No. _____

# In the Supreme Court of the United States

BENJAMIN SCHOENTHAL, et al.,

*Petitioners*,

v.

KWAME RAOUL, in his official capacity as Attorney General of Illinois, et al.,

*Respondents*.

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

## PETITION FOR WRIT OF CERTIORARI


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## QUESTION PRESENTED

Whether Illinois' flat ban on ordinary citizens carrying firearms on public transportation violates the Second and Fourteenth Amendments.

## PARTIES TO THE PROCEEDING

Petitioners Benjamin Schoenthal, Mark Wroblewski, and Douglas Winston were plaintiffs before the District Court and the plaintiffs-appellees in the Court of Appeals. They were previously joined in this suit by a fourth Plaintiff, Joseph Vesel, but Vesel's claim was dismissed as moot on appeal after he became an officer with the University of Chicago Police Department and was no longer subject to the restrictions challenged in this suit. *See* Pet.App.4a n.3.

Respondents are Kwame Raoul, in his official capacity as Attorney General of Illinois, Robert Berlin, in his official capacity as State's Attorney for DuPage County, and Eileen O'Neill Burke, in her official capacity as State's Attorney for Cook County. Raoul and Berlin were defendants before the District Court and were the defendants-appellants in the Court of Appeals. Pursuant to Federal Rule of Appellate Procedure 43(c), the Court of Appeals substituted Burke as a defendant to this proceeding after she became State's Attorney for Cook County, replacing Kimberly M. Foxx who was originally named as a defendant and then defendant-appellee below in her official capacity. *See* Order, *Schoenthal v. Raoul*, No. 24-2643 (7th Cir. Dec. 3, 2024), Doc. 20.

Respondents were joined as defendants in the district court by Rick Amato, in his official capacity as State's Attorney for DeKalb County, and Eric Rinehart, in his official capacity as State's Attorney for Lake County. The district court dismissed these defendants and Plaintiffs did not appeal their dismissal. *See* Pet.App.4a–5a & n.4.

## STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Schoenthal v. Raoul* Nos. 24-2643 & 24-2644 (7th Cir. Sept. 2, 2025)

- *Schoenthal v. Raoul*, No. 3:22-cv-50326 (N.D. Ill. Aug. 30, 2024)

There are no other proceedings in state or federal court, or in this Court, directly related to this case under Supreme Court Rule 14.1(b)(iii).

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This Court should grant review to provide much-needed guidance on the standards that govern restrictions on the possession of firearms in so-called "sensitive places." As exemplified by the Seventh Circuit's decision in this case challenging Illinois's ban on possession of firearms on public transportation, the lower courts have been using this Court's language about sensitive places to uphold restrictions on carrying firearms in locations where the need for self-defense is, if anything, enhanced. Without this Court's intervention, the Second Amendment rights of the residents of Illinois, and the Nation, will continue to be infringed.

This Court has recognized that there are certain places where the need for self-defense is particularly "acute." *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008). Public transportation certainly is such a place. As the Seventh Circuit panel below recognized, "[p]ublic transit can be extremely crowded, with commuters standing shoulder to shoulder during peak times." Pet.App.40a. To make matters worse, once "vehicles are in motion, escape is generally impossible," and "first responders face a unique challenge in confronting an attack on crowded or confined metal tubes containing hundreds or even thousands of commuters." *Id*. These characteristics of public transportation enhance the need for law-abiding citizens to be able to engage in effective self-defense. Judge Gregory, of the Fourth Circuit, recently summed up the problem at oral argument in a case raising a similar issue: "If somebody on the subway pulls a gun and wants to kill you, that's when you need [a firearm]. … I'm confronted with a whole lot of people that

I don't know anything about [there], [they can] jump on and off a train, that's where I might feel … that's when I need one. … In the subway, people are being pushed onto the rails, [there are] rapes [and] muggings, that seems like a place where you would need a weapon." Oral Argument at 44:22–45:58, *Kipke v. Moore*, No. 24-1799(L) (4th Cir. May 7, 2025), https://perma.cc/95DP-NHA7.

Instead of recognizing that the need for self-defense is particularly acute on public transportation, however, the Seventh Circuit panel below relied on the vulnerability of public transportation passengers as justification for Illinois's *ban* on possession of firearms in such locations. The Seventh Circuit's reasoning defies reality. While it may be a laudable goal to seek to ensure that law-abiding citizens can ride public transportation in peace, banning them from possessing firearms only makes them more vulnerable. As Justice Alito noted (and New York's attorney admitted) at oral argument in *Bruen*, even though New York severely restricted the issuance of carry permits pre-*Bruen*, there nevertheless were people who unlawfully carried firearms onto the subway. *See* Transcript of Oral Argument at 68:20–70:01, *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (No. 20-843). That is easily understandable. Criminals willing to commit moral atrocities are exceedingly unlikely to leave their guns at home absent measures such as metal detectors and armed guards that actually prevent carrying firearms on the train or bus. This is a principle the founders were well aware of. As an influential criminologist of the time wrote, laws banning the possession of arms only succeed in "disarm[ing] those only who are neither inclined nor determined to commit crimes. … [T]hose who have the

courage to violate the most sacred laws of humanity, the most important of the code, will [not] respect the less important and arbitrary ones, which can be violated with ease and impunity." CESARE BECCARIA, ON CRIMES AND PUNISHMENTS 87–88 (Henry Paolucci trans, Bobbs-Merrill Co., Inc., 1963) (1764). Indeed, there is *no* historical tradition of banning law-abiding citizens from possessing firearms in crowded public locations where they may be more vulnerable. To the contrary, a number of colonies "*required* individual arms bearing for public-safety reasons" in such circumstances. *See Heller*, 554 U.S. at 601 (emphasis added). And while the "going armed" laws that some states adopted around the founding did generally prohibit citizens from bringing arms into court proceedings, they excepted the judges themselves and those assisting them. *See, e.g.*, A COLLECTION OF ALL SUCH ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA 33, ch. 21 (1794). The principle underlying this history should be clear—the individual citizens of this Nation generally retain the right to armed self-defense in public spaces unless the government itself takes on the burden of securing them. Today, such security typically takes the form of armed guards and magnetometers.

Unfortunately, instead of protecting the Second Amendment rights of vulnerable citizens, the lower courts generally have been green-lighting government attempts to disarm them. *See generally Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024); *Koons v. Att'y Gen. N.J.*, Nos. 23-1900 & 23-2043, 2025 WL 2612055 (3d Cir. Sep. 10, 2025); *Wolford v. Lopez*, 116 F.4th 959 (9th Cir. 2024), *cert. granted*, No. 24-1046, 2025 WL 2808808 (U.S. Oct. 3, 2025) (Mem.). The Seventh

Circuit's decision below is exemplary of this trend, and the Court should grant review to correct it.

## OPINIONS BELOW

The opinion of the court of appeals is reported at 150 F.4th 889 and is reproduced at Pet.App.1a–67a. The memorandum opinion of the district court is unpublished but can be found at 2024 WL 4007792 and is reproduced at Pet.App.68a–130a.

## JURISDICTION

The court of appeals issued its judgment on September 2, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional provisions and Illinois statutes are reproduced in the Appendix beginning at Pet.App.131a.

## STATEMENT

### I. Illinois bans firearms on public transportation.

Illinois generally requires individuals who wish to possess a firearm to acquire a Firearm Owner's Identification (FOID) card to do so. 430 ILCS 65/2. A holder of a FOID card who wishes to carry in public must additionally acquire a concealed carry license. 430 ILCS 66/10. But even with a FOID card and a carry license, Illinois forbids such an individual from carrying a firearm for self-defense onto "[a]ny bus, train, or form of transportation paid for in whole or in part with public funds, and any building, real property, and parking area under the control of a public

transportation facility paid for in whole or in part with public funds." 430 ILCS 66/65(a)(8); *see also* 430 ILCS 66/70(e); 730 ILCS 5/5-4.5-60 (punishing violations).

Petitioners are three Illinois residents, Benjamin Schoenthal, Mark Wroblewski, and Douglas Winston, each of whom is licensed to possess and carry firearms in Illinois and desires to carry a handgun for self-defense while using public transportation systems in the state. Pet.App.4a. Each of these individuals has, however, foregone carrying firearms on public transit out of a fear of prosecution and they have also reduced the frequency with which they make use of public transportation services because of the Ban. Pet.App.73a–79a.

## II. Procedural history.

A. Petitioners filed this suit in September 2022 in the United States District Court for the Northern District of Illinois, claiming that the Public Transit Ban is unconstitutional under the Second and Fourteenth Amendments to the United States Constitution. *See* Pet.App.5a–6a. The district court had jurisdiction under 28 U.S.C. § 1331. The parties cross-moved for summary judgment. Pet.App.5a.

The district court granted summary judgment to Petitioners. After rejecting several "*Bruen*-avoidance arguments" advanced by Cook County, Pet.App.81a–91a, the district court applied *Bruen* and held, first, that the Ban implicated the Second Amendment's plain text because it affected the "right to possess and carry weapons in case of confrontation." Pet.App.98a (quoting *Heller*, 554 U.S. at 592). Turning to history, the district court held that the Respondents had failed to justify the Ban by reference to any legitimate

historical tradition of firearm regulation and declared the law unconstitutional. Pet.App.102a.

B. The Seventh Circuit reversed. After assuring itself that Plaintiffs had standing to challenge the Public Transit Ban, *see* Pet.App.6a–17a, the Seventh Circuit agreed with the district court that the Second Amendment's plain text was implicated and the constitutionality of the Ban would rise or fall with history, Pet.App.17a–19a.

In assessing the historical scope of the right, however, the Seventh Circuit's analysis diverged from the district court's. The panel held the Ban constitutional in large part based on its conclusion that "a consistent historical thread prohibits firearms in analogously crowded and confined locations." Pet.App.29a. The Seventh Circuit buttressed its opinion throughout with reference to other alleged traditions, also relying on purported traditions of restricting firearms in places where "vulnerable populations" can be found as well as in places "owned and operated by the government." Pet.App.41a–42a (citation omitted). Additionally, the court found further support in the rules of 19th century railroad companies regarding the carriage of firearms in their passenger cars, Pet.App.49a, and in the First Amendment doctrine of time, place, and manner restrictions, Pet.App.53a–54a.

Judge St. Eve wrote separately to discuss a standing issue which the panel unanimously held was no impediment to Petitioners' suit. Pet.App.59a (St. Eve., J. concurring); *see* Pet.App.16a.

## REASONS FOR GRANTING THE PETITION

### I. The circuit courts have struggled to define "sensitive places."

This Court has twice acknowledged that, although the Second Amendment protects a general individual right to keep and carry arms, there may be certain discrete locations, so-called "sensitive places," where firearms may be banned in spite of the broad textual command that "the right of the 1people to keep and bear Arms, shall not be infringed." U.S. CONST., amend. II.

In *Heller*, although the Court did not "undertake an exhaustive historical analysis today of the full scope of the Second Amendment," it suggested that there were likely some forms of firearm regulation that *were* constitutional, stating that "nothing in our opinion should be taken to cast doubt on … laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." 554 U.S. at 626. And in *Bruen*, this Court expanded on that statement, using *Heller*'s reference to "sensitive places" as an example of the type of historical analogizing that courts should do when considering modern restrictions on the right. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 30 (2022). The Court explained that "[a]lthough the historical record yields relatively few 18th- and 19th-century 'sensitive places' where weapons were altogether prohibited—*e.g.*, legislative assemblies, polling places, and courthouses—we are also aware of no disputes regarding the lawfulness of such prohibitions." *Id.* (citing David B. Kopel & Joseph G.S. Greenlee, *The "Sensitive Places" Doctrine: Locational Limits on the Right to Bear Arms*, 13 CHARLESTON L. REV. 205, 229–36, 244–

47 (2018); Br. for Independent Institute as Amicus Curiae Supporting Petitioners 11–17, 597 U.S. 1 (2021) (No. 20-843)). Although, again, this Court had "no occasion to comprehensively define 'sensitive places' in [*Bruen*]," it did specifically reject New York's view of the doctrine as encompassing "all places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available," as defining the concept "far too broadly." *Bruen*, 597 U.S. at 30–31 (internal quotation marks omitted). Such a reading would "effect[ively] exempt cities from the Second Amendment and would eviscerate the general right to public carry arms for self-defense." *Id.* at 31.

In the wake of those decisions, the question of what is a "sensitive place" has come to the fore, and the court of appeals' opinions attempting to work it out have been muddled. The issue has taken on increased importance because, after *Bruen* held that States must provide a way for ordinary, peaceable citizens to carry firearms in public for self-defense, many of the same "outlier states" that previously had analogues for New York's "proper cause" standard for carry licenses, *see id.* at 15 (identifying California, Hawaii, Maryland, Massachusetts, and New Jersey, as well as the District of Columbia), have responded by enacting sweeping new restrictions limiting the places where licensed people can carry, sometimes explicitly admitting that the changes were spurred by the fact that the states were otherwise required to respect the Second Amendment for the first time. *See* Reply Br. of State Appellees/Cross-Appellants at 7 n.1, *Kipke v. Moore*, 24-1799(L) (4th Cir. Feb. 26, 2025) ("*Bruen*, of course, required Maryland to relax its scheme for issuing public carry permits. It is no surprise—and

certainly no sign of constitutional infirmity—that when it generally became easier to carry firearms in Maryland, the State enacted restrictions on public carry at sensitive places."); *cf.* Br. of United States as Amicus Curiae Supporting Petitioners, *Wolford v. Lopez*, No. 24-1046 (U.S. May 1, 2025), 2025 WL 1297123, at *18 (noting that five of the "six outlier states" from *Bruen* had enacted *Bruen* response bills).

Faced with the pressing question of what constitutes a "sensitive place" after *Bruen*, the courts of appeals have demonstrated a deep confusion with the proper way to apply *Bruen*'s analytical framework to these laws. The Seventh Circuit's decision below is representative of this difficulty. In upholding the ban on carrying on public transit, the panel noted that the government did not "attempt to devise a common factor" between historical "sensitive places" to justify the Public Transit Ban. Pet.App.26a. Instead, it "pick[ed] out various characteristics shared by some of those places," *id.* and indeed, the panel accepted multiple separate justifications applicable to public transit based on those historical comparisons, including the fact that public transit is crowded, contains "vulnerable populations" like children, and is owned and operated by the government, all of which it held were supportive of the Ban, Pet.App.41a–42a. But recognizing that it "still need[ed] to identify a core principle underlying sensitive place regulations," Pet.App.26a, the Seventh Circuit attempted to synthesize its analysis. To do so, it identified five relevant features of the Ban, explaining that "a regulation does not offend the Second Amendment … when it: 1) temporarily regulates the manner of carrying firearms; 2) in a crowded and confined space; 3) where that space is defined by a natural tendency to congregate people in greater density

than the immediately adjacent areas; 4) that space furthers important societal interests; and 5) the presence of firearms in that space creates a heightened risk to maintaining public safety," Pet.App.45a. It immediately warned, however, that this synthesis was incomplete at best and "that lower courts should not employ this summary of today's decision as a test in all Second Amendment challenges" because it could easily think of places where it thought firearms *should* be allowed to be banned but that did not fit the profile it provided. *Id.* ("We are not certain the principle set forth above would apply to all nuclear power plants."). The upshot of the Seventh Circuit's analysis is thus that the Public Transit Ban is constitutional, but beyond that, the circuit refused to say.

