exposure to violence outside of school implies that individuals are encouraged to behave violently. They may also be more likely to carry firearms for protection . . . in a social world they see as hostile and dangerous.”).

64. See generally J. Douglas Bremner, *The Relationship Between Cognitive And Brain Changes In Posttraumatic Stress Disorder*, 1071 ANNALS OF THE N.Y. ACAD. OF SCIENCES 80 (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3233753/pdf/nihms340166.pdf> (linking clinical observations of PTSD-associated memory disturbances with neuroimaging studies documenting changes in brain structure in patients with PTSD); see also Morsy & Rothstein, *supra* note 53 (“Toxic stress and its associated hormone disruption can stunt brain growth and diminish brain activity in the prefrontal cortex, a region that controls executive function, learning, memory, attention, anxiety, and emotional regulation.”).

on educational outcomes.⁶⁵ Student behavioral problems that result from exposure to local gun violence directly impact classroom learning; the students do not misbehave merely because they are underachievers, or because the school itself is soft on discipline and rife with crime.⁶⁶

Recent studies also show that feeling unsafe in the classroom has a consistent negative effect on students' test scores.⁶⁷ In one study, feeling unsafe leads to more absences from class, and lower standardized test scores for math and English language arts.⁶⁸ "Put differently, students who report feeling the safest in their classes and who report never staying home because they feel unsafe at school perform better, on average, on standardized math exams."⁶⁹

Other studies have shown that exposure to violence can result in mental health, cognitive, and behavioral issues at the individual student level.⁷⁰ Exposure to violent incidents impacts children's performance on standardized tests due to the inevitable cognitive responses to fear, stress, and trauma.⁷¹ PTSD, sleep disorders, anxiety disorders, reduced awareness, and impaired pace, persistence, and concentration are common among the children who live with community violence in the inner

65. See Garbarino et al., *supra* note 47, at 75 ("Therefore, it is not surprising that children and youth exposed to gun violence commonly experience difficulty concentrating in the classroom, declines in academic performance, and lower educational and career aspirations.").

66. See Burdick-Will, *supra* note 35, at 218.

67. See Johanna Lacoë, *Too Scared to Learn? The Academic Consequences of Feeling Unsafe in the Classroom*, 1 URB. EDUC.. 1 (2016).

68. *Id.* at 14.

69. *Id.* at 25.

70. See Elizabeth Froom Pelletier, *Learning in Harm's Way: The Effects of Neighborhood Violence on School Performance* (2014) (unpublished Undergraduate Honors Thesis, College of William and Mary), <https://scholarworks.wm.edu/honortheses/81>. These traumatic events significantly increase the frequency of mental health conditions such as anxiety, depression, and PTSD. Some studies have linked childhood trauma to diminished concentration, comprehension, memory, and organizational and language abilities—skills necessary to process information effectively and to succeed in school. See Bradshaw et al., *supra* note 55, at 86–87.

71. See Sharkey, *Acute Effects*, *supra* note 37, at 11733.

cities, and these impairments affect their performance on tests in class, as well as standardized aptitude tests.⁷²

Princeton Professor Patrick Sharkey is one of the nation's leading experts on urban poverty and the effects of crime on minority communities. In a 2018 article, Sharkey explained how community violence affects day-to-day choice and experiences:

Beyond its impact on residential and school decisions, violence forces individuals to actively negotiate the threat of victimization in their everyday lives by altering their routines, their networks, and their parenting styles in an effort to reduce the potential for victimization. To navigate potentially dangerous streets, young people carefully plan their schedules and develop scripts and strategies to allow them to escape situations where violence can emerge. Within violent environments, parents often monitor their children more closely, keep to themselves, or force their children to isolate themselves within the home from public life. Where violence is seen as inevitable, children may choose to use force strategically or to develop networks that help them ward off potential victimizers in the future.⁷³

Sharkey noted previous research had already established that student scores on math and English assessments decline, over time, in the aftermath of fatal school shootings.⁷⁴ Measurable effects on cognition and self-control are evident in the days immediately following a homicide close to a child's home.⁷⁵ For children, living in a violent environment puts them on a downward long-term academic trajectory, albeit through a series of short-term physiological, educational, and

72. *See id.* “[L]ocal violence weighs on the minds of children as they approach cognitive assessments” *Id.* at 11736.

73. Sharkey, *Long Reach of Violence*, *supra* note 37, at 94 (internal citations omitted).

74. *Id.* at 96.

75. *Id.* at 97.

social pathways.⁷⁶ Even when the shootings and other violence are not fatal, it still affects local children's performance at school.⁷⁷ In a 2014 study, Professor Sharkey and co-researchers found that the impact disproportionately affected black children:

Black students exposed to violent crime are 3 percentage points less likely to pass the ELA exam, an effect size that is equal to 18 percent of the black–white gap in passing rates. Elementary school students exposed to violent crime experience a large decrease in ELA test scores compared to elementary school students exposed after the exam. For black elementary school students, this reduction in test scores is equivalent to over 30 percent of the black–white test score gap. Thus, although the overall effect size is small in magnitude, the impact for specific subgroups is substantial.⁷⁸

These cognitive issues worsen due to the fact that exposure to violence often disrupts a child's sleep patterns.⁷⁹ Sleep disturbance and elevated cortisol levels are, unsurprisingly, higher when the traumatic experience includes a homicide, are moderate for assault, and are negligible for robbery.⁸⁰ Other researchers have also found that neighborhood violence is associated with poor standardized test results.⁸¹ A

76. See Patrick Sharkey, Amy Ellen Schwartz, Ingrid Gould Ellen & Johanna Lacoe, *High Stakes in the Classroom, High Stakes on the Street: The Effects of Community Violence on Students' Standardized Test Performance*, 1 SOC. SCI. 199, 201 (2014).

77. See *id.* at 200 (“[T]he findings in this study indicate that forms of violence less severe than homicides still affect children's performance on assessments of cognitive skills.”).

78. *Id.* at 215.

79. See Jennifer Heissela et al., *Violence and Vigilance: The Acute Effects of Community Violent Crime on Sleep and Cortisol*, 89 CHILD DEV. 323 (2018) (“On the night following a violent crime, children have later bedtimes. Children also have disrupted cortisol patterns the following morning. Supplementary analyses using varying distances of the crime to the child's home address confirm more proximate crimes correspond to later bedtimes.”).

80. See *id.* at 329.

81. See Julia Burdick-Will et al., *Danger on the Way to School: Exposure to Violent Crime, Public Transportation, and Absenteeism*, 6 SOC. SCI. 118, 120 (2019) (surveying and summarizing recent research in the area).

2002 study found that exposure to gun violence resulted in lower IQ test scores and reading ability among urban children.⁸² Like other researchers, the team conducting this study found that community violence exposure correlated with a decrease in school attendance, lower grades, having to repeat a school year due to failing grades, and higher incidents of PTSD.⁸³ Community violence exposure, in fact, produces similar effects to other types of child maltreatment, such as malnutrition, neglect, or abuse.⁸⁴ As one of the early researchers in this area put it, “In fact, findings from several studies show posttraumatic stress disorder symptoms of children living in ‘urban war zones’ to be similar to the symptoms of children living in actual war zones.”⁸⁵

This state of fear can impede a child’s ability to focus, remain calm, regulate their behavior, appropriately process social cues, and develop trust.⁸⁶ “[V]iolence exposure was associated with greater willingness to use physical aggression, diminished perception of risk, lowered personal expectations for the future, dysphoric mood, antisocial activity, alcohol use, and diminished academic achievement.”⁸⁷ Even children at a very young age—infants and toddlers—who witness violence in their communities, often manifest heightened irritability, psychological duress, sleep disorders, and immature behavior, such as regression in toileting and communication.⁸⁸ As children in violence-ridden neighborhoods get older, anxiety, depression, and aggressiveness manifest.⁸⁹ They are “less likely to explore and play freely and to

82. See Virginia Delaney-Black et al., *Violence Exposure, Trauma, and IQ and/or Reading Deficits Among Urban Children*, 156 ARCHIVES OF PEDIATRICS & ADOLESCENT MED. 280 (2002) (“After controlling for confounders (child’s gender, caregiver’s IQ, home environment, socioeconomic status, and prenatal exposure to substance abuse) violence exposure was related to the child’s IQ (P=.01) and reading ability (P=.045).”).

83. *Id.* at 280.

84. See *id.* at 283–84 (“[E]xposure to violence may actually inhibit intellectual and academic functioning. If community violence exposure does in fact cause such deficits, the estimated number of urban children experiencing violence at this level would make this an issue of major concern.”).

85. Osofsky, *supra* note 37, at 36.

86. See Bradshaw et al., *supra* note 55, at 86–87.

87. Aizer, *supra* note 44, at 278.

88. See Osofsky, *supra* note 37, at 36.

89. See *id.* at 37.

show motivation to master their environment,⁹⁰ and intrusive thoughts frequently interrupt their concentration or focus.⁹¹ Older children understand the intentionality of violence around them, and many will obsessively “worry about what they could have done to prevent or stop it.”⁹² Stress and fear are the neurological triggers for aggressive behavior, which are more common among these students.⁹³ Students exposed to violence in their neighborhood are, understandably, more likely to perceive their school and the area around it as unsafe and have a tendency to interpret others’ actions as hostile.⁹⁴

In addition, students from violent neighborhoods are less likely to believe that their schoolteachers have the students’ best interests in mind.⁹⁵ This mistrust may be an extension of the institutional distrust common to residents of high-crime neighborhoods.⁹⁶ Successful teaching requires trust—a student who comes to the classroom wary and suspicious is more likely to rebel and disrupt the functioning of the classroom.⁹⁷ Such mental health symptoms, cognitive impairments, and behavioral problems can arise in children who have only witnessed a single violent incident.⁹⁸ Absenteeism is higher in students whose best route to school involves walking or waiting for a bus in areas with

90. *Id.*

91. *See id.*

92. *Id.*

93. *See* Burdick-Will, *supra* note 35, at 206.

94. *Id.* at 214.

95. *Id.*

96. A long history of urban ethnographic research shows that residents in “high-crime and violent neighborhoods do not trust the police to prevent crime, nor do they trust that individual police officers have their best interests in mind when on patrol.” *Id.* at 207.

97. *See id.* These behavioral coping mechanisms often adopted by children with childhood trauma can “frustrate educators and evoke exasperated reprisals—reactions that both strengthen the child’s expectations of confrontation and danger and reinforce a negative self-image.” Bradshaw et al., *supra* note 55, at 87.

98. *See* Pelletier, *supra* note 70, at 8. In addition to the cognitive and mental health issues associated with exposure to violence, students in violent neighborhoods are less likely to traverse the dangerous neighborhood streets in an attempt to access enriching neighborhood resources, such as libraries and extracurricular activities, or even to attend school. *Id.* at 9.

higher violent crime rates,⁹⁹ and this results in lower grades and higher dropout rates.¹⁰⁰

Even students who were not exposed to direct violence or neighborhood violence may suffer academically because of it.¹⁰¹ Researchers have reported an “externality phenomenon,” where certain students’ traumatic experiences could have an aggregate effect on the entire school.¹⁰² One study found that classes with that as the number of children who had experienced domestic abuse increased, peer math and reading scores decreased and peer disciplinary infractions and suspensions increased.¹⁰³ A study published in 2010 found that “children from troubled families significantly decrease their peers’ reading and math test scores and significantly increase misbehavior of others in the classroom.”¹⁰⁴ A follow-up study published in 2018 by some of the same researchers found that “exposure to a disruptive peer in classes of 25 during elementary school reduces earnings at age [26] by 3 percent,” and estimated that “differential exposure to children linked to domestic violence explains 5 percent of the rich-poor earnings gap in our data, and that each year of exposure to a disruptive peer reduces the present discounted value of classmates’ future earnings by \$80,000.”¹⁰⁵ This effect contributes the racial disparities in adult earnings in society overall: “In addition, the uneven distribution of disruptive peers across schools has important consequences for income inequality. We estimate that the increased exposure to (our measure of) disruptive peers

99. See Burdick-Will et al., *supra* note 81, at 118–19.

100. See *id.* at 121.

101. See Burdick-Will, *supra* note 35, at 205.

102. Pelletier, *supra* note 70, at 10 (“[N]ot all children in a classroom would need to have been directly exposed to violence for the effects to be felt.”).

103. *Id.* Further research has shown that when students experience higher levels of neighborhood violence, the whole student body experiences the disciplinary problems, distrust of teachers, and perception of danger usually seen at the individual level. See Burdick-Will, *supra* note 35, at 219.

104. Scott E. Carrell & Mark L. Hoekstra, *Externalities in the Classroom: How Children Exposed to Domestic Violence Affect Everyone’s Kids*, 2 AM. ECON. J. APPLIED ECON. 211, 211 (2010) (findings described in article abstract and conclusion).

105. Scott E. Carrell, Mark Hoekstra & Elira Kuka, *The Long-Run Effects of Disruptive Peers*, 108 AM. ECON. REV. 3377, 3377 (2018) (conclusions summarized in beginning abstract).

by children from lower—relative to higher—income households explains around 5 percent of the rich-poor earnings gap in adulthood.”¹⁰⁶ Eventually, even moderate levels of gun violence in the community lowers high school graduation rates there by an average of 5.1%.¹⁰⁷ It reduces the chances that a young person will attend college by 6.9%.¹⁰⁸

The Violence Policy Center (VPC) published a report in 2017 about community violence and the long-term effects of the resulting trauma.¹⁰⁹ “When a kid grows up in poverty with chronic discrimination, and sometimes various forms of child maltreatment, and is also exposed to community violence, it’s a pile-on effect. It’s like they’re growing up in a war zone. It changes their developmental pathways.”¹¹⁰ Summarizing a group of studies in the years preceding the report, the VPC observes:

Research findings have left little doubt that exposure to traumatic experiences impact how people develop and navigate their surroundings. Exposure is directly correlated with changes at the individual level, such as altered neural development and impaired learning as well as influencing the way people interact with their world. These changes have implications beyond the interpersonal. They can result in diminished academic achievement and reduced career aspirations while negatively influencing later performance in the workplace and the community.¹¹¹

106. *Id.* at 3379.

107. Jeffrey Grogger, *Local Violence and Educational Attainment*, 32 J. HUM. RESOURCES 659, 670 (1997).

108. *See id.* at 659.

109. VIOLENCE POLICY CTR., *The Relationship Between Community Violence and Trauma: How Violence Affects Learning, Health, and Behavior* (July 2017), <http://vpc.org/studies/trauma17.pdf>.

110. *Id.* at 5.

111. *Id.* at 6 (first citing William R. Saltzman, et al., *Trauma- and Grief-Focused Intervention for Adolescents Exposed to Community Violence: Results of a School-Based Screening and Group Treatment Protocol*, (2001); Christopher M. Layne, et al., *Wounded Adolescence: Science-Based Group Psychotherapy for Adolescents Who Sustained or Witnessed Violent Injury*, in *SCHOOL VIOLENCE: ASSESSMENT, MANAGEMENT, PREVENTION* 163 (M. Shafii & S.L. Shafii eds., 2001); and then citing Nathan A. Fox & Jack P. Shonkoff, *How Persistent Fear and Anxiety*

The VPC report also notes a series of studies that show gun violence in a child's community causing difficulty learning, following rules, and controlling behavior.¹¹² Such behavioral deficiencies often lead to poor academic performance, lower attendance rates, and, in the end, lower graduation rates.¹¹³ The report points readers¹¹⁴ to one 2009 study in particular, which found that children of elementary school age who had witnessed or experienced numerous violent events suffered a loss, on average, of seven IQ points and ten points on reading ability.¹¹⁵ "Diminished academic achievement among youth who witness community violence has also been shown to persist over time, underscoring the long-term impact of such damage."¹¹⁶

In sum, numerous academic studies by cognitive scientists, child psychologists, sociologists, economists, and political scientists, many of which were empirically rigorous, have demonstrated that children who live in an environment saturated by gun violence develop PTSD. As a result, these children experience cognitive impairment, sleep disorders, daily anxiety, and marked restrictions in persistence, pace, and concentration. When children encounter gun violence, their bodies experience a surge of cortisol and other stress hormones that undermine intellectual performance, memory formation or recall, and self-control. Behavioral changes can take the form of despair, disorientation, withdrawal, or aggressiveness. In addition, the more frequent the exposure to gun violence, and the more direct the exposure, the more lasting are the deleterious effects on the child's mental and personality development. Gun violence has a tremendous impact on educational achievement, which in turn influences opportunities and overall life success.

Can Affect Young Children's Learning, Behaviour and Health, 2011 EARLY CHILDHOOD MATTERS 8).

112. *Id.* at 6.

113. *Id.*

114. *Id.* at 7.

115. *Id.* at 6–7. See *Fact Sheet: Links Between Violence and Learning*, PREVENTION INST. (May 2011), <http://www.preventioninstitute.org/component/jlibrary/article/id-301/127.html>.

116. VIOLENCE POLICY CTR., *supra* note 109, at 7.

III. HOW MASS SHOOTINGS SKEW MEDIA ATTENTION AND POLICY RESOURCES AWAY FROM INNER-CITY SCHOOLS

Gun violence affects minority students through the misguided policy responses to highly-publicized mass shootings. In October 2019, the Southern Poverty Law Center published a report showing that Florida's policy responses after the Parkland mass shooting created a new set of problems for students in the state.¹¹⁷ More specifically, the Marjory Stoneman Douglas High School Public Safety Commission's recommendations to arm teachers, to expand zero tolerance policies for weapons brought to school, and to share social media and cellphone activity with police, results in more students facing arrest and violations of their privacy and civil liberties.¹¹⁸

These violent crimes receive extensive media coverage and initiate public discourse regarding gun violence and its impact on children. However, mass shootings are episodic, acute events. Experts agree that the day-to-day violence associated with high-crime neighborhoods has a greater impact on American schools than the far less common rampage shooting.¹¹⁹ One study found that in the same year as the Sandy Hook mass shooting, where twenty-six people were killed, there were 336 incidents of gunshots going off near public schools in DC. Over half of these occurred within 1000 feet of a school.¹²⁰ The vast majority of chronic gun violence affects urban schools and people of color.¹²¹

Public outrage and legislative action following high-profile mass shootings often call for increased security measures in schools, such as the use of metal detectors, security cameras, random sweeps,

117. See Zoe Savitsky, Bacardi Jackson, Katherine Dunn & Sam Boyd, *Safe for Whom? How the MSD Commission Is Putting Florida's Children in Danger*, SOUTHERN POVERTY LAW CTR. (Oct. 10, 2019), <https://www.splcenter.org/20191010/safe-whom-how-msd-commission-putting-floridas-children-danger>.

118. See *id.*

119. Christina Walker et al., *10 Years. 180 School Shootings. 365 Victims.*, CNN, <https://www.cnn.com/interactive/2019/07/us/ten-years-of-school-shootings-trnd> (last visited Oct. 6, 2019).

120. Sam Bieler & Nancy La Vigne, *Close-Range Gunfire Around DC Schools*, at 2, URBAN INST. (Sept. 2014), <http://www.urban.org/sites/default/files/publication/22906/413216-close-range-gunfire-around-dc-schools.pdf>.

121. Walker et al., *supra* note 119.

school police, and even armed teachers. Researchers warn that such intense security measures result in educational and sociological harms.¹²² Constant student surveillance and strict security creates an environment more similar to a prison than a place of education.

A. Skewed Media Attention

The disproportionate media and political attention on mass shootings belies the fact that school mass shootings represent such a small fraction of the gun violence experienced by school-aged children.¹²³ The *Washington Post* reported in 2018, “Mass shootings at predominantly white schools draw the most attention from journalists and lawmakers, but *The Post* has found that children of color are far more likely to experience campus gun violence—nearly twice as much for Hispanic students and three times as much for black students.”¹²⁴ Firearm violence disproportionately affects “inner-city children who encounter gunfire in their neighborhoods as well as in their schools.”¹²⁵

122. Melinda D. Anderson, *When School Feels Like Prison*, THE ATLANTIC (Sept. 12, 2016), <https://www.theatlantic.com/education/archive/2016/09/when-school-feels-like-prison/499556/>.

123. See Maybell Romero, *Educational Environments and the Federal Right to Education in the Wake of Parkland*, 73 U. MIAMI L. REV. 731, 756–57 (2019) (“Since 1996, there have been sixteen multiple-victim shootings in schools, with eight of these being mass shootings. Mass shootings at school are exceptionally rare . . . and while ‘mass murders occur between [twenty] and [thirty] times per year, . . . about one of those incidents on average takes place at a school.’” (quoting Allie Nicodemo & Lia Petronio, *Schools Are Safer Than They Were in the 90s, and School Shootings Are Not More Common Than They Used To Be, Researchers Say*, News@Northeastern (Feb. 26, 2018), <https://news.northeastern.edu/2018/02/26/schools-are-still-one-of-the-safest-places-for-children-researcher-says/>)); see also PIRELLI ET AL., *supra* note 38, at 221 (“Street shootings take the lives of far more people in one year than all the school rampage shootings put together.”).