Other circuits have similarly had a difficult time pinning down a single justification for these expanded sensitive places laws. Judge Porter, concurring in the judgment in part and dissenting in part in the Third Circuit's sensitive place decision in *Koons*, criticized the majority for "the astonishing number, breadth, and generality" of principles which it had identified to uphold New Jersey's restrictions in places including public transit. 2025 WL 2612055, at *44 (Porter, J., concurring in part and dissenting in part) (identifying 23 principles cited by the majority). And although the Second Circuit relied exclusively on an alleged " 'tradition of regulating firearms in often-crowded public forums' " when upholding New York's ban on firearms on public transit, *Frey v. City of New York*, No. 23-365, 2025 WL 2679729, at *8 (2d. Cir. Sep. 19, 2025) (quoting *Antonyuk*, 120 F.4th at 1021), when considering a broader sweep of New York's locational restrictions, it too found itself unable to commit to any unifying principle. *See, e.g.*, *Antonyuk*, 120 F.4th at 1027, 1029

(relying on "the tradition of regulating firearms in locations frequented by 'concentrations of vulnerable or impaired people,' here intoxicated individuals" to justify restrictions at bars and relying on the tradition of restricting firearms in "spaces hosting educational and scientific opportunities" to justify restrictions at zoos).

Even considering the evident difficulty the courts of appeals are encountering in answering these questions, it is remarkable that the Seventh Circuit is not alone in being openly unsatisfied with *its own* answers to them. In *Wolford v. Lopez*, a case in which this Court has granted certiorari limited to reviewing the constitutionality of a ban on carrying on private property absent explicit permission, the Ninth Circuit also reviewed the constitutionality of Hawaii and California's new sensitive place restrictions. And as to those restrictions, it reached a notably mixed result, holding that "[a] State likely may ban firearms in museums but not churches; in restaurants but not hospitals; in libraries but not banks," and lamented that the results of its analysis, so paired, "appear arbitrary." 116 F.4th at 1003. It held unconstitutional the ban on carrying firearms on public transit, but it stressed that that conclusion depended on the fact that the law offered no means by which to transport unloaded and inoperable firearms, *id.* at 1002, a distinction that the panel below found significant in upholding the Illinois law, Pet.App.38a. And it found "the lack of an apparent logical connection among the sensitive places … hard to explain in ordinary terms" and likely to "inspire further litigation as state and local jurisdictions attempt to legislate within constitutional bounds." *Id.* Given that this Court has made clear that the exceptions to the Second Amendment's "unqualified

command," *Bruen*, 597 U.S. at 17 (citation omitted), are both "principle[d]" and consistent with "common sense," *United States v. Rahimi*, 602 U.S. 680, 692, 698 (2024), a statement like *Wolford*'s shows that this Court's review is sorely needed.

## II. The unifying historical justification for "sensitive places" is the government's provision of security to guard against unlawful use of weapons.

This Court can, and should, step in to correct the confusion in the lower courts. Although the Respondents below did not "attempt to devise a common factor" among historical sensitive places, and the analyses discussed above demonstrate that the circuit courts have similarly failed to identify a cohesive through-line, there is, in fact, a single unifying feature that is shared across all legitimately "sensitive places," is historically grounded as *Bruen* requires, and "comport[s] with the principles underlying the Second Amendment" as *Rahimi* requires. *Id.* at 692. In any truly "sensitive place," where the government believes the presence of firearms pose unusual and unacceptable dangers, the government has historically (and continues to do so to this day) provided security to ensure that firearms are *actually* excluded, thereby seeking to diminish the need, in that discrete, secure location, for individual tools of self-defense.

This principle is based on the historical sources specifically identified by this Court in discussing this tradition. Begin with the three locations *Bruen* pointed to as historically "sensitive": legislative assemblies, courthouses, and polling places. Founding era examples of government-provided security at these locations abound. Rhode Island, Delaware,

Pennsylvania, South Carolina, New York, Georgia, New Jersey, Virginia, and Vermont all enacted statutes during the period compensating law enforcement to attend and provide security at legislatures.[1] Maryland and New Hampshire appointed sergeants-at-arms or door-keepers.[2] As their name suggests, these

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[1] *See* THE PUBLIC LAWS OF THE STATE OF RHODE-ISLAND AND PROVIDENCE PLANTATIONS 220, 222 (Providence, Carter & Wilkinson 1798) (providing fees for sheriffs, town sergeants, and constables to attend general assembly); 2 LAWS OF THE STATE OF DELAWARE 1100, 1118 (Samuel & John Adams eds., 1797) (similar); 10 THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1801 376, 378 (William Stanley Ray ed., 1904) (referencing sergeant-at-arms and door-keeper for legislature); THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA 426–27 (Phila., R. Aitken & Son 1790) (providing payment of door-keepers for legislature); An Act for the Support of the Government, *in* 1 LAWS OF THE STATE OF NEW YORK 534 (Albany, Charles R. & George Webster eds., 2d ed. 1802) (similar); An Act to Appropriate Monies for the Political Year 1808, § 2, *in* A COMPILATION OF THE LAWS OF THE STATE OF GEORGIA 372–73 (Augustine Smith Clayton ed., Augusta, Adams & Duyckinck 1812) (similar); PROVINCIAL CONGRESS, JOURNAL OF THE VOTES AND PROCEEDINGS OF THE PROVINCIAL CONGRESS OF NEW JERSEY 239–40 (Burlington, Isaac Collins, *reprinted by* Woodbury, Joseph Sailer 1835) (similar); *Saturday, December 20, 1783,* JOURNAL OF THE HOUSE OF DELEGATES OF THE COMMONWEALTH OF VIRGINIA 77 (Richmond, Thomas W. White 1828) (similar); 1 LAWS OF THE STATE OF VERMONT 382, 387 (Randolph, Sereno Wright 1808) (similar).

[2] *See* VOTES AND PROCEEDINGS OF THE HOUSE OF DELEGATES OF THE STATE OF MARYLAND, NOVEMBER SESSION, 1791 at 2 (1791) (recording appointment of sergeant-at-arms and door-keeper); VOTES AND PROCEEDINGS OF THE SENATE OF THE STATE OF MARYLAND, NOVEMBER SESSION, 1791 at 1 (1791) (similar); A JOURNAL OF THE PROCEEDINGS OF THE HONORABLE SENATE OF THE STATE OF NEW-HAMPSHIRE 6 (Amherst, Joseph Cushing 1808), https://perma.cc/Y7VF-UYV4 (similar).

positions carried with them obligations to secure the legislature, including from armed attack. Both were positions the Americans adapted from England's parliament, *see About the Sergeant at Arms: Historical Overview*, U.S. SENATE, https://perma.cc/GA5J-Q5F9, and in Parliament, both doorkeepers and sergeants-at-arms had long been tasked with securing the legislative chambers against unauthorized visitors and threats, *see, e.g.*, WILLIAM HAKEWELL, *MODUS TENENDI PARLIAMENTUM*: OR, THE OLD MANNER OF HOLDING PARLIAMENTS IN ENGLAND 22–23 (1671), https://perma.cc/4MZA-4M4Y, and they carried out those functions here following the Revolution, *see* THOMAS JEFFERSON, A MANUAL OF PARLIAMENTARY PRACTICE. FOR THE USE OF THE SENATE OF THE UNITED STATES § XVIII (1801), https://perma.cc/MC7J-J7FJ ("[T]he door of the house ought not to be shut, but to be kept by porters, or serjeants at arms, assigned for that purpose."); *see also* JACOB R. STRAUS, CONG. RSCH. SERV., 98-748, SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE: LEGISLATIVE AND ADMINISTRATIVE DUTIES 1–2 (2011), https://perma.cc/D9HY-8WAF. In one notable 18th-century incident, for example, three members of the Upper House of the Maryland legislature were refused admission to the Lower House "unless [they] first left [their] sword[s] with the doorkeeper," which they refused to do. RAPHAEL SEMMES, CAPTAINS AND MARINERS OF EARLY MARYLAND 285–86 (1937), https://perma.cc/7T7C-8WA4.

Polling places were likewise secured, including in Georgia, Virginia, New Jersey, Maryland, Delaware,

and South Carolina.[3] And courthouses also, then as now, were secured by law enforcement. South Carolina, Virginia, Delaware, New Jersey, New York, and Pennsylvania by statute required law enforcement officials to attend court.[4] Furthermore, the legislative record in other states indicates that law enforcement officials were compensated for attending judicial proceedings.[5] As a contemporary manual for law

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[3] *See* A DIGEST OF THE LAWS OF THE STATE OF GEORGIA 611 (Robert & George Watkins eds., Phila., R. Aitken 1800) ("[T]he sheriff of each county or his deputy, is required to attend at such elections, for the purpose of enforcing the orders of the presiding magistrates in preserving good order."); ABRIDGEMENT OF THE PUBLIC PERMANENT LAWS OF VIRGINIA 325 (Augustine Davis ed., 1796) (similar); LAWS OF THE STATE OF NEW JERSEY 36 (Joseph Bloomfield ed., Trenton, James J. Wilson 1811) (providing security at polling places); MD. CONST. art. 1 §§ 3, 14 (1776) (similar); 2 LAWS OF THE STATE OF DELAWARE, *supra*, at 984 (similar); THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA, *supra*, at 386–88, (table of fees includes payment to sheriffs for polling-place security).

[4] *See* THE PUBLIC LAWS OF SOUTH CAROLINA, *supra*, at 271, ("The Said sheriffs by themselves, or lawful deputies respectively, attend all the courts hereby appointed, or directed to be held, within their respective districts."); A COLLECTION OF ALL SUCH ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA 69–71 (Richmond, Samuel Pleasants & Henry Pace 1803) (similar); 2 LAWS OF THE STATE OF DELAWARE, *supra*, at 1088, 1091 (similar); LAWS OF THE STATE OF NEW JERSEY, *supra,* 49–50, 58 (similar); 1 LAWS OF NEW YORK, *supra*, at 176 (requiring during court "all justices of the peace, coroners, bailiffs, and constables within their respective counties, that they be then and there in their own persons… . And the said respective sheriffs and their officers shall then and there attend in their own proper persons."); 10 STATUTES AT LARGE OF PENNSYLVANIA, *supra*, at 57 (similar).

[5] *See* ACTS AND LAWS OF THE STATE OF CONNECTICUT 63–65 (New London, Timothy Green 1784); A DIGEST OF THE LAWS OF

enforcement made clear, it was "for [the] very purpose" of "preserv[ing] quietness, order, and decency, in the Courts of Justice" that they were required to attend court. R. SHEARDOWN, THE DUTY OF CONSTABLES 16 (1790), https://perma.cc/4EYV-2T5Q (emphasis omitted).

In fact, the historical pedigree of restricting arms bearing at discrete, secured locations stretches back to some of the very earliest legal restrictions in our tradition. The Statute of Northampton, as this Court has explained, was a 1328 English statute that did not ban ordinary defensive carriage of arms, but did ban carrying in unsecured public locations like fairs and markets "in affray of the peace," or, in modern parlance, with the intent to terrify and disturb the peace. *See Rahimi*, 602 U.S. at 697; *see also Bruen*, 597 U.S. at 40–45. But that provision—which was the focus of the Court's discussion in both *Rahimi* and *Bruen*—is the *second* carry restriction in the Statute of Northampton. The first carry restriction in the Statute is somewhat different. It prohibits any man "except the Kings' servants in his presence, and his ministers in executing of the King's precepts, or of their office, and such as be in their company assisting them … be so hardy to come before the King's justices, or other of the King's ministers doing their office, with force and

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THE STATE OF GEORGIA, *supra,* 471, 473–74, 478 (1792 law); 1 THE LAWS OF MARYLAND, ch. 25 (1799) (1799 law); ACTS AND RESOLVES OF MASSACHUSETTS, 1786–87 at 235 (Boston, Adams & Nourse 1893) (1786 law); THE LAWS OF THE STATE OF NEW HAMPSHIRE 112–16 (Portsmouth, John Melcher 1797); A MANUAL OF THE LAWS OF NORTH-CAROLINA 190–91, 196 (John Haywood ed., 3d ed., Raleigh, J. Gales 1814); THE PUBLIC LAWS OF THE STATE OF RHODE ISLAND 220, 222 (Providence, Carter & Wilkinson 1798); 1 LAWS OF VERMONT, *supra*, at 382, 387 (1798 law).

arms." 2 Edw. 3, c. 3 (1328). This provision, *preceding* the textual "affray" element, suggested that where the King's business was being conducted, and his ministers were going armed themselves, the right of others to be armed could be momentarily curtailed. This reading of the statute is confirmed by the Virginia analogue to the Statute of Northampton that was in place when the Second Amendment was adopted. In addition to adding an explicit "terror" element to the second restriction, it made the first restriction effectively about regulating who could possess arms in court, forbidding anyone "except the Ministers of Justice in executing the precepts of the courts of justice" from "com[ing] before the justices of any court, or either of their Ministers of Justice, doing their office, with force of arms." 1786 Va. Acts 35. In other words, it fits the Statute of Northampton's restrictions into the same tradition as the other laws on arms bearing in courts of law.

The principle that the government could only restrict arms in "sensitive" places if it secures such locations finds additional support in another colonial and Founding-era tradition: Beginning in the colonial period, and continuing through the Founding, there was a robust tradition of permitting—and sometimes *requiring*—firearm carriage when people entered crowded places of public assembly to provide for defense against armed violence. *See* Kopel & Greenlee, *supra*, at 232–34 & n.108 (2018); Clayton E. Cramer, *Colonial Firearm Regulation*, 16 J. FIREARMS & PUB. POL'Y 1 (2004); Benjamin Boyd, *Take Your Guns to Church: The Second Amendment and Church Autonomy*, 8 LIBERTY UNIV. L. REV. 653, 697–99 (2014); NICHOLAS JOHNSON ET AL., FIREARMS LAW & THE SECOND AMENDMENT 183–85 (2d ed. 2017) (summarizing

laws requiring carriage at places of public assembly such as churches from Virginia in 1619, 1632, and 1665; Connecticut in 1643 and 1644; Massachusetts Bay in 1637 and 1643; Rhode Island in 1639; Maryland in 1642; South Carolina in 1740 and 1743; and Georgia in 1770). *Heller* itself cited a 1770 Georgia law that required men to carry firearms "to places of public worship." 554 U.S. at 601 (citation omitted). This history defeats any notion that the Founders would have understood that there is something inherent in crowded spaces where people were particularly vulnerable that justified disarmament.