124. John Woodrow Cox & Steven Rich, *Scarred by School Shootings*, WASH. POST, <https://www.washingtonpost.com/graphics/2018/local/us-school-shootings-history/?> (last updated Mar. 25, 2018).

125. *Id.*; see also *For Many Urban Schools, Gun Violence Remains a Daily Reality*, NPR (Dec. 13, 2013, 5:10 PM), <https://www.npr.org/2013/12/13/250734629/for-many-urban-schools-gun-violence-remains-a-daily-reality>; see also Wong, *supra* note 42. Wong observes:

The Columbine shooting led to safety reforms in districts across the country, as have many school shootings since. But these efforts can

Gun violence disproportionately impacts large metropolitan areas and particularly minority youth populations, but news outlets tend to treat urban violence as an everyday, insignificant event.¹²⁶

Because of the way in which local news media cover crime in regular broadcasts, the media contribute to the perception that “crime is simply the cultural norm in urban areas” and “that the shooting deaths of children or minors in urban areas are an unfortunate manifestation of that norm” and thus “routine.”¹²⁷ News outlets recount statistics on school mass shootings in a way that escalates audience anxiety,

make schools into a stressful environment for students. Often, this punitive culture—namely, the presence of campus law enforcement—makes its way less into predominantly white, middle-class, or affluent communities, where high-profile shootings tend to happen, and more into places where the other less-recognized but more constant forms of gun violence are common.

Id. News sources devote much heavier coverage, and more sensationalized reporting, to the rare mass shootings than to the daily inner-city shootings that cause far more fatalities. See Regina G. Lawrence & Thomas A. Birkland, *Guns, Hollywood, and School Safety: Defining the School-Shooting Problem Across Public Arenas*, 85 SOCIAL SCI. QUARTERLY 1193 (2004) (analyzing how agenda setting by politicians cues the media to follow story lines that depart from actual legislative activity). For more discussion of the correlation between the media and social media frenzy, the latter being highly influential in further shaping our construction of reality, see Lauren Guggenheim et al., *Examining Social Media Influence: The Dynamics of Issue Frame Competition in Traditional and Social Media*, 659 ANNALS AM. ACAD. POL. & SOC. SCI. 207 (2015).

126. See Wanda Parham-Payne, *The Role of Media in the Disparate Response to Gun Violence in America*, 45 J. OF BLACK STUD. 752, 756–57 (2014); see also Robert S. Levine et al., *Firearms, Youth Homicide, and Public Health*, 23 J. HEALTH CARE FOR THE POOR AND UNDERSERVED 7 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3457653/>; James Hawdon et al., *Social Responses to Collective Crime: Assessing the Relationship between Crime-Related Fears and Collective Sentiments*, 11 EUR. J. CRIMINOLOGY 39, 43–52 (2014); David Ropeik, *School Shootings Are Extraordinarily Rare. Why Is Fear of Them Driving Policy?*, WASH. POST (Mar. 9, 2018, 2:27 PM), https://www.washingtonpost.com/outlook/school-shootings-are-extraordinarily-rare-why-is-fear-of-them-driving-policy/2018/03/08/f4ead9f2-2247-11e8-94da-ebf9d112159c_story.html.

127. Parham-Payne, *supra* note 126, at 757 (2014); see also Robert S. Levine, *supra* note 126, at 7.

captivating viewers by weaving a narrative of a rampant social problem.¹²⁸ The skewed portrayal, emphasizing occasional rampage shootings while ignoring daily, low-level gun violence in poor neighborhoods, creates widespread misperceptions and disproportional concern.¹²⁹ For the public, fear of school mass shootings becomes more salient than the reality of gun-related youth deaths and injuries; mass shootings in normally peaceful, suburban schools seem terrifying and receive saturation-level coverage.¹³⁰ “A threat feels more threatening if it’s getting a lot of attention.”¹³¹ Because certain “news outlets set the agendas for other ones,” the selection and framing of news stories by a few influences the information the public receives and ultimately “can affect the scope of policy debate.”¹³²

128. See Jaelyn Schildkraut, *Mass Murder and the Media: Understanding the Construction of the Social Problem of Mass Shootings in the US*, 4 J. QUALITATIVE CRIM. JUST. & CRIMINOLOGY 1, 27 (2016). Victim counts, for example, help “to underscore just how horrific the event was.” *Id.* at 21. Further dramatizing the information, the media use “community statistics” to suggest death tolls could have been even higher. *Id.* at 23 (giving examples of community statistics such as “[a]t least 10,000 people were in the mall at the time of the shooting” and the business “employs 1,200 to 1,800 people on any given day.”).

129. *Id.* at 24 (“By situating the rare phenomenon of mass shooting in national statistics, such as violent crime rates for individual cities or even the nation at large, the unlikelihood of these events would be underscored.”). Similarly, for example, reporting on the 10,000+ rounds of ammunition an active shooter had without putting the terrifying fact “in terms of the victim count or actual rounds fired,” amplifies the potential carnage in the viewers mind.” *Id.*

130. See HEMENWAY, *supra* note 41, at 105 (“Recent [school shootings] have been unusual in that they did not occur so much in urban settings as in generally more peaceful suburban and rural communities.”).

131. Ropeik, *supra* note 126.

132. Guggenheim, et al., *supra* note 125, at 208, 209; see also Parham-Payne, *supra* note 126, at 758 (“[A]fter learning of the Newtown shootings, the national media . . . impl[ie]d that [the shooter’s] behavior was deviant and outside of the norm for the area . . . and members of the general citizenry exhibited a significant shift in gun control policy Congressional members and other federal lawmakers also began to shift their focus on the role of gun policies in an attempt to ameliorate the public’s growing demand of gun reform in the aftermath of the shootings.”).

B. The Problems with Arming Teachers and Other School Personnel

The policy response is also disproportional: politicians act quickly to respond to low-probability school mass shootings.¹³³ Sadly, this response neglects the larger, more complex issue of youth gun violence, and these political actions can expend political capital and induce unintended, inapposite legislative results and other consequences.¹³⁴ One common response to school shootings is to increase

133. See Kimberley Hefling, *School Safety Efforts Reignite in Congress After Mass Shootings*, POLITICO (Aug. 8, 2019, 10:00 AM), <https://www.politico.com/newsletters/morning-education/2019/08/08/school-safety-efforts-reignite-in-congress-after-mass-shootings-466541>.

134. See Harvard Law School Gun Violence Policy Group, *White Paper: Gun Violence in the Inner City* 18 (Harv. Law Sch. Frontier Torts Project ed., 2013), <http://learning.law.harvard.edu/frontiertorts/wp-content/uploads/2014/02/140207%20Inner%20City%20Gun%20Violence%20Final.pdf> (“[T]he media’s tendency to focus on mass shootings and suburban deaths from guns at the exclusion of reporting on urban gun violence, and the implication of choice in those portrayals of urban shootings that are publicized, may be both reflecting and further motivating a dispositionist view of urban violence actors in public discussions and limiting true evaluation of possible solutions for the national problem of urban gun violence.”); Lawrence, *supra* note 125, at 1193; Christopher Ingraham, *After Mass Shootings, GOP-Led Legislatures Double Efforts to Loosen Gun Restrictions*, *Data Show*, WASH. POST (Sept. 4, 2019, 5:00 AM), <https://www.washingtonpost.com/business/2019/09/04/after-mass-shootings-republican-led-legislatures-double-efforts-loosen-gun-restrictions/> (“[R]esearchers found ‘the annual number of laws that loosen gun restrictions doubles in the year following a mass shooting in states with Republican-controlled legislatures.’ Mass shootings in states where Democrats held the majority, on the other hand, didn’t appear to elicit any significant policy response in either direction.”); see also Guggenheim et al., *supra* note 125, at 209 (“The Newton school [mass] shooting in particular stimulated both popular and congressional support for policy action. . . resulting in no national policy measures (although many states enacted legislation, both in favor of and opposed to stricter gun regulations. . . .)”).; Kim Bellware, *NRA Calls O’Rourke ‘Salesman of the Month’ After Gun Store Cashes in with ‘Beto Special’*, WASH. POST (Sept. 20, 2019, 9:46 AM), <https://www.washingtonpost.com/politics/2019/09/20/nra-calls-orourke-salesman-month-after-gun-store-cashes-with-beto-special/> (“An Arizona gun store is crediting a major sales bump to Democratic presidential candidate Beto O’Rourke after turning his recent call for a buyback of high-powered firearms into a promotional event. . . . O’Rourke has staked out the most aggressive stance on gun control among the field of Democratic presidential hopefuls, making it a central campaign issue following a mass shooting that killed 22 people.”).

the number of armed adults in schools. The push to increase police presence in schools exacerbates existing problems for several reasons.

1. Psychological Effects of Weapons Present in Schools

First, there is a weapons effect—psychological research suggests that the mere presence of a firearm can cause people to perceive others as aggressive, making them more inclined to respond in an aggressive manner in ambiguous situations.¹³⁵ This compounds issues for children coming from violent neighborhoods who may already struggle to make appropriate appraisals as to their safety and the trustworthiness of authority figures. As shown, one child’s behavioral problems can stymie the education potential of the entire class. The presence of armed guards and teachers, especially combined with active-shooter drills, adds to the trauma and intimidation that these students experience. As mentioned above, the Florida commission investigating the horrifying school shooting in Parkland recommended that the state’s schools reduce the frequency of active-shooter drills because they could be traumatizing for students.¹³⁶

2. Race-Crime Association

Some commentators have expressed concern over the race-crime association: people of color are seen as more dangerous and deserving of punishment than their white counterparts.¹³⁷ Extensive research shows that “students of color are punished more severely than

135. See Arlin J. Benjamin Jr. et al., *Effects of Weapons on Aggressive Thoughts, Angry Feelings, Hostile Appraisals, and Aggressive Behavior: A Meta-analytic Review of the Weapons Effect Literature*, 21 PERSONALITY & SOC. PSYCHOL. REV. 347, 359 (2017).

136. See Arian Campo-Flores, *Florida Commission Calls for Fewer School-Shooting Drills*, WALL STREET J. (Oct. 16, 2019, 2:12 PM), <https://www.wsj.com/articles/florida-commission-calls-for-fewer-school-shooting-drills-11571249535>.