This regulatory principle also comports with the "principles underlying the Second Amendment" that this Court has identified. *Rahimi*, 602 U.S. at 692. The Second Amendment " 'surely elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense." *Bruen*, 597 U.S. at 26 (quoting *Heller*, 554 U.S. at 635); *see also Koons*, 2025 WL 2612055, at *44 (Porter, J., dissenting) ("The most basic principle underlying the Second Amendment and our regulatory tradition of public carry is that the right's central component is individual self-defense." (cleaned up)). Disarming people *for their protection*, without providing security for them, is anathema to the right itself. The Founders well understood that disarming people in public places *without* providing security to prevent unlawful use of weapons in those places would only "make things worse for the assaulted and better for the assailants." Mark W. Smith, *Enlightenment Thinker Cesare Beccaria and His Influence on the Founders: Understanding the Meaning and Purpose of the Second Amendment's Right to Keep and Bear Arms*, 2020 PEPP. L. REV. 71, 83 (2020) (explaining that the Founders were

influenced by prominent Enlightenment thinker Cesare Beccaria, who was critical of gun control laws for this reason); THOMAS JEFFERSON, JEFFERSON'S LEGAL COMMONPLACE BOOK 521 (David Thomas Konig et al. eds., Princeton Univ. Press 2019) (quoting Beccaria on this point).

Finally, the principle that a place may be "sensitive" if the government takes it upon itself to secure the location is a *comprehensive* principle, both providing the government with flexibility to designate those places where there really is some "pre-existing vulnerability or societal tension that would be exacerbated by the presence of firearms," Pet.App.26a, and adequate to explain locational restrictions wherever the government validly enacts them. As was shown above, the Seventh Circuit itself was unsatisfied with its own ability to formulate a principle to justify sensitive place restrictions generally, Pet.App.45a and *Wolford* despaired of finding any such unifying principle when confronted with a broader set of restrictions, 116 F.4th at 1003. But ours is not a tradition of arbitrary restrictions. It is instead one that is consistent with reasoned judgment and common sense. *See Rahimi*, 602 U.S. at 698. It makes sense that, if the government could be permitted to disarm its citizens anywhere, it can only be in locations where it takes steps to ensure it is providing for their protection and not leaving them at the mercy of those who will not balk at ignoring a "gun free" public transit system. *See* David Hodges & Cassidy Johncox, *New video shows accused Charlotte light rail stabber riding public transit, laughing to self before attack*, WBTV3 (Sep. 25, 2025), https://perma.cc/YLT3-SR4X.

## III. The courts of appeals' contrary decisions are in conflict with this Court's precedent.

The alternative principles that the courts of appeals have embraced to justify "sensitive place" restrictions, in lieu of accepting the common sense and historical solution of comprehensive government security, are directly contrary to this Court's precedents and unmoored from any appropriate reading of history.

### A. There is no tradition of banning firearms in crowded places.

The Seventh Circuit's major historical justification for holding the Public Transit Ban constitutional was its conclusion that bans in crowded places are historically justified. *See, e.g.*, Pet.App.34a ("[H]igh population density *in discrete, confined spaces* … has historically justified firearms restrictions.") (quoting *Antonyuk*, 120 F.4th at 1027 (emphasis added)). It is not alone in purporting to find something like that in the historical record. *See Wolford*, 116 F.4th at 986 ("[T]hese laws show a well-established tradition of prohibiting firearms at crowded places."); *Frey*, 2025 WL 2679729, at *8 ("[T]he tradition of regulating firearms in often-crowded public forums is part of the immemorial custom of this Nation." (quoting *Antonyuk*, 120 F.4th at 1021)); *see also Koons*, 2025 WL 2612055, at *30 ("These legislative goals find support in the historic principle, established through several analogous historical laws, which forbade guns from centers of community life, such as fairs and markets, to ensure visitors could participate without the risks and anxieties associated with deadly weapons.").

Leaving aside the infirmities in the evidence for this principle, discussed below, it is remarkable that so many courts have embraced a rule that is facially irreconcilable with *Bruen* and *Rahimi*. As noted above, *Bruen* specifically rejected crowding as an adequate historical justification for declaring a place sensitive. *See* 597 U.S. at 31; *see also id.* at 58 (rejecting the argument that historically, "merely carrying firearms in populous areas breached the peace *per se*" (internal quotation marks omitted)). Given that this Court specifically said that "there is no historical basis for New York to effectively declare the island of Manhattan a 'sensitive place' simply because it is crowded and protected generally by the New York City Police Department," *id.* at 31, it is hard to see how, for example, the Second Circuit could conclude that a ban on firearms in Times Square, "[e]xtending approximately from 40th to 53rd Street, and from Sixth to Ninth Avenue in Manhattan" and comprising "[t]he Nasdaq Exchange and Broadway theaters, as well as hundreds of restaurants and stores," was "entirely consistent with our historical tradition of regulating firearms in quintessentially crowded places." *Frey*, 2025 WL 2679729, at *9. Under the circuit courts' convoluted reasoning, "the island of Manhattan" cannot be a sensitive place without "eviscerat[ing] the general right to publicly carry arms for self-defense," *Bruen*, 597 U.S. at 31, but when confined to the approximately 39-block sized "heart of Manhattan," the calculus is entirely different, *Frey*, 2025 WL 2679729, at *9. That cannot be right under *Bruen*.

Moreover, this principle is inconsistent with the "principles underlying the Second Amendment," *Rahimi*, 602 U.S. at 692, because it is premised on the

false notion that is legitimate to disarm individuals *for their protection.* In doing so, it effectively treats the presence of firearms, even firearms in the hands of law-abiding citizens, as dangerous. But the constitutional guarantee of the right to keep and bear arms means that a court cannot "attribute to the mere carrying of arms 'a necessarily consequent operation as terror to the people,' " *Bruen*, 597 U.S. at 51 (quoting *Simpson v. State*, 13 Tenn. 356, 360 (1833)). The majority's attempt to nuance its position by claiming "that 'Firearms are dangerous' is a justification outside our regulatory tradition [ but] 'Firearms are dangerous *in this kind of place*' can fall within that tradition," Pet.App.44a, reflects its confusion about the proper mode of analysis in this case—there is no logical or historical reason (and the Seventh Circuit does not try to suggest one) why that should be a distinction with any difference at all.

Finally, the historical support for this alleged tradition is severely lacking. The first evidence on which the Seventh Circuit relied (and the starting point for several of the courts of appeals on this issue) was the Statute of Northampton. *See* Pet.App.30a. But as discussed above, the Statute of Northampton, to the extent it has any relevance here, buttresses Petitioners' understanding of the right, because the only place where it forbade carriage irrespective of *how* it was done or for what purpose, was in the presence of the King and his ministers doing their offices, in which case those ministers were permitted to be armed and, presumptively, enforced the carry ban. The Seventh Circuit's reading hinged on the other section of the statute, prohibiting carriage "in fairs and markets," but this Court has clearly held that that restriction, at least by the Founding, it was "no obstacle to public

carry for self-defense" anywhere. *Bruen*, 597 U.S. at 45.

The Seventh Circuit's American statutory restrictions fare little better. Only one arguably dated to the Founding era, which this Court has "generally assumed" to be the period most important for understanding the Amendment's scope, *id.* at 37, and that—an 1817 New Orleans ordinance prohibiting firearms in public ballrooms—was applicable only in the city of New Orleans, in addition to having no contemporaneous counterparts, Pet.App.30a. The vast majority of the Seventh Circuit's support comes from much too late to be probative, and from places that are uniquely unlikely to provide useful evidence of the proper scope of the right to bear arms: one law from 1852 in New Mexico (a territory ceded to the United States just four years earlier in the Treaty of Guadalupe Hidalgo) prohibiting firearms at any "Ball or Fandango," Pet.App.32a–33a, and four southern state laws prohibiting firearms in various places enacted during Reconstruction, Pet.App.33a, and similar laws enacted in several territories post-Reconstruction, Pet.App.34a. *Bruen* disregarded, or discounted, such late-coming and territorial laws. *See* 597 U.S. at 67–69; *see also Koons*, 2025 WL 2612055, at *63–64 (Porter, J., dissenting) (discussing these and similar laws). But the Seventh Circuit built almost its entire historical analysis on them.

### B. There is no tradition of banning firearms for the protection of "vulnerable populations."

The Seventh Circuit reinforced its conclusion with reference to other features of public transit, most notably, the presence of "vulnerable populations" on

trains and busses and the fact that they are "government-controlled property." Pet.App.41a. The "government-controlled property" strand of the analysis was not thoroughly examined by the Seventh Circuit, apart from acknowledging that that was also true of courthouses, legislatures, and polling places at the Founding, but the court did claim that "the government's power to regulate conduct and maintain order on its own property" contributed to its finding that it could ban firearms, as a "relevant characteristic" of the space. Pet.App.42a–44a.

More significant was the court's emphasis on the presence of "vulnerable populations." This too, is a common approach among the courts of appeals. *See Koons*, 2025 WL 2612055, at *33 ("[L]ibraries and museums often serve as spaces frequented by children, a 'vulnerable population' that history shows legislatures may constitutionally enact firearm regulations to protect."); *Antonyuk*, 120 F.4th at 1012 ("[T]he State's evidence establishes a tradition of prohibiting firearms in locations where vulnerable populations congregate and a concomitant tradition of considering those with behavioral and substance dependence disorders to constitute a vulnerable population justifying firearm regulation."); *but see Wolford*, 116 F.4th at 1000 ("[W]e find it unlikely that Defendant will establish a tradition of regulating firearms at all places that contain a vulnerable population. The Supreme Court did not hold that schools were sensitive solely because they contain a vulnerable population."). But it is also squarely contrary to this Court's binding interpretation of the Second Amendment. As noted several times above, the Second Amendment is not an illogical or unreasoned restriction on the ability of the government to legislate—it embodies a decision of the

American people to elevate above other interests the right of the people to defend themselves with arms. Consistent with that understanding of the Amendment, the answer, throughout our nation's history, to places where "vulnerable populations" can be found, has been to require able-bodied and peaceable citizens to arm themselves for their collective protection. *See, e.g.*, Boyd, *supra*, at 697–99. Indeed, given that the relevant type of "danger" to be concerned about here is *armed attack* (or an attacker bent on violence with a size and strength advantage), it is hard to know what a "vulnerable population" could be *except* a disarmed one.

The panel's contrary conclusion rested on its assertion that there have, historically, been certain firearms restrictions at schools, which contain the "vulnerable population" of children. *See* Pet.App.41a–42a. But these restrictions, too, have been widely misunderstood. *See Wolford*, 116 F.4th at 1001. Historical bans on firearms at schools applied to *students*. *See, e.g.*, *The Minutes of the Senate Academicus, 1799-1842* at 86, UNIV. OF GA. LIBRS. (1976), https://perma.cc/J3ZV-XMEC (restriction dating to 1810), and they were frequently accompanied by other requirements and restrictions on students' freedoms that, applied to the general population, would have been certainly unconstitutional, *see, e.g., id.* at 38 ("Every Student, whether a Graduate or Undergraduate, shall be subject to the laws and government of the College and show in speech and behavior, all proper respect and obedience to the President, Professors and Tutors of the College.") (1803 restriction); *id.* at 85–86 ("If any scholar shall be guilty of profane swearing … [or] [i]f he shall disturb others by noise[,] loud talking[,] or singing during the time of study[ ] … he

shall for either of those offences be punished.") (1810 restriction). "The University of Georgia even prohibited [students from] possessing weapons *off*-campus, strongly suggesting that this authority was not predicated on or justified by the student's presence in a sensitive location, but rather stemmed from the inherent power of the authority standing *in loco parentis* to dictate all but the most fundamental rights of the infants in its charge." *Lara v. Comm'r Pa. State Police*, 125 F.4th 428, 450–51 (3d Cir. 2025) (Restrepo, J., dissenting); *see also Worth v. Jacobson*, 108 F.4th 677, 695–96 (8th Cir. 2024); *Morse v. Frederick*, 551 U.S. 393, 413 n.3 (2007) (Thomas, J. concurring); *id.* at 416 (schools traditionally exercised *in loco parentis* authority over those in their care). The principle that these rules illustrate is therefore entirely unrelated to the presence of "vulnerable populations," and inapplicable to riders on public transit.

## IV. This case is a good vehicle for addressing this important issue.

This case presents an excellent vehicle for this Court to offer its first in-depth analysis of the "sensitive places" doctrine and provide much needed guidance to the courts of appeals that are dealing with a variety of similar Second Amendment challenges now. Unlike many of the other cases discussed above, the decision below presents a single, discrete restriction, and it represents a final decision of a court of appeals, given that this appeal arises out of a grant of summary judgment, not a preliminary injunction.

While this Court has granted two other Second Amendment cases for consideration this term, *Wolford v. Lopez*, No. 24-1046, 2025 WL 2808808 (U.S Oct. 3, 2025) (Mem.), and *United States v. Hemani*,

No. 24-1234, 2025 WL 2949569 (U.S. Oct. 20, 2025) (Mem.), those cases are very unlikely to shed light on the question presented here or to meaningfully assist courts of appeals in deciding the constitutionality of the wide variety of "sensitive place" restrictions with which they are confronted. *Hemani* deals with a question, similar to the one this Court addressed in *Rahimi*, of *who* can exercise the right to keep and bear arms, and is thus almost wholly irrelevant to this suit. *Wolford* is closer—like this case, it addresses the question of *where* the right can be exercised—but its analysis is unlikely to meaningfully intersect with this suit. While the decision below in *Wolford*, discussed repeatedly above, dealt with similar "sensitive place" restrictions to the Illinois law at issue here, the portion of the law that this Court will be considering is not a "sensitive place" restriction. Rather, that case deals with Hawaii's presumptive ban on carrying firearms in all private property open to the public, but that presumptive ban only has meaning in locations that Hawaii has *not* deemed sensitive, since in those locations carry is *absolutely* prohibited, regardless of the wishes of the property owner. *See* HAW. REV. STAT. §§ 134-9.1, 134-9.5.

This case therefore would provide a useful companion to *Wolford*. Indeed, given that *Wolford* remains the only court of appeals decision to uphold the presumptive ban on carrying on private property, but the Seventh Circuit's decision below is broadly representative of several court of appeals decisions upholding "sensitive place" restrictions, granting this case in addition to *Wolford* would ensure that this Court's guidance on the increasingly important *where* question in Second Amendment would meaningfully

impact the courts of appeals at their greatest point of confusion.

## CONCLUSION

The Court should grant petition for a writ of certiorari.

Respectfully submitted,

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# APPENDIX

## TABLE OF APPENDICES

**APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED SEPTEMBER 2, 2025**

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 24-2643 & 24-2644

BENJAMIN SCHOENTHAL, *et al.*,

*Plaintiffs-Appellees,*

v.

KWAME RAOUL, *et al.*,

*Defendants-Appellants.*

Appeals from the United States District Court for the Northern District of Illinois, Western Division.
No. 3:22-cv-50326 — **Iain D. Johnston**, *Judge.*

Argued May 28, 2025 – Decided September 2, 2025

Before Ripple, St. Eve, and Kolar, *Circuit Judges.*

Kolar, *Circuit Judge.* Illinois's Firearm Concealed Carry Act forbids licensees from carrying firearms on public transportation, with an exception for unloaded and stored firearms. *See* 430 ILCS 66/65(a)(8). A violation is a misdemeanor punishable with up to six months incarceration for a first offense. The Plaintiffs argue that this restriction contravenes the Second Amendment. The district court agreed.

To assess the Plaintiffs' claim, we apply the test set forth in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022) and focus on whether 430 ILCS 66/65(a)(8) fits within our nation's "history and tradition" of firearm regulation. We conclude that the challenged law is comfortably situated in a centuries-old practice of limiting firearms in sensitive and crowded, confined places.

The Second Amendment protects an individual's right to self-defense. It does not bar the people's representatives from enacting laws—consistent with our nation's historical tradition of regulation—that ensure public transportation systems remain free from accessible firearms. We are asked whether the state may temporarily disarm its citizens as they travel in crowded and confined metal tubes unlike anything the Founders envisioned. We draw from the lessons of our nation's historical regulatory traditions and find no Second Amendment violation in such a regulation. We reverse.

## I. Background

### A. Illinois Law

The Firearm Concealed Carry Act allows Illinois residents to obtain licenses to carry concealed firearms in public.[1] 430 ILCS 66/1, *et seq.* It also enumerates locations

1. Illinois law defines the "unlawful possession of weapons" as a criminal offense. *See* 720 ILCS 5/24-1; *see also* 720 ILCS 5/24-1.6 (the aggravated version of the offense). The Act was passed in 2013, after we determined that previous versions of 720 ILCS 5/24-1 & 5/24-

where even licensees may not carry loaded and accessible firearms. 430 ILCS 66/65.

This case is about only one of those locations, public transit. The Act provides that a licensee shall not knowingly carry a firearm on or into

> [a]ny bus, train, or form of transportation paid for in whole or in part with public funds, and any building, real property, and parking area under the control of a public transportation facility paid for in whole or in part with public funds.

430 ILCS 66/65(a)(8). For convenience, we sometimes call this the "public transit firearm restriction," or Section 65(a)(8). Exceptions apply when a person carries a firearm that is broken down, properly stored, or not immediately accessible. 720 ILCS 5/24-1(a)(4)(i)-(iii).

A first violation of Section 65(a)(8) is a Class B misdemeanor punishable by up to 6 months incarceration and up to a $1,500 fine.[2] 430 ILCS 66/70(e) ("Except as

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1.6 that prohibited firearm possession in public violated the Second Amendment. See *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012). Although the details are not pertinent to the issues on appeal, the Act more precisely allows carry of handguns, defined as "any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas that is designed to be held and fired by the use of a single hand." 430 ILCS 66/5. It excludes machine guns, short-barreled rifles, and shotguns, and refers to the definitions of those terms found in 720 ILCS 5/24-1. *Id.*

2. A subsequent violation is a Class A misdemeanor, punishable by up to 364 days incarceration and up to a $2,500 fine. 430 ILCS 66/70(e); 730 ILCS 5/5-4.5-55.

otherwise provided, a licensee in violation of this Act shall be guilty of a Class B misdemeanor."); 730 ILCS 5/5-4.5-60.

Section 65(a)(8) regulates conduct on numerous public transit systems. The largest is the Chicago Transit Authority (CTA), which runs trains and buses in the city of Chicago and into surrounding communities. Hundreds of millions of CTA trips occur each year. The second largest is Metra, a commuter rail system again centered in Chicago. Additional forms of public transit include several more busing systems and two rail systems stretching into neighboring states, the South Shore Line (Indiana) and MetroLink (Missouri).

## B. Procedural History

The Plaintiffs are three Illinois residents who claim that Section 65(a)(8) violates their Second Amendment rights (as enforceable against Illinois by the Fourteenth Amendment).[3] Benjamin Schoenthal, Mark Wroblewski, and Douglas Winston are concealed carry licensees who want to carry firearms for self-defense while using public transit systems, namely the CTA and Metra. Plaintiffs

3. For most of this case, there has been a fourth plaintiff, Joseph Vesel. Shortly after oral argument, Vesel notified us that he became an officer with the University of Chicago Police Department. Under Illinois law, that position affords Vesel the right to carry a concealed firearm for personal protection when off-duty, including on public transportation. 110 ILCS 1020/1; 720 ILCS 5/24-2(a)(1); *id.* at 5/2-13. Thus, Vesel has accurately submitted that his claim regarding Section 65(a)(8) is moot. We dismiss him from this appeal.

often refrain from transit trips they want to take because Section 65(a)(8) requires temporary disarmament.

Plaintiffs brought their complaint against several state officials who they alleged are empowered to enforce Section 65(a)(8) against them: Illinois Attorney General Kwame Raoul, the Cook County State's Attorney (then Kimberly M. Foxx, now Eileen O'Neill Burke), and DuPage County State's Attorney Robert Berlin, plus two others who are no longer subject to this proceeding, the DeKalb County and Lake County State's Attorneys.[4] They requested a declaration "that the Public Transportation Carry Ban consisting of 430 ILCS 66/65(a)(8), and all related laws, regulations, policies, and procedures" were unconstitutional.

The parties filed cross-motions for summary judgment. The district court's decision first addressed jurisdiction and rejected the argument that Plaintiffs lacked standing. It found an injury because "[t]he undisputed facts show that each plaintiff would carry a concealed handgun on public transportation for the purpose of self-defense if not for the Firearm Concealed Carry Act's ban and its threat of arrest and prosecution." Therefore, the district court concluded that "Plaintiffs' injuries trace back to the threat of enforcement" and "a declaration would redress that injury."

On the merits, after applying *Bruen*, the district court granted Plaintiffs' motion and declared that enforcing

4. The district court dismissed these two defendants because Plaintiffs had not shown intent to ride public transit in DeKalb or Lake County.

Section 65(a)(8) against Plaintiffs would violate the Second Amendment. It held that carrying firearms on public transit fell within the textual ambit of the Second Amendment, and that the government had failed to meet its burden to establish that Section 65(a)(8) was within the country's historical tradition of firearm regulation.

The Defendants appealed in two sets: Attorney General Raoul joined by the DuPage County State's Attorney, and the Cook County State's Attorney on her own. When the distinction matters, usually because an argument was made by only one, we refer to them separately as the State and Cook County. When it does not, we speak of "Defendants" or simply "the government."

## II. Analysis

We review the district court's grant of summary judgment and the underlying question of constitutional law *de novo*. *Anderson v. Milwaukee County*, 433 F.3d 975, 978 (7th Cir. 2006). Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Before we reach the merits, we must confirm that Plaintiffs have standing to bring their claims. *Word Seed Church v. Vill. of Hazel Crest*, 111 F.4th 814, 819, 822 (7th Cir. 2024).

## A. Plaintiffs Have Standing

Article III of the Constitution affords federal courts with jurisdiction over "Cases" and "Controversies." *Murthy v. Missouri*, 603 U.S. 43, 56, 144 S. Ct. 1972, 219 L. Ed. 2d 604 (2024). "A proper case or controversy exists only when at least one plaintiff 'establishes that she has standing to sue.'" *Id.* at 57 (quoting *Raines v. Byrd*, 521 U.S. 811, 818, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997)).

To establish standing, Plaintiffs must "present an injury that is [1] concrete, particularized, and actual or imminent; [2] fairly traceable to the defendant's challenged behavior; and [3] likely to be redressed by a favorable ruling." *Dep't of Commerce v. New York*, 588 U.S. 752, 766, 139 S. Ct. 2551, 204 L. Ed. 2d 978 (2019) (quoting *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 733, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008)). As the district court found, each of the Plaintiffs would take a concealed firearm on public transportation if not for the credible threat of prosecution by Defendants under Section 65(a)(8), so injury and traceability are certain. And a judgment that the statute violates the Second Amendment would provide redress.

Cook County offers two reasons why we should nevertheless conclude that the Plaintiffs lack standing. The first deserves no more than a brief rejection. For context, Plaintiffs originally sought injunctive relief, in addition to a declaratory judgment, but the district court's summary judgment decision held that they forfeited the

request for an injunction.[5] According to Cook County, the forfeiture means the district court lost jurisdiction to enter a declaratory judgment. That is incorrect.

Nearly a century of case law establishes that Plaintiffs can bring a standalone claim pursuant to the procedures in the Declaratory Judgment Act, 28 U.S.C. §2201(a), when the claim satisfies Article III's case-or-controversy requirement. *Nashville, Chattanooga & St. Louis Ry. Co. v. Wallace*, 288 U.S. 249, 262-63, 53 S. Ct. 345, 77 L. Ed. 730 (1933); *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671-72, 70 S. Ct. 876, 94 L. Ed. 1194 (1950) ("The Declaratory Judgment Act allowed relief to be given by way of recognizing the plaintiff's right even though no immediate enforcement of it was asked."); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126, 127 S. Ct. 764, 166 L. Ed. 2d 604 (2007) ("There was a time when this Court harbored doubts about the compatibility of declaratory-judgment actions with Article III's case-or-controversy requirement. ... We dispelled those doubts...."). Cook County misreads *California v. Texas*, which again explains the uncontroversial proposition that a plaintiff who seeks a declaratory judgment must show standing like any other plaintiff, including that the asserted injury can be relieved by court action such as an injunction. 593 U.S. 659, 672, 141 S. Ct. 2104, 210 L. Ed. 2d 230 (2021). Contrary to Cook County's position, a plaintiff need not actually pursue that relief.[6] *See Aetna Life Ins. Co. of*

5. Plaintiffs did not cross-appeal this ruling.

6. In *California v. Texas*, the plaintiffs requested a declaratory judgment that an "unenforceable statutory provision"—the

*Hartford, Conn. v. Haworth*, 300 U.S. 227, 241, 57 S. Ct. 461, 81 L. Ed. 617 (1937) ("And as it is not essential to the exercise of the judicial power [to enter a declaratory judgment] that an injunction be sought, allegations that irreparable injury is threatened are not required."); *see also Hero v. Lake County Election Board*, 42 F.4th 768, 772 (7th Cir. 2022).

That brings us to Cook County's second reason why Plaintiffs lack standing: other rules restrict Plaintiffs from carrying firearms on public transportation even in the absence of the challenged statute, so a favorable decision does not redress Plaintiffs' injuries because they still could not carry firearms on public transit. This argument requires us to carefully parse the Supreme Court's standing jurisprudence, along with our own case law, but Plaintiffs' injuries are indeed redressable.

Currently, Metra bans firearms with no exception for concealed carry licensees. Passenger Code of Conduct, Metra, §§III(I), IV(H).[7] Plaintiffs assert that they will defy

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Affordable Care Act's zeroed-out monetary penalty for individuals without health insurance—was unconstitutional. 593 U.S. at 673. Because the plaintiffs had no damages from the penalty and could not obtain an injunction to prevent any official from enforcing the penalty of zero dollars, the Supreme Court held that plaintiffs sought an advisory opinion that could not have provided relief from the purported injury. *Id.*

7. Cook County also says that CTA has a similar ban, but we put that issue to the side because all three Plaintiffs desire to ride Metra while armed, but only one has the same wish for CTA. With respect to CTA, the premise of Cook County's argument may

Metra's rule if Section 65(a)(8) is declared unconstitutional. Cook County retorts that if Plaintiffs knowingly ride Metra in violation of the firearm ban, they face prosecution for trespass, which is also a Class B misdemeanor. *See* 720 ILCS 5/21-3 (providing that a person commits criminal trespass when he enters upon land after receiving notice that the entry is forbidden).

Cook County cites *Harp Advertising Illinois, Inc. v. Village of Chicago Ridge* to argue that Metra rules and the possibility of trespass charges eliminate Plaintiffs' standing. 9 F.3d 1290 (7th Cir. 1993). There, we held that a plaintiff who challenged one village ordinance lacked

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well be wrong. CTA Ord. No. 016-110 §1(28) (2016) bans firearms but exempts individuals "authorized under Section 5/24-2 of the Illinois Criminal Code to carry weapons onto transit...." A look at Section 5/24-2 of the Illinois Criminal Code reveals that it does not "authorize" any individual to carry weapons on transit, at least not in plain terms. Instead, it lists "exceptions" from Section 24-1, which defines the offense of "unlawful possession of weapons" in a manner that includes carrying firearms on transit. *See* 720 ILCS 5/24-1, 24-2. It appears that the best reading of the CTA ordinance's text is that because one of the exceptions in Section 5/24-2 applies to individuals with a concealed carry license, *see* 720 ILCS 5/24-2(a-5), Plaintiffs are "authorized" to "carry weapons onto transit" and the ordinance does not apply to them. Therefore, Section 65(a)(8) would be the only restriction on CTA riders who have a concealed carry license, and Plaintiff Douglas Winston would have standing regardless of anything else we say. We called for supplemental briefing on this issue, but given the complex interplay between the CTA ordinance and the relevant Illinois statutes, and that all three Plaintiffs have standing either way, we refrain from reaching a definitive conclusion. Federalism concerns counsel us to leave novel and complex interpretations of Illinois law to Illinois's courts, unless we must confront such an issue to render a decision.

standing because the desired conduct was prohibited by another unchallenged and unrelated zoning rule, hence a favorable ruling would not redress the injury. *Id.* at 1292.

Cook County also invokes *Haaland v. Brackeen*, where the Supreme Court held that the plaintiffs lacked standing because while a federal court decision might have had powerful persuasive effect, it would not bind the state courts who implemented the challenged statute. 599 U.S. 255, 292-94, 143 S. Ct. 1609, 216 L. Ed. 2d 254 (2023). "Redressability requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power." *Id.* at 294 (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 825, 112 S. Ct. 2767, 120 L. Ed. 2d 636 (1992) (Scalia, J., concurring in part and concurring in judgment) (emphasis in original)). "It is a federal court's judgment, not its opinion, that remedies an injury; thus it is the judgment, not the opinion, that demonstrates redressability." *Id.* Cook County thus contends that even if a federal court decision striking down Section 65(a)(8) would be convincing to future (federal or state) courts considering a pre-enforcement challenge to Metra's rules, or to state courts encountering a trespass prosecution based on the violation of those rules, it would not suffice to remedy Plaintiffs' injury.