137. The race-crime association can be seen in the discrepancies in sentencing for murders perpetrated by black individuals against white victims. Cases in which the criminal defendant appeared “more stereotypically black (e.g. darker skinned, with a broader nose and thicker lips)” received harsher sentences and were more likely to be sentenced to death than defendants with less stereotypically black characteristics. Additionally, black juvenile offenders are more likely to be perceived as adults and, thus, more deserving of more severe punishment. *About Jennifer Lynn Eberhardt*,

white students for the same minor infractions.”¹³⁸ As one expert put it, “[a]rming that bias with a gun is frightening.”¹³⁹ Additionally, security measures are often far more stringent in schools serving students of color.¹⁴⁰ The probability of a school using a mix of metal detectors, school police and security guards, locked gates, and random sweeps is two to eighteen times greater at schools with a majority nonwhite population than at schools where the nonwhite population is less than 20%.¹⁴¹ These measures are often funded through federal programs, like the Department of Justice’s Community Oriented Policing Services (COPS) program¹⁴² which granted \$125 million in grants to schools wishing to hire school resource officers,¹⁴³ so under-resourced schools increasingly rely on police, rather than teachers or administrators, to handle disciplinary problems. Students are being criminalized for behavior that would normally be handled inside the school. The majority of school-based arrests are for non-violent offenses, such as disruptive behavior. The result is a “school-to-prison pipeline,” in which children are funneled from public schools into the juvenile and criminal justice systems.¹⁴⁴

STAN. U., <http://web.stanford.edu/~eberhard/about-jennifer-eberhardt.html> (last visited Oct. 6, 2019).

138. Mimi Kirk, *What Research Says About Arming Teachers*, CITYLAB (Mar. 14, 2018), <https://www.citylab.com/life/2018/03/what-the-research-says-about-arming-teachers/555545/>.

139. *Id.*

140. See Jason P. Nance, *Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 EMORY L. J. 765, 830 (2017). Research has shown that even after controlling for school crime, neighborhood crime, and school disorder, “the concentration of young, male African-Americans” was a predictor of whether or not schools decided to rely on more intense security measures. *Id.*

141. *Id.* at 811.

142. THE WHITE HOUSE, PROGRESS REPORT ON THE PRESIDENT’S EXECUTIVE ACTIONS TO REDUCE GUN VIOLENCE (Dec. 2, 2013), 6, <https://www.dhs.gov/sites/default/files/publications/Exec%20Actions%20Progress%20Report%20FINAL.PDF>.

143. Press Release, Dep’t of Justice Awards Hiring Grants for Law Enf’t and Sch. Safety Officers, Dep’t of Justice (Sept. 27, 2013), <https://www.justice.gov/opa/pr/departement-justice-awards-hiring-grants-law-enforcement-and-school-safety-officers>.

144. RUSSELL SKIBA ET AL., AMERICAN PSYCHOLOGICAL ASS’N ZERO TOLERANCE TASK FORCE, ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? AN EVIDENTIARY REVIEW AND RECOMMENDATIONS 9 (2006), <https://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf>.

3. Mishandled Guns

Guns are mishandled in schools regularly enough that any proposals to bring more guns into classrooms should be treated with extreme skepticism, if not outright opposition. Teachers, and even trained personnel such as School Resource Officers (SROs), often mishandle guns in schools.¹⁴⁵ Guns that are misplaced in schools are frequently found by students.¹⁴⁶ Even stored guns are found and accessed by students.¹⁴⁷ Students have discharged guns belonging to teachers and

145. See Kelly Drane, *Every Incident of Mishandled Guns in Schools*, GIFFORDS LAW CTR. (Feb. 2, 2020), <https://giffords.org/blog/2020/02/every-incident-of-mishandled-guns-in-schools-blog/> (collecting publicly-reported incidents of mishandled guns in schools). The author wishes to acknowledge the invaluable help provided by research assistant Stephanie KcKernan in researching and compiling this subsection.

146. Students usually find guns that were accidentally left in restrooms. See, e.g. Becky Metrick, *Teacher Charged After Students Find Her Loaded Gun in Bathroom*, PUB. OPINION NEWS (September 12, 2016, 6:39 PM), <https://www.publicopiniononline.com/story/news/2016/09/12/teacher-resigns-after-child-finds-her-loaded-gun-school/90280916/> (four students between the ages of 6 and 8 found a teacher's loaded gun on the toilet tank in a single unisex school bathroom); *Boy Finds Gun in School Bathroom in Miami*, CBSMIAMI (October 5, 2018, 5:49 PM) <https://miami.cbslocal.com/2018/10/05/boy-finds-gun-in-school-bathroom-in-miami/> (5th grader found a security guard's gun in the bathroom); *Student Finds Loaded Gun in Holly Hill School Bathroom*, WESH (May 3, 2017, 11:04 PM), <https://www.wesh.com/article/student-finds-loaded-gun-in-holly-hill-school-bathroom/9599927> (the gun was left in the restroom by a campus security guard); Kaitlin Zurawsky, *Ringgold Student Finds Security Guard's Loaded Gun in Bathroom*, WTAE (Oct.13, 2016, 11:29 PM), <https://www.wtae.com/article/ringgold-student-finds-security-guard-s-loaded-gun-in-bathroom/8059057> (high school student found district security guard's loaded gun).

147. See, e.g., Dean Narciso, *First Graders Had Access to Gun Meant to Prevent School Violence*, COLUMBUS DISPATCH (Aug. 16, 2019, 7:11 AM), <https://www.dispatch.com/news/20190816/first-graders-had-access-to-gun-meant-to-prevent-school-violence> (district transportation director left her gun in an unlocked plastic case behind her desk during a short trip to the restroom and returned to find that the gun was accessed by two first graders); J. Ryne Danielson, *Central Middle Teacher Brought Gun To Class, Students Stole It*, PATCH (October 26, 2018, 8:13 AM), <https://patch.com/missouri/stlouis/central-middle-teacher-brought-gun-class-students-stole-it> (substitute teacher didn't realize their gun, which was stolen by two students aged 13 and 14, was missing until the end of the school day) (the students were arrested for stealing the gun); Carla Field, *5th-Grader Takes Security Guard's Gun at School, Officials Say*, WYFT (May 13, 2015, 7:47 PM),

SROs at school.¹⁴⁸ Teachers and SROs have also accidentally discharged their own firearms at school.¹⁴⁹ Of course, the risks associated with an increased number of guns in schools are not limited to physical harm, but sometimes students do in fact sustain bodily injury from guns mishandled by someone at school.¹⁵⁰ Of course, some teachers *want* to

<https://www.wyff4.com/article/5th-grader-takes-security-guard-s-gun-at-school-officials-say/7014639#> (a fifth-grade student took a security guard's gun from his holster while sitting next to him); Bill Wilson & Heather King, *Teacher Charged After Loaded Gun Found in Classroom*, WITN (December 5, 2014, 11:16 PM), <https://www.witn.com/home/headlines/Teacher-charged-after-loaded-gun-found-in-classroom-284881001.html> (high school student found loaded gun in auto mechanic teacher's laptop bag).

148. See, e.g., *Third-grader Fired Minnesota Cop's Holstered Gun; No One Hurt*, MINNESOTA PUBLIC RADIO NEWS (February 5, 2018, 6:00 PM), <https://www.duluthnewtribune.com/news/crime-and-courts/4399076-third-grader-fires-minnesota-cops-holstered-gun-no-one-hurt> (third-grader pulled the trigger of a school liaison officer's holstered handgun while sitting next to him and fired a round into the floor). The holster was a department-approved holster with a trigger guard that typically cannot be touched or fired in the holster, "but the child's small finger was able to reach inside." *Id.*; Gus Burns, *Gun Discharges During Struggle Between Deputy, High School Student*, MLIVE DETROIT (October 4, 2017), https://www.mlive.com/news/detroit/2017/10/report_gun_discharges_during_s.html (18-year-old student grabbed a deputy's gun during an arrest, causing the weapon to discharge) (the student faces possible charges of domestic violence—the reason for the initial arrest, attempting to disarm a police officer and resisting or obstructing a police officer).

149. See, e.g., Joshua Tombly, *Pasco Deputy's Gun Goes Off in Weightman Middle School Cafeteria, Strikes Wall*, TAMPA BAY TIMES (April 30, 2019), <https://www.tampabay.com/news/publicsafety/pasco-resource-officers-gun-goes-off-hits-cafeteria-wall-at-weightman-middle-school-20190430/> (SRO's holstered firearm fired a round into the wall he was on duty); Kaley Johnson, *DFW School Resource Officer Accidentally Fires Gun at School*, STAR-TELEGRAM (April 18, 2019, 3:49 PM), https://www.star-telegram.com/news/local/crime/article229432704.html?fbclid=IwAR0xqJo56pSsDGYYzFUwQ-hIEya8r0ze3tub-FWmev9i19_JK0RoD9a1ECU8 (Mesquite police officer assigned to a high school accidentally fired a round from his handgun while inspecting it); Amy Larson, *Seaside High Teacher Accidentally Fires Gun in Class, Students Injured*, KSBW (March 14, 2018, 6:30 PM) <https://www.ksbw.com/article/seaside-high-teacher-accidentally-fires-gun-in-class/19426017#> (teacher who also serves as a reserve police officer accidentally fired a gun inside a classroom while teaching a course about gun safety).

150. See Larson, *supra* note 150. The teacher accidentally fired a round into the ceiling during his demonstration. Three students were injured when pieces of the ceiling fell. One 17-year-old student was struck in the neck by bullet fragments that ricocheted off the ceiling. *Id.*

carry guns to school and believe that they can adequately secure the firearm in a place where children cannot access it,¹⁵¹ though most teachers' associations oppose the arming of schoolteachers.

4. Insurance

Allowing teachers to carry guns on campus presents such a high risk for insurers that oftentimes they will either refuse to provide coverage for schools or hike premiums to account for the risk.¹⁵² For example, the largest insurer of Kansas' school districts refused to insure schools which implemented a new state law that would allow teachers with concealed weapons permits to carry their guns at school.¹⁵³ The New York Times also reported that the school districts in Oregon that allow armed staff must pay an additional \$2,500 annual premium for each armed staff member.¹⁵⁴

151. See LAURA BETH NIELSEN, GOOD MOMS WITH GUNS, GUNS IN LAW 191–92 (Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey, eds. 2019) (interview with schoolteacher who describes carrying a gun in a purse that locks, and locking the purse in a drawer in a cabinet behind her desk in her elementary school classroom).

152. See Steven Yaccino, *Schools Seeking to Arm Employees Hit Hurdle on Insurance*, N.Y. TIMES (July 7, 2013), <https://www.nytimes.com/2013/07/08/us/schools-seeking-to-arm-employees-hit-hurdle-on-insurance.html>. See also Joseph P. Conti, *Arming Teachers and School Personnel: The Potential Civil Liability for School Districts*, 86 PA. B. ASS'N Q. 1, 8 (2015) (“A serious question exists as to whether insurance companies will be willing to provide the necessary liability coverage.”).

153. In a 2013 memo to its Kansas agents, EMC Insurance said that it “has concluded that concealed handguns on school premises pose a heightened liability risk.” Agency Service Bulletin to Kansas Agents RE: KS House Bill 2052, EMC Insurance Companies (May 15, 2013). For this reason, EMC decided not to insure schools that allowed concealed carry “to protect the financial security of our company.” *Id.* In 2018, Kansas lawmakers introduced legislation that would prohibit insurance companies from charging discriminatory rates or refusing to insure school districts that allowed concealed carry. EMC refused to back down and the bills died in committee. See Corey Clark, *Insurers Resist Arming Teachers*, ST. NET CAPITOL J. (July 6, 2018), <https://www.lexisnexis.com/communities/state-net/b/capitol-journal/archive/2018/07/06/insurers-resist-arming-teachers.aspx>.

154. Yaccino, *supra* note 153; see also Todd C. Frankel, *One Roadblock to Arming Teachers: Insurance Companies*, WASH. POST (May 26, 2018, 10:13 PM), <https://www.washingtonpost.com/business/economy/one-roadblock-to-arming-teachers-insurance-companies/2018/05/26/59d6c704-5f7e-11e8-8c93->

5. Civil Liability

Armed-teacher policies could potentially bring a teacher's actions within the purview of § 1983 liability under the state-created risk doctrine.¹⁵⁵ School districts that adopt armed-teacher policies can also expose themselves to tort liability if they fail to adequately train or supervise those teachers.¹⁵⁶ Consequently, both individual actors and the school district are vulnerable to liability for any injuries proximately caused by the armed-teacher policies.¹⁵⁷ Suits for damages resulting from a teacher's conduct could potentially bankrupt a school district, or at least strain its resources.

6. Ambiguity Over Use of Federal Funds

The DOJ Community-Oriented Policing Services (COPS) is an office within the DOJ, created by Title I of the Violent Crime Control and Law Enforcement Act of 1994.¹⁵⁸ The COPS Office provides

8cf33c21da8d_story.html?noredirect=on. Interestingly, unlike the school districts' liability insurance, the cost of homeowners', renters', and even life insurance is not influenced by the presence of firearms. See George A. Mocsary, *Insuring Against Guns?*, 46 CONN. L. REV. 1209, 1233 (2014), for an analysis of the potential for firearm liability insurance for gun owners.

155. See generally Danielle Weatherby, *Opening the "Snake Pit": Arming Teachers in the War Against School Violence and the Government-Created Risk Doctrine*, 48 CONN. L. REV. 119 (2015) (discussing a teacher's affirmative duty to protect students from potential harm caused by a "state actor," in this case a teacher, bringing a concealed weapon into the school).

156. See *id.* at 164 ("[A] plaintiff seeking to hold a school district liable for an injury or death proximately caused by a teacher's misfire or misuse of a firearm pursuant to a district's armed-teachers policy will be able to establish municipal liability under the state-established policy, practice, or custom theory of liability.").

157. See *id.* at 131 ("School shooting victims may bring a § 1983 action against . . . an individual teacher (the 'state actor') whose actions proximately caused their injuries.").

158. 34 U.S.C. § 10381 (2018). The Act seeks "to establish school-based partnerships between local law enforcement agencies and local school systems by using school resource officers." *Id.* § 10381(b)(12). The COPS Office was created to distribute and monitor the \$8.8 billion in appropriated funds over the next six years. COPS, <https://cops.usdoj.gov/aboutcops> (last visited Feb. 21, 2020).

grants to hire “community policing” professionals—many grant recipients are school districts.¹⁵⁹ Since 1994, COPS hiring programs have funded 130,000 law enforcement officer positions.¹⁶⁰ Supplementing this federal program is the Student Support and Academic Enrichment Program, a flexible block grant created by the Every Student Succeeds Act, which allows state and local education agencies to provide academic services and tools to enhance student learning and achievement.¹⁶¹ The statute is unclear about whether schools may use the funds to purchase firearms or firearms training for teachers and security guards.¹⁶² Section 7188 provides that funds can be used to “improve . . . school conditions for student learning” and “to support safe and healthy students.”¹⁶³ Controversy has surrounded whether these federal funds could be used to purchase guns.¹⁶⁴

159. See OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, U.S. DEPARTMENT OF JUSTICE FY 2019 PERFORMANCE BUDGET 3 (February 12, 2018), <https://www.justice.gov/jmd/page/file/1034536/download>.

160. See OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE FY 2020 PERFORMANCE BUDGET 109 (March 2019), <https://www.justice.gov/file/1144566/download>. Of the \$99 million requested for COPS programs in FY 2020, \$69 million is requested specifically for the COPS Hiring Program. *Id.* at 110.

161. 20 U.S.C. § 7111 (2015). The purpose of the grant is to “improve student’s academic achievement by increasing the capacity of . . . schools, and local communities to . . . improve school conditions for student learning.” *Id.* § 7111(1)(2). This includes but is not limited to school safety measures like school-based mental health services, violence prevention programs, and training for staff on trauma-informed practices. See 20 U.S.C. § 7118 (5)(B–D) (2015).

162. See Memorandum from the Office of Elementary and Secondary Education on Options for the Allowable Use of Funds for School Safety Measures 4 (July 16, 2018) (“However the definition of ‘drug and violence prevention’ for the Title IV, Part A program reference the ‘creation and maintenance of a school environment that is free from weapons.’”).

163. See 20 U.S.C. § 7118 (describing programs to support safe and healthy students).

164. See Erica L. Green, *DeVos Punts to Congress on Federally Funded Guns for Schools*, N.Y. TIMES (September 6, 2018), <https://www.nytimes.com/2018/09/06/us/politics/devos-schools-guns.html>. DeVos said that she had “no intention of taking any action concerning the purchase of firearms or firearms training for staff.” DeVos’s letter to Democratic lawmakers went on to say that “Congress did not authorize me or the Department to make those decisions [about whether an activity is an allowable use of funds].” Letter from Betsy DeVos, Sec’y of Educ., to Rep. Bobby Scott, House Committee on Education and the Workforce (August 31,

C. Zero-Tolerance Policies Harm Students

Schools have increasingly embraced zero-tolerance policies that automatically impose severe punishment in response to certain rule violations regardless of circumstances. The amended Gun-Free Schools Act (GFSA) mandates that, in order to receive certain federal funds, states must require local educational agencies to expel students from school for a minimum period of one year if they possess a firearm on school property.¹⁶⁵ Though the GFSA allows states to grant local educational agencies discretion in such expulsions on a case-by-case basis,¹⁶⁶ this avenue is rarely used in practice. As a result, measures that school districts use to prevent or deter students from carrying guns are often overly punitive, and these heavy-handed actions disproportionately fall on students of color.

Draconian punishments do not necessarily yield increased school safety or academic success.¹⁶⁷ Research has revealed a negative relationship between “the use of school suspension and expulsion and school-wide academic achievement.”¹⁶⁸ “[S]chools with higher rates of school suspension and expulsion appear to have *less* satisfactory ratings of school climate, less satisfactory school governance structures, and . . . a higher likelihood of school dropout[.]”¹⁶⁹ Zero tolerance policies correlate with increased use of and reliance on school security technology, security personnel, and profiling.¹⁷⁰ Again, evidence shows that black students receive punishments that are more severe, for less serious or more subjective reasons.¹⁷¹ Further, students with behavioral disorders, like the ones associated with neighborhood violence, are also disproportionately subject to suspension and expulsion.¹⁷²

2018.). See @EDPressSec, TWITTER (August 31, 2018, 3:56 PM), <https://twitter.com/EDPressSec/status/1035632557126287360>.

165. See 18 U.S.C. § 922(q)(2)(B)(iv), (v) (2019); § 922(q)(3)(B)(ii), (iii) (2019).

166. 20 U.S.C. § 7961(b)(1) (2015).

167. SKIBA ET AL., *supra* note 144, at 4–5.

168. *Id.* at 5.

169. *Id.* at 4–5.

170. See *id.* at 6.

171. *Id.*

172. *Id.*

In 2014, the Obama administration released federal guidance in the form of a joint “dear colleague” letter from the U.S. Department of Justice and the Department of Education.¹⁷³ The policy sought to reduce suspensions and expulsions of minority students in an effort to curb the school-to-prison pipeline. It stated “[s]chools cannot divest themselves of responsibility for the nondiscriminatory administration of school safety measures and student discipline by relying on school resource officers[.]”¹⁷⁴ After 2016, the Trump administration has rolled back the directive. Even though mass shootings have occurred mostly in predominately white, suburban schools, the Trump administration blamed the Obama-era policy for recent mass shootings.¹⁷⁵

These solutions—turning schools into armed fortresses, then into prison-like compounds with punitive crackdowns on the students themselves—have failed to address the widespread, detrimental gun violence in the communities that continues to affect the students. The larger, more systemic problem is that the violent gun culture outside the school is affecting what goes on inside the schools. Misguided policies up to now have focused instead on trying to eliminate every possible threat within the schools themselves, ignoring the violence surrounding the school on the outside.

IV. WORKABLE SOLUTIONS

The gun violence that perpetuates and contributes to educational inequality is not primarily *within* the school, but outside, in the students’ community. Their trauma comes from daily gun violence in the neighborhoods where they live, play, and trek to and from school. Thus, the solution is to reduce gun violence in the community, not merely within the school. Some programs have been remarkably effective at reducing violence in specific communities when there was

173. See Joint Dear Colleague Letter from U.S. Dep’t Just. & U.S. Dep’t Educ. on the Nondiscriminatory Administration of School Discipline (Jan. 8, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

174. *Id.*

175. See Erica L. Green, *Trump Finds Unlikely Culprit in School Shootings: Obama Discipline Policies*, N.Y. TIMES (Mar. 13, 2018), <https://www.nytimes.com/2018/03/13/us/politics/trump-school-shootings-obama-discipline-policies.html>.

adequate participation by community leaders and funding from government agencies or private foundations; these programs strengthen the local community and have many benefits besides lowering homicide rates. These programs should be the starting point in any response.