Here, Plaintiffs' redressable injury is facing prosecution under Section 65(a)(8).[8] With respect to possible trespass charges, neither we nor the Supreme

8. To be precise, prosecution under 430 ILCS 66/70(e) for violating Section 65(a)(8).

Court have ever held that a plaintiff who brings a pre-enforcement challenge against one criminal statute must also challenge all criminal or civil enforcement statutes that potentially bear upon the same conduct. "[T]he ability 'to effectuate a partial remedy' satisfies the redressability requirement." *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291, 141 S. Ct. 792, 209 L. Ed. 2d 94 (2021) (quoting *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13, 113 S. Ct. 447, 121 L. Ed. 2d 313 (1992)).

In *Reporters Committee for Freedom of the Press v. Rokita*, we affirmed the grant of a preliminary injunction in a pre-enforcement challenge to Indiana's buffer law, which made it a crime to approach within 25 feet of a law enforcement officer executing his duties. 147 F.4th 720, 2025 U.S. App. LEXIS 19745, 2025 WL 2218472, at *1 (7th Cir. Aug. 5, 2025). There, we rejected a similar argument that the plaintiffs lacked a redressable injury where the challenged buffer law and a separate, unchallenged emergency incident statute each criminalized similar conduct. 147 F.4th 720, *Id. at *4-5*. First, we explained that "although there may be some overlap between the buffer law and the emergency incident statute, the overlap is not complete"—the buffer law "applie[d] in a far broader set of situations...." 147 F.4th 720, *Id.* at *4. Second, we observed that even had there been complete overlap, because both statutes were criminal laws, facing prosecution under both for the same conduct would subject the plaintiffs to steeper penalties. *Id.* We held that "removing an additional layer of criminal liability [is] a form of redress sufficient to confer standing, even though the underlying behavior [is] still subject to prosecution" under other laws. *Id.* (citing

*Animal Legal Def. Fund v. Reynolds*, 89 F.4th 1071, 1078 (8th Cir. 2024)).

Contrary to Cook County's arguments, *Harp* does not undercut our standing analysis. There, we discussed standing where the asserted injury was "the inability to erect an off-premises billboard" and the overlapping restrictions were imposed by civil, not criminal laws—a zoning rule challenged by the plaintiff and a separate, unchallenged local ordinance. *Harp*, 9 F.3d at 1292. Either of the zoning rule or the ordinance operating alone would have precluded the *Harp* plaintiff's desired conduct; the layers of criminal liability central to *Reporters Committee for Freedom of the Press* were not present. *Id.* Cook County points out that *Harp* relied on *Renne v. Geary*, but that case is even further afield from the facts here. 501 U.S. 312, 111 S. Ct. 2331, 115 L. Ed. 2d 288 (1991). In *Renne*, the plaintiffs challenged a restriction on certain speech from political candidates, alleging injury because "they desired to hear" that speech. *Id.* at 319. The Supreme Court had "reason to doubt" that this injury could be redressed by a favorable decision because a different, unchallenged law might still prohibit the speech that the plaintiffs wanted to hear. *Id.* Quite unlike this case, the asserted injury was a step removed from the restriction, which had no direct effect on the plaintiffs. *See Linda R.S. v. Richard D.*, 410 U.S. 614, 619, 93 S. Ct. 1146, 35 L. Ed. 2d 536 (1973) ("[A] citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution."). Also relevant for our purposes is that the challenged rule "carrie[d] no criminal penalties, and [could] only be enforced by injunction." *Renne*, 501 U.S. at 322.

We decline to extend *Harp* to defeat Plaintiffs' standing here and instead follow *Reporters Committee for Freedom of the Press*. Plaintiffs' criminal exposure from Section 65(a)(8) is a discrete injury that a court can remedy. "Plaintiffs [who] face a credible threat of prosecution ... should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." *Holder v. Humanitarian L. Project*, 561 U.S. 1, 15, 130 S. Ct. 2705, 177 L. Ed. 2d 355 (2010) (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L. Ed. 2d 895 (1979)). A categorical rule that plaintiffs must always challenge all restrictions that might apply to their desired conduct could allow the government to evade review of squarely presented controversies, especially in the realm of pre-enforcement challenges to criminal penalties. At the same time, we recognize that overlapping criminal statutes could defeat standing in other contexts, and note the need for careful consideration when these concerns arise.

As stated by *Brackeen*, 599 U.S. at 292-94, the possible impact of a favorable *opinion* could not give Plaintiffs' standing if they had not presented Section 65(a)(8) charges as an injury that a favorable *judgment* is likely to redress.[9] It merely helps define the injury. In viewing the injury as

9. As the concurrence discusses, we must also consider issue preclusion. However, we decline to ground our jurisdiction upon a broader analysis of the preclusive effect our judgement would have on future state or federal lawsuits. *Brackeen* involved a lawsuit against federal officials, when state officials enforced the law at issue. 599 U.S. at 293 (explaining the state officials would "not be bound by the judgment"). Here, a judgment favorable to Plaintiffs would bar the named Defendants from enforcing Section 65(a)(8) and related laws and regulations (as we discuss next).

prosecution under Section 65(a)(8), we find it relevant that there are several layers of conjecture needed to conclude that Plaintiffs would continue to face trespass charges after a favorable decision. Without Section 65(a)(8), no portion of the Illinois Criminal Code prohibits Plaintiffs from carrying concealed firearms on transit.[10]

We also observe that Metra has authority to confiscate fare media and suspend riding privileges but cannot otherwise penalize Plaintiffs. Passenger Code of Conduct, Metra, §V. Plaintiffs' apparent cost-benefit analysis—that they would risk sanction under these rules but not charges under Section 65(a)(8)—is conceivably rational. The prospect of these considerably lower penalties does not defeat redressability.[11]

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10. CTA's amicus brief argues that 430 ILCS 66/65(a)(5), which bars firearms in "[a]ny building or portion of a building under the control of a unit of local government," is an independent bar to redressability. Although Plaintiffs have not specifically cited this portion of the statute in pressing their claims, it is identical to Section 65(a)(8) with respect to the proposed conduct, and we consider the two provisions together.

11. Metra operates on privately owned railroad lines, including the BNSF Railway, the Canadian National Railway, and the Union Pacific Railroad. *See, e.g., Union Pac. R. Co. v. Reg'l Transp. Auth.*, 74 F.4th 884, 885 (7th Cir. 2023) (describing the relationship between Metra and Union Pacific). Cook County asserts that these entities all prohibit firearms on their property, and that this restriction is another independent rule barring redress for Plaintiffs. We are not moved. Cook County backs this claim with rules pertaining to railway employees and contractors, leaving unclear if the railways apply them to passengers. And assuming the rules do govern Metra passengers, we reject Cook County's argument for the same reasons as for Metra's Code of Conduct.

There is a second basis for our conclusion that Plaintiffs have standing.[12] In a decision issued at the end of the last term, the Supreme Court emphasized that we assess redressability based on the plaintiff's complaint, not "the relief the District Court granted on the merits." *Gutierrez v. Saenz*, 145 S. Ct. 2258, 2267, 222 L. Ed. 2d 531 (2025). There, the Supreme Court said that "[t]o the extent the Fifth Circuit based its assessment of redressability on the declaratory judgment the District Court later issued, rather than Gutierrez's complaint, it turned the Article III standing inquiry on its head." *Id.*

Here, the complaint's prayer for relief requested a judgment declaring that the "Public Transportation Carry Ban consisting of 430 ILCS 66/65(a)(8), and *all related laws, regulations, policies, and procedures*" violates the Second Amendment (emphasis added). Metra's rules are not formally connected to Section 65(a)(8), but a

12. Plaintiffs, who have the burden to establish standing, only raised this argument after we requested supplemental briefing. Yet we have an "independent obligation" to assess standing. *Summers v. Earth Island Inst.*, 555 U.S. 488, 499, 129 S. Ct. 1142, 173 L. Ed. 2d 1 (2009). While "'[a] court's non-waivable obligation to inquire into its own jurisdiction is most frequently exercised in the negative,' courts 'have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not....'" *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 110 F.4th 295, 314 (1st Cir. 2024) (quoting *Hartig Drug Co. v. Senju Pharm. Co.*, 836 F.3d 261, 267 (3rd Cir. 2016)). It is therefore "appropriate to consider arguments favoring standing not presented" by the Plaintiffs in their appellate brief, *id.*, particularly when Plaintiffs mounted other vigorous arguments for standing, introduced supporting evidence in the summary judgment record, and an interceding Supreme Court decision affected the analysis.

trespass prosecution for violating those rules is properly characterized as a "related" regulation on carrying firearms. Based on the prayer for relief and the nature of the Plaintiffs' claim, the litigation could have developed such that the district court declared that Plaintiffs had a right to travel on public transit while armed, and that any effort to impede that right with criminal charges is unconstitutional. The district court's order was more circumspect, referencing only Section 65(a)(8). But even if we agreed with Cook County and found that the district court's decision did not actually redress Plaintiffs' injury, the fact that the district court *could have* redressed the injury is sufficient to confer standing in the first place. *Gutierrez*, 145 S. Ct. at 2267.

With our jurisdiction assured, we turn to the merits.

### B. Illinois's Public Transit Firearm Restriction Is Consistent With The Second Amendment

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. Seventeen years ago, the Supreme Court interpreted this language in recognizing an individual right to possess and carry weapons. *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). Not long after, the Court held that the Fourteenth Amendment incorporated that Second Amendment right against the states. *McDonald v. City of Chicago*, 561 U.S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010). These decisions "opened up new frontiers of litigation" and gave rise to uncertainty

about the appropriate framework for deciding whether a firearm regulation was constitutionally permissible. *Bevis v. City of Naperville*, 85 F.4th 1175, 1188-92 (7th Cir. 2023) (tracing the development of Second Amendment jurisprudence after *Heller*).

The Supreme Court has now instructed us to assess Second Amendment claims by using the two-step test laid out in *Bruen*, 597 U.S. at 24, with the benefit of the additional direction in *United States v. Rahimi*, 602 U.S. 680, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024). Under the *Bruen* framework, we first consider whether "the Second Amendment's plain text covers an individual's conduct...." *Bruen*, 597 U.S. at 24. At this first step, we corroborate our reading of the Second Amendment's plain text with assistance from historical sources. *See id.* at 20 (explaining that in *Heller*, the Court assessed whether its initial textual interpretation was "confirmed by the historical background of the Second Amendment" (quoting *Heller*, 554 U.S. at 592)). If the plain text covers an individual's conduct, "the Constitution presumptively protects that conduct." *Id.* And we then move to *Bruen's* second step, where the government has the burden to "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.*

Everyone agrees that the plain text of the Second Amendment, as interpreted by the Supreme Court, covers Plaintiffs' desire to ride public transit while carrying a licensed concealed firearm for self-defense. *See id.* at 29 (quoting *McDonald*, 561 U.S. at 767) ("[I]ndividual self-defense is 'the *central component*' of the Second

Amendment right."). There is no need to linger on the first step.

At the second step, "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692. To determine whether a modern regulation is "'relevantly similar' to laws that our tradition is understood to permit," *id.* (quoting *Bruen*, 597 U.S. at 29), the central inquiry is "how and why the regulation[] burden[s] a law-abiding citizen's right to armed self-defense," *Bruen*, 597 U.S. at 29. For how, we ask "whether modern and historical regulations impose a comparable burden on the right of armed self-defense...." *Bruen*, 597 U.S. at 29. Then, for why, "whether that burden is comparably justified...." *Id.* A law that "regulates arms-bearing for a permissible reason" may still fall to a Second Amendment challenge if the burden exceeds that found in our tradition. *Rahimi*, 602 U.S. at 692. But when the government has presented "historical laws 'address[ing] particular problems' there is a good chance 'contemporary laws imposing similar restrictions for similar reasons' are also permissible." *United States v. Rush*, 130 F.4th 633, 641 (7th Cir. 2025) (quoting *Rahimi*, 602 U.S. at 692).

In the words of the Supreme Court, "recent Second Amendment cases ... were not meant to suggest a law trapped in amber." *Rahimi*, 602 U.S. at 691. "Even if the modern-day regulation is not 'a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster'—we need not find a historical 'twin.'" *Rush*, 130 F.4th at 641 (quoting *Bruen*, 597 U.S.

at 30). After all, "[t]he regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868." *Bruen*, 597 U.S. at 27. The *Bruen* inquiry accordingly recognizes that "cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach" to drawing historical analogies. *Id.*

With that foundation, we confront Illinois's public transit firearm restriction. Undoubtedly, some place-based restrictions on carrying firearms are harmonious with the Second Amendment. The Supreme Court has provided a non-exhaustive list of "sensitive places" to use as material for analogical reasoning, and beyond that, there is a more expansive tradition of regulations pertaining to confined and crowded places. *Id.* at 30. Although public transportation is a historically recent phenomenon, the regulation at issue is "relevantly similar" to rules throughout our nation's history. *Id.* at 29. We conclude that the government has met its burden under step two.

### 1. Regulation of Firearms in Sensitive Places is Permissible

The Supreme Court has repeatedly recognized that "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" are consistent with the Second Amendment. *Heller*, 554 U.S. at 626-27; *McDonald*, 561 U.S. at 786. Sensitive places "where weapons were altogether prohibited" in the 18th

and 19th centuries also include "legislative assemblies, polling places, and courthouses...." *Bruen*, 597 U.S. at 30. At the time, there was no dispute that these rules were legal. *Id.* Thus, "courts can use analogies to those historical regulations of 'sensitive places' to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible." *Id.*

The Second and Ninth Circuits recently applied the sensitive places doctrine. The Second Circuit largely rejected a Second Amendment challenge to a New York state law that criminalized carrying firearms in many places, including parks, bars, places of worship, theaters, zoos, and more. *Antonyuk v. James*, 120 F.4th 941, 955-57 (2d Cir. 2024).[13] It did not assess the constitutionality of a public transit restriction.[14]

The Ninth Circuit reached a more mixed result after reviewing California and Hawaii laws that again restricted firearms in parks, bars, places of worship, plus other locations not covered by New York's law, like banks and hospitals. *Wolford v. Lopez*, 116 F.4th 959, 1002-03 (9th

13. The Supreme Court denied certiorari. *Antonyuk v. James*, 145 S. Ct. 1900, 221 L. Ed. 2d 646 (2025).

14. The district court enjoined New York's ban on carrying firearms in buses, vans, and airports (to the extent a person was "complying with all federal regulations there"). *Antonyuk v. Hochul*, 639 F. Supp. 3d 232, 331 (N.D.N.Y. 2022). New York did not appeal that part of the decision. *See Antonyuk*, 120 F.4th at 960. ("The State challenged each aspect of the injunction except for the portion concerning the [New York ban's] application to buses and airports.").