The solutions exemplified by the relief sought in the Chicago *Powell* case would also help reduce community gun violence by reducing the supply of crime guns in urban areas¹⁷⁶—mostly focusing on gun dealers, but also on firearm relinquishment for those gun owners with revoked licenses and permits. These initiatives are on what I term the outskirts of the Second Amendment—close enough to the penumbra of the Second Amendment’s coverage to provoke constitutional challenges, but (at least up to now) just enough outside the Amendment’s curtilage to survive such challenges in courts. Regulation and inspections of gun dealers implicates the Second Amendment only indirectly, of course, and since there is no outright ban on gun sales at issue, the constitutional claim is extremely attenuated. Regulation and inspections of gun retailers have the pedigree of statutory text, tradition, and a longstanding history. Adopting clear rules for retailers, as well as providing training and regular inspections, would help reduce the number of straw purchasers for violent criminals, and would help reduce the number of stolen guns that replenish the black market every month. Additionally, age restrictions (at least 21, if not 24,) for gun purchases and/or ownership, and zoning ordinances to keep firearm retailers outside normal walking distance from schools are on the outskirts of the Second Amendment. The regulatory improvements sought in *Powell* would certainly help the situation of the children in Chicago, especially if combined with other proven strategies for reducing community gun violence, to which I now turn.

A. *Programs that Have Worked*¹⁷⁷

Several community-based outreach programs have proved surprisingly successful in recent years in reducing urban gun violence. The programs continue to demonstrate success and are spreading to more cities, and they show promise for reducing the trauma that inner-city children experience due to the rampant gun violence that has

176. See *supra* notes 52–116 and accompanying text.

177. The author is particularly indebted to research assistant Sofia Colorado for her contributions to this section.

plagued their neighborhoods. I propose that such programs also include teachers, school guidance counselors, and school administrators. We must train educators and school counselors about ways that they can help interrupt community violence, and how to channel at-risk students to into effective outside nonviolence programs and social services they need.

1. Oakland, California: Oakland Ceasefire and “Lock it Up”

Oakland, California used a community-based program to reduce its level of shootings and homicides to their second lowest levels in 47 years.¹⁷⁸ The program uses a data analytics to identify groups and individuals at the highest risk of being involved in a shooting, and uses careful, respectful approaches of outreach to those identified, to make various social services and opportunities available to them. At the same time, local police use focused enforcement to specifically target individuals who persist in a pattern of violent crime even after receiving social services outreach.¹⁷⁹ In a breathtaking success story, Oakland has reduced its annual shootings and homicides by half.¹⁸⁰ The city built its program management structure around regular communication between Oakland Ceasefire partners and city leaders, with frequent meetings, weekly shooting reviews, bimonthly coordination meetings, and performance reviews by the mayor.¹⁸¹ Oakland Ceasefire has become a template for other large cities to follow.

In addition, Oakland added a component of safe-storage practices specifically to reduce children firearm fatalities. Unsafe firearm storage is a leading cause of youth violence against themselves and their classmates.¹⁸² Seventy to ninety percent of firearms used in youth

178. See David Muhammad, *Oakland's Successful Gun Violence Reduction Strategy*, NAT'L INST. CRIM. JUSTICE REF. 1 (2018), <http://nicjr.org/wp-content/uploads/2018/02/Oakland%E2%80%99s-Successful-Gun-Violence-Reduction-Strategy-NICJR-Jan-2018.pdf>.

179. *Id.* at 2

180. See Mike McLively & Brittany Nieto, *A Case Study in Hope: Lessons from Oakland's Remarkable Reduction in Gun Violence*, GIFFORDS LAW CTR. 5 (2019), <https://lawcenter.giffords.org/wp-content/uploads/2019/05/Giffords-Law-Center-A-Case-Study-in-Hope.pdf>.

181. *Id.* at 7.

182. See *Safe Storage*, GIFFORDS LAW CTR. <https://lawcenter.giffords.org/gun-laws/policy-areas/child-consumer-safety/safe-storage/> (last visited Oct. 2, 2019).

suicide and school shootings were obtained from their household.¹⁸³ In order to combat youth gun violence, Oakland County adopted the “Lock-It-Up” initiative, which requires both residents and visitors to safely store firearms in their household¹⁸⁴ and their cars.¹⁸⁵ The California Penal Code provides that all authorized legal firearms owners are prohibited from keeping a firearm in their residence¹⁸⁶ unless one of the following exceptions apply: the gun is stored in a locked container,¹⁸⁷ the gun is disabled by a safety device, the gun is maintained within a locked gun safe or a locked trunk. Additionally, and obviously, storage of firearms is not a requirement for a gun “carried on the person or within close enough proximity thereto that the individual can readily retrieve and use the firearm as if carried on the person.”¹⁸⁸

183. *Id.*

184. OAKLAND MUN. CODE § 9.39 (2016) (“Safe Storage of Firearms in a Residence”). The Act also imposes civil and criminal penalties on violators. *Id.* § 9.39.050. Specifically, improper gun storage can lead to a maximum of six months in jail or/and a \$1,000 fine. Civil penalties include a \$1,000 fee per violation. *Id.* Shortly after the bill was proposed, the NRA took legal action by hiring counsel to draft a letter to the City of Oakland’s council members expressing their concerns regarding the bill. *See Darwin BondGraham, NRA Says It Will Sue Oakland Over New Gun Laws, EAST BAY EXPRESS* (Jan. 7, 2016), <https://www.eastbayexpress.com/SevenDays/archives/2016/01/07/nra-says-it-will-sue-oakland-over-new-gun-laws>. The letter opened with a litigious quote from the *Heller* decision and claimed that the law was “extreme and unconstitutional.” *Id.*

185. OAKLAND MUN. CODE § 9.37 (2016) (“Unsecured Firearms and Ammunition in Unattended Vehicles”). *See also Oakland Gun Storage Law, CITY OF OAKLAND*, <https://www.oaklandca.gov/topics/oakland-gun-storage-laws> (last visited Oct. 3, 2019).

186. OAKLAND MUN. CODE § 9.39.030 (2016) (“‘Residence’ means any structure intended or used for human habitation, including but not limited to, houses, condominiums, rooms, motels, and time-shares. For purposes of this chapter, it also includes a garage which is enclosed within or located adjacent to such a structure and which is not open to the public.”).

187. *Id.* “[L]ocked container” means a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device as defined by California Penal Code Section 16850.” “The term ‘locked container’ does not include the utility or glove compartment of a motor vehicle. CAL. PENAL CODE § 16850 (2015).

188. CAL. PENAL CODE § 25135(a)(6) (West 2014).

2. New York City, New York “Cure Violence”

New York City is currently experiencing the lowest recorded crime rate in two decades.¹⁸⁹ While the crime rate can be attributed to a number of factors, including stricter gun laws, the “Cure Violence” program has successfully lowered gun injury rates in several areas of the city where the program operates.¹⁹⁰ “Cure Violence” combats gun violence from a public health standpoint in order to change individual and community attitudes towards gun violence.¹⁹¹ The program involves holistic participation of educators and health practitioners, along with social workers that seek to “introduce at-risk individuals to alternative models of conflict resolution that, in turn, may spread to the larger community—essentially ‘de-normalizing’ the harmful behavior.”¹⁹²

The “Cure Violence” initiative includes several community-based organizations with members working with young people in the most high-risk New York neighborhoods. Notably, the program operates independent of law enforcement¹⁹³ as it carefully selects “credible messengers” to share with the community an anti-violence perspective

189. Azi Paybarah, *Gun Violence: New York's Own Problem*, N.Y. TIMES (Aug. 6, 2019), <https://www.nytimes.com/2019/08/06/nyregion/newyorktoday/nyc-gun-violence.html>.

190. See *Big Drops in Gun Crime Reported in NYC Neighborhoods Where ‘Violence Interrupters’ Patrol*, THE TRACE (Sept. 22, 2019), <https://www.the-trace.org/rounds/big-declines-in-gun-violence-reported-in-new-york-city-neighborhoods-where-violence-interrupters-patrol/>; see also *Shootings Fell Sharply in Neighborhoods Operating NYC-Funded ‘Cure Violence’ Programs, New Study Shows*, NYC MAYOR’S OFFICE OF CRIM. JUST. (Oct. 2, 2017), <https://criminaljustice.cityofnewyork.us/press-release/shootings-fell-sharply-in-neighborhoods-operating-nyc-funded-cure-violence-programs-new-study-shows/>.

191. See Jeffrey A. Butts et al., *Cure Violence: A Public Health Model to Reduce Gun Violence*, ANN. REV. PUB. HEALTH 39 (Jan. 7, 2015), <https://www.annualreviews.org/doi/pdf/10.1146/annurev-publhealth-031914-122509>.

192. *Id.* at 40.

193. The Director of the Mayor’s Office of Criminal Justice, Elizabeth Glazer, explained that the program’s independence from law enforcement is a crucial feature of the initiative. See *Shootings Fell Sharply in Neighborhoods Operating NYC-Funded ‘Cure Violence’ Programs, New Study Shows*, NYC MAYOR’S OFFICE OF CRIM. JUST. (Oct. 2, 2017) <https://criminaljustice.cityofnewyork.us/press-release/shootings-fell-sharply-in-neighborhoods-operating-nyc-funded-cure-violence-programs-new-study-shows>.

towards resolving disputes.¹⁹⁴ These credible messengers, also known as “violence interrupters,” serve to intervene violent situations; they are usually former criminals that have turned their life around and are respected members of the same community.¹⁹⁵ Ultimately, the Cure Violence program mobilizes its members to “use their relationships with program participants to help connect high-risk individuals to positive opportunities and resources in the community, including employment, housing, recreational activities, and education.”¹⁹⁶

3. Chicago, Illinois “Becoming a Man”

The City of Chicago developed a highly effective school and community-based program that focused on young boys of color in low-income public schools.¹⁹⁷ The program addresses the young men’s lack of self-control in provocative situations, which leads to impulsive aggression. The “Becoming a Man” (BAM) initiative provides “weekly group sessions during the school day and uses cognitive behavioral therapy to help youth slowdown in high-stakes situations.”¹⁹⁸ Attending weekly sessions and having the support of a BAM counselor allows young men to focus on school and learn the skills to avoid the negative influences in the community.¹⁹⁹

A unique feature of the BAM program is that the mentors do not give the young people hardline rules for how to do the “right” thing.

194. *NYC Cure Violence Quick Stats*, YOUNG MEN’S INITIATIVE http://www.nyc.gov/html/yimi/downloads/pdf/cure_violence.pdf (last visited Oct. 3, 2019).

195. See Butts, Roman, Bostwick & Porter, *supra* note 192, at 41.

196. *Id.*

197. Unfortunately, Black males are more likely to die from a homicide than from heart disease and the number of black homicides is seventeen times more than white homicides. Sara B. Hellerm et al., *Thinking, Fast and Slow? Some Field Experiments to Reduce Crime and Dropout in Chicago*, NAT’L BUREAU OF ECON. RES. 3 (May 2015), <https://urbanlabs.uchicago.edu/attachments/0bd9bbdea840ff8faddf10f8b30a372863ae1938/store/234ef5222cf43a9b9165d47d18ae984df8cc08279122e99cb4f287c4918a/Thinking%2BFast%2Band%2BSlow%2B-%2BNBER.pdf>.

198. See *Reducing Violence and Increasing Graduation*, U. CHI. URB. LABS <https://urbanlabs.uchicago.edu/projects/becoming-a-man> (last visited Oct. 3, 2019).

199. See *Helping Boys Become Men*, YOUTH GUIDANCE <https://www.youthguidance.org/bam/> (last visited Oct. 3, 2019).

The program recognizes that the problems these young people faces are not black or white. In other words, the program engages kids in goal-setting activities and emphasizes a “show, not tell” mentality.²⁰⁰ The efficacy of the BAM program led former President Barack Obama to use its framework to develop another community program called “My Brother’s Keeper.”²⁰¹

4. Boston, Massachusetts “Operation Ceasefire”

In the late 1980s and early 1990s Boston, like other large cities, faced widespread gun violence and youth homicide.²⁰² Unlike Chicago or New York, which used social and cognitive behavioral therapy ap-

200. Helleme et al., *supra* note 198, at 11. In a study conducted by the University of Chicago, evidence from the BAM program was compared with evidence from the Juvenile Temporary Detention Center (JTDC), which revolved around a “tell, not show” mentality. *Id.* The study noted that lessons from JTDC that teach disadvantaged youth to comply at all times may be problematic when used on the streets. *Id.* at 29. On the other hand, BAM does not have blanket rules such as “never fight” as there are circumstances where that behavior may be appropriate. *Id.* at 28–29.

201. See Gregory M. Zimmerman, Brandon C. Welch & Chad Posick, *Investigating the Role of Neighborhood Youth Organization in Preventing Adolescent Violent Offending: Evidence from Chicago*, J. QUANTITATIVE CRIMINOLOGY 567, 590 (2014). The study analyzed several youth organizations in Chicago, including BAM, and concluded that it “reduced the effects of low self-control on violent crime.” *Id.* at 565. Specifically, BAM’s social cognitive training significantly lowered violent-crime rates and the participants have higher grades and enrollment status in school. *Id.* at 590.

202. See Anthony Braga et al., REDUCING GUN VIOLENCE, NAT’L INST. JUST. 1 (2001), <https://www.ncjrs.gov/pdffiles1/nij/188741.pdf>. The homicides were particularly prevalent in younger communities under 24 years old. *Id.* The peak of this violent epidemic can be depicted by the death of Darlene Tiffany Moore, a 12-year-old who was killed while sitting outside of her house on her mailbox. *Id.* at 5. Twenty-six years later, the man convicted for her death was released after spending 14 years in jail for a crime he did not commit. See John R. Ellement, *Wrongful Conviction Lawsuit Settled for \$5m*, BOS. GLOBE (May 15, 2014, 4:08 PM), <https://www.bostonglobe.com/metro/2014/05/14/shawn-drumgold-paid-million-city-boston-for-wrongful-conviction-darlene-tiffany-moore-murder-case/P55AeEoRluSxhfRNez7KlIO/story.html>.

proach, Boston heavily relied on law enforcement to deter gun violence.²⁰³ The program's strategy relied on agency involvement and on the offender's perception that crime was not worth the severe consequences that followed. Boston's zero-tolerance approach narrowly targeted gangs that were committing violent crimes through "retail deterrence."²⁰⁴ Heightened sentences for repeat offenders and aggressive law enforcement tactics were employed to prevent gun-related violence in the city.²⁰⁵

Boston's program operates under two essential elements. First, "Operation Ceasefire" directly pursued the illegal supply of guns to young people by paying attention to intrastate trafficking on a local, State, and Federal scale. Second, the program directly communicated with gangs, victims, and community members to discuss the potential consequences offenders could be facing. This element was also known as the "pulling levers" method, which was coupled with other forms of outreach support such as community groups, parole officers, and churches.²⁰⁶ Agencies and prosecutors heavily focused on the gang-related gun violence to "crackdown" on violent crime.

5. Recent Developments in Other Cities

In October 2019, three more major cities adopted Cure Violence and supplemental **street-level violence interruption programs**. The St. Louis Board of Aldermen approved funding for 'Cure Violence' St. Louis on Oct 4, 2019, allocating \$5 million in funding over three years to fund the public safety program.²⁰⁷ City officials told the press that several other Cure Violence sites have gone one to two years without a shooting or killing, citing examples of Yonkers, New York and the 39th

203. See *Program Profile: Operation Ceasefire (Boston, Mass.)*, CRIME SOLUTIONS (Dec. 15, 2011), <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=207>.

204. *Id.*

205. *Id.*

206. *Operation Ceasefire*, BOS. POLICE DEP'T, <https://bpdnews.com/operation-ceasefire> (last visited Oct. 4, 2019).

207. See Ashley Cole, *St. Louis Board of Aldermen Approves Funding for Cure Violence Program*, 5 ON YOUR SIDE (Oct. 4, 2019, 11:24 AM), <https://www.ksdk.com/article/news/local/cure-violence-st-louis/63-07cec85a-2533-4061-b93e-ba0833895b93>.

neighborhood in Philadelphia.²⁰⁸ Overall, St. Louis officials recounted, Baltimore had seen a 56% reduction in killings and 44% in shootings, New Orleans saw a 47% reduction in shootings, New York had a 63% reduction in shootings, and Philadelphia had a 30% reduction in shootings after implementing Cure Violence.²⁰⁹

On Oct. 15, 2019, Jackson City, Michigan, approved a plan to implement Cure Violence.²¹⁰ City officials announced that they planned to hire five people in the community on a part time basis for the program, and to enlist “violence interrupters” in the community who would help deescalate disputes and help at-risk people find social services, jobs, and housing.²¹¹ The next day, on October 16, Greensboro, North Carolina, allocated \$500,000 to implement their own Cure Violence program.²¹² City officials told reporters that the program treats neighborhood violence like a disease epidemic, and uses outreach to deescalate street conflicts.²¹³

The next step is to involve teachers, school guidance counselors, and school administrators in these projects, and to provide educators and guidance counselors with free training about how to interrupt community violence, how to refer at-risk students to the concerted efforts for mobilizing social services in this regard. We need to bring the local schools into Cure Violence and Operation Ceasefire, and conversely, we need to bring these programs into the schools. In addition, teachers and guidance counselors should receive free, up-to-date training about children and youth access to firearms—best practices for safe storage (unloaded lockup) at home, and nuanced understanding of informal gun markets and transfers that often include young people.

208. *Id.*

209. *Id.*

210. *See* Taylor DesOrmeau, *Minutes Before Boy Shot, City Passes Gun Violence Program*, MICH. LIVE (Oct. 16, 2019), <https://www.mlive.com/news/jackson/2019/10/minutes-before-boy-shot-city-passes-gun-violence-program.html>.

211. *Id.*

212. *See* Richard M. Barron, *Greensboro Council OKs \$500K for Cure Violence Program*, GREENSBORO NEWS & REC. (Oct 15, 2019), https://www.greensboro.com/news/local_news/greensboro-council-oks-k-for-cure-violence-program/article_2dbe43d9-69f3-5365-abf0-f55f0b8aa70a.html.

213. *Id.*

B. Looking to the Future: Raising the Minimum Age for Firearm Possession to Shield Children from Exposure to Gun Violence

Federal law prohibits licensed firearm dealers (FFL's) from selling a handgun or ammunition to anyone under age twenty-one²¹⁴ and from selling a rifle to anyone under eighteen.²¹⁵ In terms of ownership and use, federal law prohibits possession of a handgun or handgun ammunition for anyone under age eighteen;²¹⁶ there is no federal age restriction for long gun (rifle) ownership. Aftermarket sellers (unlicensed sellers of pre-owned firearms) cannot transfer a handgun to anyone under eighteen, because the buyer would be a prohibited person.²¹⁷ These federal laws contain an express exception for temporary transfer and possession of handguns and handgun ammunition for specified activities, including employment, target practice, and hunting.²¹⁸

Federal minimum age restrictions, as well as their state law counterparts,²¹⁹ have survived Second Amendment challenges in the last few years;²²⁰ the Supreme Court obliquely endorsed these laws,

214. 18 U.S.C. § 922(b)(1), (c)(1) (2019).

215. *Id.*

216. *Id.* § 922(x)(2), (5).

217. *Id.* § 922(x)(1), (5).

218. *Id.* § 922(x)(3).

219. For a thorough survey of state age restrictions (including a useful 50-state table), see *Minimum Age to Purchase & Possess*, GIFFORDS L. CTR., <https://law-center.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/minimum-age> (last visited Feb. 13, 2020).

220. See *Hirschfeld v. ATF*, No. 3:18CV00103, 2019 WL 4923955 (W.D. Va. Oct. 4, 2019) (upholding federal statute prohibiting the sale of handguns and ammunition to anyone under age 21); see also *Horsley v. Trame*, 808 F.3d 1126 (7th Cir. 2015) (upholding age restriction in Illinois FOIA Act); *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185 (5th Cir. 2012); *Nat'l Rifle Ass'n of Am., Inc. v. McCraw*, 719 F.3d 338 (5th Cir. 2013) (upholding Texas statutory scheme that did not allow eighteen to twenty year-old adults to carry handguns in public); see also *U.S. v. Rene E.*, 583 F.3d 8 (1st Cir. 2009).

albeit in dicta, in *Heller*²²¹ and *McDonald*.²²² Congress' purpose in enacting these restrictions was to reduce both youth fatalities and crime overall,²²³ based on the prevailing view that young people commit a disproportionate number of crimes.²²⁴

221. See *District of Columbia v. Heller*, 554 U.S. 570, 626–27, 627 n.26 (2008) (providing a non-exhaustive list of “presumptively lawful regulatory measures,” which included “longstanding prohibitions” on felons and other groups possessing guns, and “laws imposing conditions and qualifications on the commercial sale of arms.”).