Cir. 2024) ("A State likely may ban firearms in museums but not churches; in restaurants but not hospitals; in libraries but not banks.").

Critically, the Ninth Circuit also assessed California's prohibition of firearms on public transit. *Id.* at 1000. Our sister circuit held that the law was likely unconstitutional but only because it did not contain an exception for unloaded and secured firearms.[15] *Id.* at 1000-01. Illinois, of course, has that exception. We will say more about *Wolford*'s public transit analysis later.

Right now, we advise that while the issue before us is narrower than those in *Antonyuk* or *Wolford*, we find their reasoning instructive. After reviewing *Bruen* and *Rahimi* with the insight of our sister circuits, we apply the following methodology to analyze a place-based firearm restriction. "Our Nation has a clear historical tradition of banning firearms at sensitive places." *Wolford*, 116 F.4th at 980; *Bruen*, 597 U.S. at 30 (same). To show that a place-based regulation fits within that tradition, the government may compare it to the regulations on schools, legislative assemblies, polling places, and courthouses blessed in *Heller* and *Bruen*. Comparison to regulations at those four sensitive places benefits from an already-completed historical analysis. All we must do is make the analogy. But nothing in *Bruen* suggests that its short list of sensitive places was intended to be a conclusive survey of all historical place-based firearm laws. Such a narrow

15. *Antonyuk* and *Wolford* were both appeals from a preliminary injunction rather than a declaratory judgment. This procedural distinction with our case is immaterial to the legal analysis.

reading would run contrary to the two-part test *Bruen* announced. When a modern law does not neatly compare to the regulations on the four prototypical sensitive places, as it often might not, the government should present additional historical evidence of analogous place-based restrictions to help locate the challenged law within our tradition. If the government cannot do so, a modern regulation is unconstitutional.

One point deserves emphasis. We are in the project of comparing regulations, not places. *Bruen*, 597 U.S. at 29-30; *Rahimi*, 602 U.S. at 692. "'Analogical reasoning' under *Bruen* demands a wider lens: Historical regulations reveal a principle, not a mold." *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring).

That matters because the sensitive places identified in *Bruen* meaningfully differ from one another in their characteristics. We must consider whether there are core principles unifying those sensitive places that justify firearms regulations within them. Schools and courthouses may share structural characteristics (or not), and certainly differ in their functions and the ages and activities of their primary inhabitants; legislative assemblies and polling places are central to representative democracy but share few characteristics as physical spaces.

Plaintiffs attempt to carve out schools from the group and then assert that the remaining commonality is that the government provides comprehensive security in those places. This effort does not withstand historical scrutiny. Plaintiffs assert that firearm restrictions in schools were

linked to the principle of *in loco parentis* authority over students. But it would be odd for the Supreme Court to talk about schools in the context of sensitive places if it was actually referring to restrictions on students, a subset of those occupying the place. Because we read *Bruen*, 597 U.S. at 30, and *Heller*, 554 U.S. at 626, to say that schools are places where firearms can be prohibited for all individuals, what makes schools "sensitive" must be something other than *in loco parentis*. Surely, it is not government provided security.

The security principle also cannot unify even legislative assemblies, polling places, and courthouses. Nowadays, we expect to be greeted at legislative assemblies and courthouses with screenings and armed officials. But the historical evidence marshaled by the parties and amici indicates surprisingly lax and irregular security practices in our nation's past. Legislative assemblies, including Congress, were often protected by merely one person, whose duties and abilities would be less-than-adequate to stave off violence.[16] Courthouses, relatedly,

16. *See* THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA 426-27 (John Faucheraud Grimke ed., Phila., R. Aitken & Son 1790), Act of Mar. 27, 1787, No. 1482 (South Carolina statute providing for one door-keeper for each legislative chamber); A COMPILATION OF THE LAWS OF THE STATE OF GEORGIA 372-73 (Augustin Smith Clayton ed., Augusta, Adams & Duyckinck 1812), Act of Dec. 10, 1807, No. 280 (Georgia statute paying one individual for dual role of "messenger and door-keeper" for each chamber); EXTRACTS FROM THE JOURNAL OF PROCEEDINGS OF THE PROVINCIAL CONGRESS OF NEW JERSEY 240 (Burlington, Isaac Collins, reprinted by Woodbury, Joseph Sailer 1835), Act Effective Mar. 1, 1776 (New Jersey ordinance providing for payment to one legislative door-keeper); United States Capitol Police, *Mission & History*, https://www.uscp.gov/the-department/

preoccupied sheriffs with administrative responsibilities, and would not always require their regular attendance.[17] And the historical evidence of law enforcement at polling places persuades us that their role was largely to help run elections rather than provide security.[18] In all three contexts, law enforcement ensured smooth operations,

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our-mission [https://perma.cc/94HJ-SUFF] (last visited Aug. 11, 2025) (explaining that in 1800 a "lone watchman, John Golding, was hired to protect the Capitol Building," and that the watch remained one person until 1828, when it was expanded to four).

17. Founding-era state laws required the sheriffs' and constables' presence in courthouses at times but also obliged their presence in the broader community for the service of writs, warrants, and summonses, punishing crimes, and overseeing the sale of property. That array of functions supports our conclusion that the Founding-era sheriff's remit was broader than that of the modern courthouse security guard. *See* THE PUBLIC LAWS OF THE STATE OF RHODE-ISLAND 220, 222 (Providence, Carter & Wilkinson 1798), Act of Jan. 29, 1798; LAWS OF THE STATE OF NEW JERSEY 50 (Joseph Bloomfield ed., Trenton, James J. Wilson 1811), Act of Mar. 15, 1798; A DIGEST OF THE LAWS OF THE STATE OF GEORGIA 473-74 (Robert & George Watkins eds., Phila., R. Aitken 1800), Act of Dec. 18, 1792; 1 THE LAWS OF MARYLAND, ch. 25 (1799).

18. *See* THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA 387-88, Act of Mar. 27, 1787, No. 1395 (including in the "public services of the Sheriff" the administrative functions of "publishing writs for electing members to the General Assembly" and "taking the ballots and returning the writ"); ABRIDGEMENT OF THE PUBLIC PERMANENT LAWS OF VIRGINIA 325 (Augustine Davis ed., 1796), Act of Dec. 11, 1778 (requiring the sheriff to notify the freeholders of the upcoming election and to "attend and take the poll at such election, entering the names of the persons voted for in a distinct column, and the name of every freeholder giving his vote under the name of the person he votes for," and to "upon oath, certify[] the name of the person elected, to be by the clerk recorded.").

which is distinct from the practice of comprehensive security to keep people safe.

The government, in contrast to Plaintiffs, does not attempt to devise a common factor between schools, legislative assemblies, polling places, and courthouses. In lieu of that effort, the government's analogies pick out various characteristics shared by some of those places. As discussed below, many of those comparisons are well-made, but we still need to identify a core principle underlying sensitive place regulations.

That unifying principle emerges when we look at "how" and "why" the government historically burdened the right to carry weapons in these four types of sensitive places. *See Rahimi*, 602 U.S. at 692. Ironically, the similarity is their differences; not with each other, but from everywhere else. They are all discrete places with unavoidable characteristics that potentially render it ill-advised to allow firearms. Schools are learning environments overwhelmingly dominated by the presence of children; legislative assemblies feature public officials making weighty decisions about how to run our government. Polling places call upon the public to do the same. So do courthouses oblige judges and juries with the administration of justice. What happens within these places means that there is a pre-existing vulnerability or societal tension that would be exacerbated by the presence of firearms. And crucially, they are a list of dispersed places within a community, not the community itself, so regulation deprives the Second Amendment right only for a limited time.

Put another way, firearms are potentially disruptive and deadly everywhere. The Second Amendment settled whether society nevertheless accepts the risk of allowing armed self-defense. Yet the sensitive places doctrine tells us that the appropriate balance allows for temporary restrictions in scattered discrete places where the risk is simply different, and reminiscent of risks addressed by regulations in our past.

"To be clear," this is not a "regulatory blank check" to use security fears to justify any firearm restriction. *Bruen*, 597 U.S. at 30. Rather, the search for a "relevantly similar" regulation burdens the government to make comparisons between the "particular problems" that motivated historical firearm restrictions in certain places and the problems that spur restrictions today. *Rahimi*, 602 U.S. at 692. Here, logical reasoning builds on the foundation of history.

What is said when making an analogy to historical sensitive place rules might at times sounds like the means-end scrutiny rejected in *Bruen*, 597 U.S. at 19. But the fact that similar points can be made under different tests is a familiar aspect of the law. A prosecutor cannot secure a conviction by arguing that a defendant is so dangerous that he deserves to be behind bars. She can do so only by proving the elements of an offense. That those elements might go heavily to a defendant's danger does not change the nature of the appropriate inquiry. The same is true under *Bruen*. The Founding generation made policy choices, inhered with value-laden judgments, and so have successive generations. We cannot analogize without reference to those choices.

Still, *Bruen* assigns judges with the part-time role of historian, not policymaker. The government certainly should not try to convince us that a law's benefits outweigh the costs. It should show no more, and no less, than that the trade-off is one that accords with our history.

Some place-based restrictions will look much like those in the past. (Think of a rule banning firearms at a daycare.) Other times, they will appear rather different. This may be a constitutional warning sign, especially if the government is restricting firearms in a place that has existed throughout our nation's history without analogous prohibitions. *See, e.g.*, *Wolford*, 116 F.4th at 980-81. It may also reflect the fact, however, that some places did not exist until more recent periods of history. "[C]ourts must be particularly attuned to the reality that the issues we face today are different than those faced in medieval England, the Founding Era, the Antebellum Era, and Reconstruction." *Antonyuk*, 120 F.4th at 970. When modern issues are significantly different from problems encountered in the past, higher-level analogies can support a law's constitutionality. *Bruen*, 597 U.S. at 27.

All in all, the Supreme Court's *Bruen* framework, and the sensitive place doctrine, lead us to ask: Is Illinois's law "'relevantly similar' to laws that our tradition is understood to permit...."? *Rahimi*, 602 U.S. at 692 (quoting *Bruen*, 597 U.S. at 29). We could likely answer in the affirmative. Nevertheless, our Constitutional rights stand as a bulwark against government overreach, and we do not treat Second Amendment rights as a "second-class right...." *Bruen*, 597 U.S. at 70. So before concluding that

Illinois may temporarily cabin an individual's right to carry a firearm while using a crowded transit system, we continue our analysis.

### 2. Illinois's Public Transit Firearm Restriction is Akin to the Tradition of Regulating Firearms in Crowded and Confined Spaces

We start by expanding on *Bruen*'s list of locations where firearms were historically prohibited. In response to Plaintiffs' challenge, the government fits the public transit restriction within the sensitive places doctrine by supplying evidence that a consistent historical thread prohibits firearms in analogously crowded and confined locations. After that regulatory practice started in medieval England, it continued in Revolutionary America, through Reconstruction, and into the present day. Our sister circuits have described much of this history. *Wolford*, 116 F.4th at 986; *Antonyuk*, 120 F.4th at 1019-24. We borrow from their telling.

The beginning of the relevant tradition, based on the record the government has provided, is 1328's Statute of Northampton, a "British statute forbidding going or riding 'armed by night [ ]or by day, in fairs [or] markets....'" *Antonyuk*, 120 F.4th at 1019 (quoting Statute of Northampton 1328, 2 Edw. 3 c.3 (Eng.)). This firearm restriction in traditionally crowded public spaces persisted into American law, including in Virginia and North Carolina. 1786 Va. Acts 35, ch. 49; *State v. Huntly*, 25 N.C. 418, 420-21 (1843).

Plaintiffs explain, and we accept, that these laws were understood to only prohibit firearm carrying that caused "terror."[19] *See Bruen*, 597 U.S. at 40-45 (discussing the Northampton statute and successor laws). That weakens the analogy. Nevertheless, the laws still demonstrate that the American tradition has long approved of firearm restrictions that are triggered by carrying in a crowded space, even if another condition is required to complete the violation.[20] This is a principle, rather than a dead ringer. *Rahimi*, 602 U.S. at 692.

Another law built on the principle that originated in the Statute of Northampton by flatly banning carrying firearms in confined and crowded spaces, without any terror requirements. An 1817 New Orleans ordinance prohibited firearms in public ballrooms. *See* An Ordinance Respecting Public Balls (1817), *in* A General Digest of

19. The Second Circuit concluded that North Carolina law did not have a terror element, but Plaintiffs argue that the Second Circuit relied on an inaccurate historical document. *Antonyuk*, 120 F.4th at 1019-20. One peril of relying on history is that records of past laws are incomplete and can be unreliable. For the purpose of this opinion, we assume that Plaintiffs are right, but we would not see this as a load-bearing mistake in the Second Circuit's analysis.

20. We agree with the Second Circuit that *Bruen* addressed the Statute of Northampton as a justification for New York's categorical restriction on public carry and that the Supreme Court's analysis in that regard does not control whether the Northampton statute is analogous to more limited place-based restrictions. *Antonyuk*, 120 F.4th at 1020 n.82; s*ee also Rahimi*, 602 U.S. at 700 ("The conclusion that focused regulations ... are not a historical analogue for a broad prohibitory regime like New York's [in *Bruen*] does not mean that they cannot be an appropriate analogue for a narrow one.").

THE ORDINANCES AND RESOLUTIONS OF THE CORPORATION OF NEW ORLEANS 371 (1831); *Wolford*, 116 F.4th at 986. We see no sign that the lawfulness of this rule, which was enacted within the lifetimes of the generation that fought the Revolutionary War and ratified the Bill of Rights, was subject to dispute. *Bruen*, 597 U.S. at 30 (advising that a key concern is to avoid upholding laws that "our ancestors would have never accepted") (quoting *Drummond v. Robinson*, 9 F.4th 217, 226 (3d Cir. 2021)).

And, as discussed, sensitive place restrictions were already well-known. The idea that firearms could be banned in certain locations, which originated in British legal practices, provided a relevant principle familiar to the Founding generation, and helps us understand why restrictions such as the New Orleans ordinance would be accepted without controversy. These rules were evolving and building on each other as a young nation put into practice the public understanding of the right to bear arms.

Before moving on, we pause for another comment on methodology. Plaintiffs argue that much of the government's other evidence is not probative because it is after the Founding era. We are unconvinced. "[T]he government is not constrained to only Founding Era laws. While not every time period is weighed equally, *Bruen* instructs us to consider 'historical precedent from before, during, and even after the founding....'" *Rush*, 130 F.4th at 642 (quoting *Bruen*, 597 U.S. at 27). That approach accords with Founding-era methodologies of constitutional and statutory interpretation. *See, e.g.*, THE FEDERALIST NO. 37

(James Madison) (1788) ("All new laws... are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications.").

Although the Supreme Court has not set a conclusive cut-off point, we and other circuits concur that evidence stretching into the nineteenth century is useful to a *Bruen* inquiry. *Rush*, 130 F.4th at 642 (citing to an 1856 statute); *Bevis*, 85 F.4th at 1201-02; *Antonyuk*, 120 F.4th at 973-74; *Wolford*, 116 F.4th at 980; *Nat'l Rifle Ass'n v. Bondi*, 133 F.4th 1108, 1121 (11th Cir. 2025) (en banc) (W. Pryor, C.J.) (relying on "[m]id-to-late-nineteenth-century laws"). That is especially true when reviewing a state law, given that the states were not bound by the Second Amendment until the Fourteenth Amendment was ratified in 1868. *See Antonyuk*, 120 F.4th at 972-74; *Wolford*, 116 F.4th at 980.

A trickier issue emerges when Founding-era evidence and laws from later periods, such as Reconstruction, provide opposite signals about the contours of the Second Amendment. "But we need not and do not decide in this appeal how to address a conflict between the Founding-era and Reconstruction-era understandings of the right...." *Nat'l Rifle Ass'n*, 133 F.4th at 1116-17. When it comes to crowded space restrictions, "historical practice from the mid-to-late nineteenth century ... confirm[s] the Founding-era understanding of the Second Amendment." *Id.* at 1116.

For example, an 1852 New Mexico law prohibited firearms at any "Ball or Fandango" (as the combined reference conveys, a fandango is a social gathering like a

ball).[21] *Wolford*, 116 F.4th at 986 & n.5; *see* 1852 N.M. Laws 67, 69, §3. In the Reconstruction Era, at least four states "passed laws prohibiting weapons in ... crowded places such as assemblies for 'educational, literary or scientific purposes, or ... ball room[s], social part[ies,] or other social gathering[s].'" *Antonyuk*, 120 F.4th at 1020 (quoting 1870 Tex. Gen. Laws 63, ch. 46, §1); *see also* 1870 Ga. Laws 421, No. 285, §1; 1875 Mo. Laws 50-51, §1; 1869-1870 Tenn. Pub. Acts 23-24, ch. 22, §2; 1871 Tex. Gen. Laws 25-26, ch. 34, §3 (adding additional restricted areas to 1870 law)); *Wolford*, 116 F.4th at 986-88 (discussing these laws).

These crowded-space restrictions were consistently upheld as constitutional under state constitutional provisions analogous to the Second Amendment. *Andrews v. State*, 50 Tenn. 165, 186 (1871); *English v. State*, 35 Tex. 473, 480 (1871);[22] *Hill v. State*, 53 Ga. 472, 476 (1874); *State v. Shelby*, 90 Mo. 302, 2 S.W. 468, 469-70 (Mo. 1886). That is strong evidence that similar crowded space rules are constitutional today. *See Bruen*, 597 U.S. at 68 (describing "judicial scrutiny" as relevant to the analysis); *Wolford*,

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21. New Mexico was still a territory, but while *Bruen* found several short-lived territorial restrictions "deserve[d] little weight" in the historical analysis, 597 U.S. at 69, we side with the Second Circuit that it would be wrong to read *Bruen* as compelling "automatic rejection of any territorial laws and statutes...." *Antonyuk*, 120 F.4th at 1029. Territorial laws can carry weight when they were "consistent with" contemporaneous state laws, like this New Mexico law. *Id.*

22. As with the Statute of Northampton, we agree with the Second Circuit that the Supreme Court's discussion of *English* in *Bruen* is not decisive to whether *English* is an analogue for place-based restrictions. *Antonyuk*, 120 F.4th at 1021 n.83.

116 F.4th at 981 ("[I]f courts unanimously confirmed laws as constitutional, that evidence ... suggests that the laws were constitutional....").

Several more laws show that just as crowded place laws existed long before Reconstruction, they persisted afterward. In 1879, New Orleans expanded its firearm prohibition to cover "any theatre, public hall, tavern, picnic ground, place for shows or exhibitions, house or other place of public entertainment or amusement." JEWELL'S DIGEST OF THE CITY ORDINANCES OF THE CITY OF NEW ORLEANS 1 (Edwin L. Jewell ed., 1882) art. 1; *see Wolford*, 116 F.4th at 987. From the 1880s through the turn of the century, the territories of Arizona, Montana, and Oklahoma affirmed the aforementioned state regulatory practices by adopting prohibitions on firearms in various public gathering spaces, like ballrooms. *Antonyuk*, 120 F.4th at 1020 (citing 1889 Ariz. Sess. Laws 16, 17, No. 13, §3; 1890 Okla. Terr. Stats. ch. 25, art. 47, §7); *Wolford*, 116 F.4th at 987 (describing an analogous 1903 Montana law).

On a similar record, the Second Circuit concluded that "the Nation not only tolerated the regulation of firearms in ... crowded spaces, but also found it aberrational that a state would be unable to regulate firearms ... in such spaces." *Antonyuk*, 120 F.4th at 1020-21. Said differently, a "high population density *in discrete, confined spaces* ... has historically justified firearm restrictions." *Id.* at 1027 (emphasis added). The Ninth Circuit's analysis of various restrictions rested on a similar premise. *Wolford*, 116 F.4th at 986 ("[T]hese laws show a well-established tradition of prohibiting firearms at crowded places ... [a]nd ... we are

not aware of any question as to the constitutionality of those laws.").

The federal government, for its part, regulates concealed carry in transit: an airline passenger faces federal criminal penalties for carrying a concealed firearm on board. 49 U.S.C. §46505. Congress first criminalized carrying weapons aboard aircraft in 1961, as commercial air travel began to play a greater role in our national life. *See* Act of Sept 5, 1961, Pub. L. No. 87-197, §l, 75 Stat 466, 466-67 (1961). We acknowledge that regulations concerning air transit are a more recent phenomenon. The Founders could not have anticipated the modern transit system, either as mass transit exists in Illinois or in air travel. The Supreme Court counseled that "dramatic technological changes may require a more nuanced approach" to our analysis of historical regulation. *Bruen*, 597 U.S. at 27. We note these more recent regulations here only to demonstrate an unbroken chain of regulations in crowded and confined spaces. And like the transport exception in the public transit firearm restriction at issue here, federal law allows a passenger to carry an unloaded firearm "in baggage not accessible to a passenger in flight if the air carrier was informed of the presence of the weapon." 49 U.S.C. §46505(d)(3). Illinois's approach with the public transit firearm restriction accords with Congress's choices in a similar context, supporting its lawfulness.

We agree with our sister circuits and hold that regulations in crowded and confined places are ensconced in our nation's history and tradition. As we see it, crowded spaces restrictions fall under the sensitive place doctrine.

To clarify our terminology, any location where firearms can be banned is accurately described as a "sensitive place" for the sake of a Second Amendment inquiry. *Bruen* explicitly disclaims that it was listing all possible historical sensitive places. 597 U.S. at 30-31. The government's crowded spaces evidence helps us figure out if the label is appropriate by creating more analogues and further defining the characteristics and problems that justify place-based firearm restrictions. As always, the converse is true too, and it is not enough to say that a rule addressing a crowded space is permissible merely because crowded spaces were historically subject to firearm regulations. *See id.* There must be a clear connection between the nature of the crowded space and the resulting problem of allowing firearms, which is best proved by analogue regulations that address comparable problems in similar spaces.

### 3. The How and Why of Historical Regulations are Akin to Those of the Illinois Public Transit Restriction

Against this backdrop of additional historical evidence, we turn to analogies. Analogizing between a legislative assembly and a CTA bus is no easy task. We could say both can suffer gridlock, yet that is clearly not relevant to our analysis. However, we are analogizing restrictions, not merely places. And because the high-level principle supporting historical sensitive place-regulations—temporary restrictions on arms-bearing in limited places with unique features—is familiar by now, we take the opportunity to be more specific.

Mindful of our marching orders from the Supreme Court, we start with the "how." *Bruen*, 597 U.S. at 29. Section 65(a)(8) impairs the right to carry a firearm only when an individual is within a particular space. Many of the restrictions scrutinized in the post-*Heller* era are categorical deprivations of the right to self-defense, such as the licensing regime struck down in *Bruen*, or the ongoing challenges to 18 U.S.C. §922(g)(1)'s prohibition of the possession of firearms by a convicted felon. *See, e.g.*, *United States v. Gay*, 98 F.4th 843, 846-47 (7th Cir. 2024); *Range v. Att'y Gen. United States*, 124 F.4th 218, 222 (3d Cir. 2024) (en banc); *United States v. Duarte*, 137 F.4th 743, 747 (9th Cir. 2025) (en banc); *Zherka v. Bondi*, 140 F.4th 68, 75 (2d Cir. 2025).

It is entirely possible to avoid Section 65(a)(8), as Plaintiffs currently do. And, when an individual decides the benefit of using public transit outweighs the burden on his right to carry, the trade-off is temporary.

Historical crowded place restrictions functioned in much the same way, and when those historical regulations differed, it was often due to earlier generations placing an even greater restriction on individuals carrying firearms. Americans in the Founding era, and through Reconstruction, accepted that their Second Amendment rights weakened in certain spaces. *Bruen*, 597 U.S. at 30. In fact, because firearms were often altogether prohibited in crowded spaces, the burden was greater than under Section 65(a)(8). An individual disarmed before and after the time spent at the crowded and confined ball or fandango of years past, until he returned to the

place where his firearm was stored. Not true here. A concealed-carry licenseholder can keep his firearm with him as long as it is unloaded and secured during his time on public transit. *See* 720 ILCS 5/24-1(a)(4)(i)-(iii). Under Illinois's regulation, a citizen can step off the transit system, reassemble their firearm, and go about their day with no further infringement on their rights. When this aspect of the public transit firearm restriction's "how" differs from the past, it does so in a way that decreases the burden on Second Amendment rights. Undoubtedly the Second Amendment does not bar a state legislature from finding ways to regulate firearms in a manner less restrictive than relevant historical traditions.

There are more similarities in the "how." Aside from narrow exceptions for those entrusted with positions of authority, historical crowded place restrictions did not distinguish between different groups of citizens (such as whether an individual had previously committed a crime). They did not draw distinctions based on the type of firearm. Section 65(a)(8) shares those traits.

"[T]he penalty—another relevant aspect of the burden—also fits within the regulatory tradition." *Rahimi*, 602 U.S. at 699. A violation of Section 65(a)(8) can be punished with imprisonment and a fine, *see* 430 ILCS 66/70(e), just like the penalties for violating historical crowded place rules. *See, e.g.*, An Ordinance Respecting Public Balls (1817) (providing for a five dollar fine); 1870 Tex. Gen. Laws 63, ch. 46, §1 (setting a fine of $50 to $500); 1870 Ga. Laws 421, No. 285, § 2 (punishing violations with a $20 to $50 fine and 10 to 20 days in jail). These

punishments are another reminder that crowded place regulations developed from similar and earlier sensitive place regulations. *See, e.g.*, 1787 N.Y. Laws 344-45, ch. 1 (providing for "fine and imprisonment" for bearing arms at polling place); 1786 Va. Acts 35, ch. 49 (providing for imprisonment for bringing arms to courthouse). Even when historical sensitive and crowded place laws did not include imprisonment, the shared principle with Section 65(a)(8) is that a violation carries a legal consequence beyond getting kicked out and banned from a space. The "how" is a match.

Next, we evaluate the "why."[23] The actual security risk at any given crowded place, such as a social gathering, is sure to vary from location to location and from day to day. What matters is that the features of those places will always lead to a different security calculus. We accordingly expect the government to show why the features of public transit create "particular problems" that situate Section 65(a)(8)'s restriction on arms bearing within our nation's tradition. *Rahimi*, 602 U.S. at 692.

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23. "We confess to some skepticism about any test that requires the court to divine legislative purpose from anything but the words that wound up in the statute." *Bevis*, 85 F.4th at 1200. As the Supreme Court has said many times outside of the Second Amendment context, "legislative history is not the law." *Epic Systems Corp. v. Lewis*, 584 U.S. 497, 523, 138 S. Ct. 1612, 200 L. Ed. 2d 889 (2018). Nor can we "peer inside legislators' skulls" to discern legislative intent. *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 777, 139 S. Ct. 1894, 204 L. Ed. 2d 377 (2019). When we consider "why" a rule restricts firearms, therefore, we find it more illuminating to look at the text and what the rule does rather than the subjective intent of legislators. *Bevis*, 85 F.4th at 1200.

Here, the government has explained how public transit's unique physical characteristics mean that firearms create similar problems there as in historically regulated crowded places. Public transit can be extremely crowded, with commuters standing shoulder to shoulder during peak times. Even when trains and buses are not densely packed with people, they are "discrete, confined spaces" where it would be difficult to avoid a person wielding a firearm. *Antonyuk*, 120 F.4th at 1027. The risk of wayward bullets striking an unintended innocent target is high. What's more, when vehicles are in motion, escape is generally impossible.

Also relevant: a brandished weapon or gunfire could distract, injure, or kill a train or bus driver, endangering the lives of everyone on the vehicle as well as anyone in its path. Public transit is even more confined than ballrooms of the past. Riders face not just plaster and wood in a large building, but rather tubes made primarily of metal. We are also mindful that first responders face a unique challenge in confronting an attack on crowded and confined metal tubes containing hundreds or even thousands of commuters. And that challenge becomes even more difficult when law enforcement has no way of knowing if an armed individual is an innocent civilian or the perpetrator of an attack.

These problems are inherent to the presence of firearms in the space. Framed in that perspective, "why" Section 65(a)(8) prohibits firearms in public transit is also why historical laws banned guns in crowded spaces, and why the federal government bans firearms on airplanes.

Firearms are exceptionally dangerous and lethal in confined areas with a high density of people. As with the "how," the "why" is match. Just like the prototypical sensitive places laid out in *Bruen*—schools, courthouses and legislative assemblies—public transit today provides a function that is crucial to modern society.

Numerous historical comparators demonstrate why Section 65(a)(8) is within the nation's regulatory tradition. The government offers three ways of analogizing between the security problems recognized as permissible justifications in our history and the security problems posed by public transit: crowds, vulnerable populations, and government-controlled property.

First, the government says that public transit is "often crowded," like other sensitive places. *Wolford*, 116 F.4th at 1001. As we have observed throughout this opinion, Illinois's public transit system shares that characteristic with places subjected to arms regulations throughout our nation's history.