222. See *McDonald v. Chicago*, 561 U.S. 742, 786 (2010) (plurality).

223. According to the legislative history, members of Congress observed a “causal relationship between the easy availability” of handguns “and juvenile and youthful criminal behavior, and that such firearms have been widely sold by federally licensed importers and dealers to emotionally immature, or thrill-bent juveniles and minors prone to criminal behavior.” *Hirschfeld*, 2019 WL 4923955 at *3, (quoting Pub. L. No. 90–351, § 901(a)(6), 82 Stat. 197, 225–226).

224. See, e.g., S. REP. NO. 90-1097, at 2165 (1968) (“[J]uveniles account for some 49 percent of the arrests for serious crimes in the United States and minors account for 64 percent of [such] total arrests”). Minimum age restrictions for guns have an impressive pedigree in terms of history, text, and tradition, as courts have noted. See *Hirschfeld*, 2019 WL 4923955, at *3–4 (providing detailed history of nineteenth-century state laws banning sales of guns to minors or those under 21, and appellate decisions acknowledging this history and tradition). The most recent legal academic commentary on this issue is sparse, and it reflects the current polarized stances on guns in general. See Amit Vora, *Defending an Under-21 Firearm Ban Under the Second Amendment Two Step*, 71 STAN. L. REV. ONLINE 1 (2018) (suggesting that current case law would support the constitutionality of raising the minimum age for assault rifle purchases to twenty-one); but see David B. Kopel & Joseph G.S. Greenlee, *The Second Amendment Rights of Young Adults*, 43 S. Ill. U. L.J. 495, 498 (2019) (arguing that under *Heller*, “extra regulations for young adults may be permissible, but prohibitions or quasi-prohibitions are not,” and that “there is some historical precedent for extra regulation for handgun acquisition by young adults, and very little for extra restrictions on long gun acquisition”); Christopher M. Johnson, Note, *Second-Class: Heller, Age, and the Prodigal Amendment*, 117 COLUM. L. REV. 1585, 1586 (2017) (arguing that the age restrictions are unconstitutional and suggesting a statutory change). The short-term and long-term impact of age restrictions on crime rates is uncertain due to a dearth of rigorous empirical research on the issue. See RAND CORP., *THE SCIENCE OF GUN POLICY* 145–58 (2018) (surveying the empirical literature to date regarding minimum age requirements). Scientific literature suggests that human brain development continues after the age of twenty-one, including areas involved in self-control and judgment. See Elizabeth R. Sowell et al., *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 NATURE NEUROSCIENCE 859, 859 (1999). Brain development and hormonal levels in teens and young adults

The focus in this article, however, is not on teen or young adult perpetrators, but instead on the deleterious effects of community gun violence on children. From that standpoint, the immediate social network of children in primary and secondary school plays a crucial role. Recent high school graduates or dropouts—individuals under twenty-five—are often still living at home with younger siblings, some are in romantic relationships or have close friendships with youths who are still in high school, and many entry-level cashiers, baristas, stockers, and clerks are under twenty-five. After age twenty-five, adults have less interaction with children and teens in their neighborhoods, unless their employment involves working with children. Even apart from aggregate crime rates, or underage criminal actors and underage suicides, raising the gun purchase and ownership age to twenty-five would interrupt the social network supply chain of guns to students, and would help shield inner city children from experiencing gun fatalities in their immediate social spheres—their family, friends, school, and neighborhood. If the goal is the eventual and permanent reduction of educational inequality in our country, the minimum age for firearm possession should be twenty-five.

While some of these latter suggestions do not relate to schools or children themselves, the point is that they could help significantly reduce gun violence in the immediate social networks of the school-age children in poor communities. This, in turn, would make a huge difference in school performance of each child, and the overall school environment, as the community that surrounds and supports the school

make them prone to aggression and risk-taking. See Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 *NEUROPSYCHIATRIC DISEASE & TREATMENT* 449, 449 (2013); Allan Siegel & Jeff Victoroff, *Understanding Human Aggression: New Insights from Neuroscience*, 32 *INT'L J. L. & PSYCHIATRY* 209 (2009). A study published in 2004 in the *Journal of the American Medical Association* found that state laws raising the minimum age for purchasing firearms to twenty-one, even from private sellers, resulted in a significant drop in gun suicides for those between age eighteen and twenty-one. See Daniel W. Webster et al., *Association Between Youth-Focused Firearm Laws and Youth Suicides*, 292 *JAMA* 594, 598 (2004). A more recent study (2015) found that the enactment of the federal minimum age laws reduced the number of teen suicides. See Mark Gius, *The Impact of Minimum Age and Child Access Prevention Laws on Firearm-related Youth Suicides and Unintentional Deaths*, 52 *SOC. SCI. J.* 168, 168 (2015). The rationale behind minimum age restrictions is that children, teens, and young adults are a high-risk group for gun possession.

becomes a more secure, nurturing environment where children can thrive inside and outside the classroom.

V. CONCLUSION

The litigation now pending in the federal court in Chicago highlights a pressing social problem in our society—the impact on educational equality caused by firearm prevalence and the inevitable gun violence that results from oversupply of weapons. Regardless of how this individual case turns out, the same problems afflict children of color in other urban communities, making this a national issue. Looking back on the progress public education has made in the sixty-five years since the *Brown* decision, it is evident that inequality in academic opportunity is still prevalent. A student's race and socio-economic class remain the most significant predictors of their educational success.²²⁵ The role of gun violence, and its prevalence in impoverished, inner-city, minority communities, in perpetuating education inequality has gone overlooked for too long.

Gun violence creates a vicious feedback loop, preserving remnants of pre-civil rights oppression. The impact of violence on students, and the education and justice systems' responses to violence, deliver a double blow to minority communities. Exposure to violence often results in cognitive impairments and behavioral problems, both of which hinder a student's academic success. The trauma suffered by even a small percentage of students has a ripple effect through the entire school. The behavioral issues associated with childhood exposure to violence are disruptive to the learning environment. In addition, children who have experienced trauma are more likely to overreact to perceived aggression in others, and to reciprocate or escalate the perceived threat. As a society, we owe our children something better than a gun-saturated neighborhood with violence reminiscent of a Hobbesian state of nature.

Compounding this untenable situation is the skewed media coverage of gun violence, focusing on the shocking, but comparatively rare, rampage shootings in white, suburban schools. The day-to-day

225. EMMA GARCÍA & ELAINE WEISS, EDUCATION INEQUALITIES AT THE SCHOOL STARTING GATE: GAPS, TRENDS, AND STRATEGIES TO ADDRESS THEM 1 (2017), <https://www.epi.org/files/pdf/132500.pdf>.

gun violence plaguing our cities goes overlooked, even though it produces tens of thousands more fatalities and debilitating injuries every year than high-profile rampage shootings. The skewed news coverage leads to skewed policies adopted by legislatures and school districts to prevent mass shootings—armed school personnel, zero-tolerance regimes, frequent active shooter drills, and a prison-like school environment. The efficacy of these measures remains unproven for preventing rampage shootings, but the downside for students of color is easily discernible. White suburban students (or at least their parents) may feel safer, because they perceive the guns and guards as there to keep dangerous outsiders from entering. Students of color in urban centers are more likely to see the guns and guards as there to keep the students themselves in line. These measures reinforce their perception that the larger society views them with mistrust and resentment. For students caught up in the disciplinary regime, it sets them on a downward trajectory with long-term consequences.

Arming teachers is the wrong approach not only because of the martial-law environment it creates in schools, but also because of the regularly reported incidents of guns inadvertently left where children find them, or accidental discharges in and around the school. Gun-free zones, originally designed to respond to urban violence, have come under attack by pro-gun advocates who want teachers and other school personnel armed because they imagine it will thwart a rampage shooting like the ones that occurred at Columbine, Newtown, and Parkland. Schools *should* be gun free zones. The far bigger risks are the day-to-day adolescent scuffles, over drug deals, girlfriends, spots on the sports team, jealousy, or excessive teasing that quickly turn lethal if the adolescents have guns. At the same time, the draconian punishments that result in automatic expulsion err on the other extreme. Within the schools, some technological solutions show great promise, such as two-way communication systems throughout the school that are easy to use even in emergencies, better video surveillance at entrances, and AI-driven firearm detection systems. Social media surveillance can also help detect potential threats – not only of mass shootings but also of contemplated gang violence or hits – but such surveillance presents difficult tradeoffs, of course, because of the invasion into students' privacy by school officials.

The violence affecting underprivileged children in our schools occurs primarily outside the schools, as it is the *community* violence

that traumatizes the children daily. Proven approaches for reducing gun violence in the community, therefore, are the true solution. Successful community intervention programs, like Cure Violence and Oakland Ceasefire, should receive more funding and support from lawmakers and elected officials. Laws and outreach programs that encourage parents who own guns to keep them locked up and unloaded significantly reduce youth access to firearms, thereby reducing youth accidents and youth violence. The solutions sought in the *Powell* litigation pending in Chicago would also make a significant difference by implementing the laws we already have for firearm dealers and individual owner-licensees, through long overdue regulations, monitoring, and enforcement. As the stock, supply, and flow of crime gun diminishes, gun violence decreases as well. Beyond these traditional solutions, we need to go further: gun retailers should not have locations within walking distance of schools, and minimum age for buying or owning a gun should be 21, in order to keep guns out of the immediate social network of children who are still in school. Of course, Second Amendment challenges to these laws are pending in the courts and in public policy debates, but under current Second Amendment precedent, these measures address violence on the outskirts of the Second Amendment, addressing individuals or transactions that the Second Amendment protections do cover.

Schools should be safe havens that promote learning and teaching. Unfortunately, schools across the country no longer provide refuge from disputes and community violence. The overwhelming number of nationwide school shootings have highlighted the need for greater school security. As a result, policy makers and educators have responded by implementing a variety of measures such as community programs and technology-enhanced security in schools. Solutions to community gun violence such as after-school interventions, keeping guns out of reach from youth, and cognitive behavioral therapy seek to change community attitudes towards gun violence. By targeting high-risk youth, these community programs effectively reduce gun violence and improve academic performance at school. Fewer incidents of violent and disruptive behavior occur in classrooms when young people in disadvantaged urban settings are provided with support and assistance from their community. Gun violence can impede learning and engagement in school. Creating a safe learning environment is critical. While protecting students is an intensely debated public policy concern, there

are current strategies that schools and policy makers can implement to address the far-reaching educational impacts of school shootings.