The government's second way of analogy is that children regularly take public transit. The record shows that all Chicago public schools distribute CTA fare cards that allow students to take advantage of special student fares when using transit to attend classes. For many students, CTA serves as the functional equivalent of a school bus. To be sure, we are careful not to put too much weight on this similarity to schools. The Second Amendment does not vanish in the presence of children. But the fact that public transit serves the "vulnerable population[]"

of children is a "why" that Section 65(a)(8) shares with historically permissible restrictions in schools. *Wolford*, 116 F.4th at 1001.

Third, public transit is owned and operated by the government. This is true of legislative assemblies, polling places, and courthouses.[24] It was generally not true of schools during the Founding era. Regardless, we find this similarity between public transit and most of the other sensitive places to be relevant. The Supreme Court has recognized that "government buildings" have maintained a longstanding tradition of firearm restriction, although we do not read *Bruen* to necessarily situate all government buildings within the category of widely-accepted sensitive places. *Bruen*, 597 U.S. at 30 (quoting *Heller*, 554 U.S. at 626). Either way, the government's power to regulate conduct and maintain order on its own property helps place laws like Section 65(a)(8) within our regulatory tradition.

Remember that millions of Illinois residents put their faith in the government to safely take them where they need to go. And those residents have decided, through their elected representatives, that forbidding firearms is a method to achieve this goal. The public transit firearm restriction is different from bans on firearms in privately-owned places, where Illinois law might override an operator and a patron's agreement to allow firearms in an

24. Some polling places may be privately-operated locations that are temporarily in the control of the government during elections.

establishment.[25] The people, by way of the franchise, taxes, and fares, are both operator and patron of public transit. Section 65(a)(8) reflects their shared understanding of how to operate in the space of public transit. The Fourth Circuit has put it well: "Just as the Second Amendment protects the right of the people to keep and bear arms, the democratic process protects the right of the people to the blessings of self-government." *McCoy v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 140 F.4th 568, 581 (4th Cir. 2025) (upholding federal ban on commercial sale of handguns to individuals under the age of 21).

That dynamic does not license a majority of the people to override the Second Amendment rights of a minority in places run by the government. "[I]ndividual and democratic rights do not extinguish one another in this important area...." *Id.* In fact, while Cook County has argued that we should apply a "government proprietor" framework that effectively withdraws firearm restrictions on government property from the *Bruen* framework in favor of a rational basis test, we decline to endorse that argument.[26] We consider government ownership at *Bruen*'s second step as a guidepost for locating the public transit restriction within our nation's tradition. It

25. As this opinion should make clear, the government can make such a collective security decision to deal with problems that are sufficiently analogous to those addressed in our historical tradition of regulation. What private establishments can be regulated under that test is a question for another day.

26. It would be particularly inappropriate to recognize a "government proprietor" exception because none of the named Defendants are the proprietors of Illinois's public transit systems.

is merely a relevant characteristic, neither necessary nor sufficient.

We stress that this analysis should not stretch beyond reason. Illinois cannot contend, for example, that the entire city of Chicago is a sensitive place because parts of that city can be crowded. *Bruen*, 597 U.S. at 29 ("[T]here is no historical basis for New York to effectively declare the island of Manhattan a 'sensitive place....'"). Nor could it say the same for even those most crowded neighborhoods. The Second Amendment equally grants the right to bear arms to those who live in high density urban areas and those in rural communities. *See id.* What follows from that proposition is that the particular problem motivating a firearm ban in the Chicago Loop would be little more than the innate risk of firearms in society, which is inconsistent with the "balance struck by the founding generation...." *Id.* at 29 n.7.

By contrast, the Illinois public transit firearm restriction is consonant with a crucial limiting principle for permissible crowded and sensitive place regulations. Like sensitive and crowded place laws throughout our nation's history, the challenged statute only applies in discrete, easily defined locations. It bears repeating that "Firearms are dangerous" is a justification outside of our regulatory tradition. "Firearms are dangerous *in this kind of place*" can fall within that tradition.

A universal limiting principle is difficult to square with the regulation-specific inquiry that *Bruen* mandates. We are careful, however, to keep in mind that our decision

today must not vest too much power in the state's hands. Doing so would disrupt the carefully drawn protections of the Bill of Rights. So we note that all we find necessary to decide in rendering today's decision is that a regulation does not offend the Second Amendment because it is consistent with our historical tradition when it: 1) temporarily regulates the manner of carrying firearms; 2) in a crowded and confined space; 3) where that space is defined by a natural tendency to congregate people in greater density than the immediately adjacent areas; 4) that space furthers important societal interests; and 5) the presence of firearms in that space creates a heightened risk to maintaining public safety.

We stress that lower courts should not employ this summary of today's decision as a test in all Second Amendment challenges. "[C]ommon sense" informs the *Bruen* inquiry. *Rahimi*, 602 U.S. at 698. Consider nuclear power plants. We are not certain the principle set forth above would apply to all nuclear power plants. And, the Founding generation, for all their wisdom, had no opportunity to grasp that these facilities would one day exist, let alone decide whether to incorporate them into firearm laws. *See Wolford*, 116 F.4th at 980. In defending a ban on firearms at nuclear power plants, the government would fare best if it produced evidence of historical firearm restrictions at watermills, smelters or munitions stockpiles. Yet even in the absence of such evidence, courts would do *Bruen* no favors to pretend that it is impossible to identify the shared principle with earlier sensitive place restrictions. Is there something about a nuclear power plant that implies the general right

to armed self-defense might temporarily dwindle there? The threat of radioactive cataclysm, we think, carries that implication.

Likewise, we emphasize that public transit did not exist until late in the 19th century. Even the post-Reconstruction-era laws cited herein predate mass, government-operated transit. So, as we evaluate historical analogues, we must not lose sight of the modern target of Illinois's public transit firearm restriction: systems comprised of metal tubes traveling quickly, carrying hundreds of passengers at a time, and relied upon by millions for their basic transportation. The Founding and Reconstruction generations had no corollaries for a space where bullets will ricochet and kill innocents and first responders during a shooting, where the very nature of the space facilitates a quick escape by criminals, or where a terror attack could paralyze free movement throughout a city. *See id.* at 30 ("[T]he Second Amendment is [not] a regulatory straightjacket...."). In such circumstances, *Bruen* and *Rahimi*'s exhortations that we must identify a general principle, not a historical twin, carry greatest force.

Any attempt to impose a test of strict similarity between historical and current regulations would not only run afoul of binding precedent, *Rahimi*, 602 U.S. at 692, it would also jeopardize the carefully drawn balance of power between the federal government—including federal courts interpreting the U.S. Constitution—and the states. *Murphy v. Nat'l Collegiate Ath. Ass'n*, 584 U.S. 453, 473, 138 S. Ct. 1461, 200 L. Ed. 2d 854 (2018) ("[A] healthy balance of power between the States and the

Federal Government [reduces] the risk of tyranny and abuse from either front." (quoting *New York v. United States*, 505 U.S. 144, 181, 112 S. Ct. 2408, 120 L. Ed. 2d 120 (1992))). Part of the historical tradition of regulation is using the states as "laboratories for devising solutions to difficult legal problems." *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 817, 135 S. Ct. 2652, 192 L. Ed. 2d 704 (2015) (quoting *Oregon v. Ice*, 555 U.S. 160, 171, 129 S. Ct. 711, 172 L. Ed. 2d 517 (2009)). "The people of some states may find the arguments in favor of a lack of restrictions to be persuasive; the people of other states may prefer tighter restrictions." *Bevis*, 85 F.4th at 1203.

The virtue of our federal system is that citizens who find themselves on the losing end of legislative disputes in their state may vote with their feet and move to a jurisdiction where their views have prevailed. *See Bond v. United States*, 564 U.S. 211, 221, 131 S. Ct. 2355, 180 L. Ed. 2d 269 (2011) (explaining that federalism "makes government 'more responsive by putting the States in competition for a mobile citizenry.'" (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 458, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991))); *see also New York*, 505 U.S. at 181 ("[T]he Constitution divides authority between federal and state governments for the protection of individuals."). If the law is not to fossilize, *see Rahimi*, 602 U.S. at 691, there must remain room for a national dialogue where the people and their elected representatives try different solutions to their problems and compare the outcomes, so long as those policies are cut from the same cloth as historical regulations.

Are we saying that the public transit firearm restriction is constitutional? Yes. But we are not done, and our conclusion is informed by the next part of this decision, which is a continued study of the crowded spaces evidence in the record. The fabric of our national tradition will at times include regulations that do not strictly come from the government.

#### 4. Illinois's Public Transit Firearm Restriction is Akin to Railroad Firearm Restrictions, As a Continued Thread of Crowded and Confined Spaces Regulation

Here, we confront the government's contention that 19th-century railroad regulations are acceptable evidence for determining history and tradition. We tend to agree, once more aligning with the Ninth Circuit. In doing so, we emphasize that this evidence corroborates the expansive tradition of regulation in sensitive and crowded, confined places laid out above, and removes any doubt that the public transit firearm restriction is within that tradition.

The Ninth Circuit concluded that "[a] ban on the carry of firearms on public transit almost certainly would be constitutionally permissible if the law allowed the carry of unloaded and secured firearms." *Wolford*, 116 F.4th at 1002. It "acknowledge[d] that public transit bears some features common to other sensitive places, such as government buildings and schools." *Id.* "Transit facilities are often crowded, they serve some vulnerable populations, and they are State-owned." *Id.* As we explain above, these shared features are a potent indication that firearm restrictions on public transit are constitutional, but the Ninth Circuit turned to a different analogue.

The Ninth Circuit primarily relied on the rules of private railroad operators in the 19th century, as situated in the historical tradition of crowded place regulations. *Id.* Plaintiffs' objection to this maneuver is easy to anticipate: these rules were not laws, so they are irrelevant to our analysis. This is an area for caution, but we disagree with Plaintiffs' wholesale rejection of the regulations' relevance. For one, the Supreme Court's decision in *Bruen* seemingly relied on private rules, in part, to support the conclusion that schools are a sensitive place.[27]

For another, it is not quite right to say that late 19th-century railroads were strictly private entities. As the Ninth Circuit said:

> [i]n examining historical evidence, rules and regulations by private entities may inform the historical analysis, particularly where, as with train companies operating on the public right of way, the "private" entities were providing essentially a public service and were more properly characterized as mixed public-private entities.

*Wolford*, 116 F.4th at 1001. That characterization is endorsed by an array of more contemporary Supreme Court decisions. *Lake Shore & Mich. S. Ry. Co. v. Smith*, 173 U.S. 684, 690, 19 S. Ct. 565, 43 L. Ed. 858 (1899),

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27. *Bruen* acknowledges schools as a sensitive place and shortly thereafter cites to an amicus brief that describes several firearm restrictions at private universities. *Bruen*, 597 U.S. at 30. The Eleventh Circuit has followed this practice of consulting private university rules. *Nat'l Rifle Ass'n*, 133 F.4th at 1120.

*overruled on other grounds by Pa. R. Co. v. Towers*, 245 U.S. 6, 38 S. Ct. 2, 62 L. Ed. 117 (1917) ("A railroad company, although a quasi public corporation, and although it operates a public highway has, nevertheless, rights which the legislature cannot take away without a violation of the federal constitution...") (internal citation omitted); *Chicago, Burlington, & Quincy R. Co. v. Iowa*, 94 U.S. 155, 161, 24 L. Ed. 94 (1876) (stating that railroad companies are "given extraordinary powers, in order that they may the better serve the public" and are "engaged in a public employment affecting the public interest"); *Pine Grove Twp. v. Talcott*, 86 U.S. 666, 676, 22 L. Ed. 227 (1873) ("Though the [railroad] corporation was private, its work was public, as much so as if it were to be constructed by the State."). It also is supported in the record, where an expert report from Dr. Brennan Rivas explains that legislatures made special arrangements to authorize railway police to protect the peace of passengers in transit.

Because we are comfortable looking at these 19th-century rules, we proceed to the "how" and "why" comparisons. This part is straightforward. As described by Dr. Rivas and in *Wolford*, six railroad companies prohibited passengers from carrying "guns," or required guns to be kept "in cases and not loaded," or forced guns to be checked as baggage.[28] *Wolford*, 116 F.4th at 1001. This "how" is nearly identical to Section 65(a)(8).

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28. Plaintiffs cite an 1828 dictionary to assert that "gun" would have been understood to only refer to rifles, not handguns. This definition precedes the relevant regulations by decades and is not compelling evidence of their meaning.

So is the "why." Both the railroad rules and Section 65(a)(8) were "comparably justified," *Bruen*, 597 U.S. at 29, by a concern for public safety in confined, discrete, fast-moving vehicles.[29] *See, e.g., Pa. R. Co. v. Langdon*, 92 Pa. 21, 27 (1879) ("The right of a railroad company to make reasonable rules for its own protection, and for the safety and convenience of passengers, has been repeatedly recognised."); *Poole v. N. Pacific R. Co.*, 16 Ore. 261, 264, 19 P. 107 (1888) ("For its own safety and convenience, and that of the public, a railroad company may make reasonable rules and regulations for the management of its business, and the conduct of its passengers.").

Therefore, these rules—in coordination with the crowded and sensitive places analysis discussed above—show a historical tradition that bears a marked similarity with Section 65(a)(8).[30] What we have here is "[t]he most

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29. Plaintiffs implausibly suggest that railroads banned guns because they were unwieldly baggage and not because of public safety concerns. As the State explains in its reply brief, this is hard to square with exceptions allowing unloaded guns or guns in cases.

30. Beyond transit vehicles, Section 65(a)(8) also prohibits carrying firearms in "any building, real property, and parking area under the control of a public transportation facility...." The parties say almost nothing about this part of the law, which is tangential at best to Plaintiffs' claims. Plaintiffs brought this litigation because they desire to ride trains and buses while armed, not because they wish to carry firearms while walking through a train station or waiting at a bus stop. Regardless, we have no difficulty concluding that Illinois can also ban firearms in those transient spaces. Many of the same analogies apply, and it would be entirely impractical, both for government enforcement efforts and for Plaintiffs, if Section 65(a)(8) were to kick into effect the moment a person boards a transit

compelling evidence ... of a consistent regulatory practice from ratification onward." *United States v. Carbajal-Flores*, 143 F.4th 877, 883 (7th Cir. 2025).

We could stop here. But *Bruen* and *Rahimi* convey a clear message that the individual right to self-defense is an important fixture of our Constitution. So we have a bit more to say about why Section 65(a)(8) is a permissible regulation.

### 5. Illinois's Public Transit Firearm Restriction is Akin to Lawful Time, Place, and Manner Speech Restrictions in Sensitive Places

We have one more reflection. We have been told to draw analogies to schools, legislative assemblies, polling places, and courthouses. *Bruen*, 597 U.S. at 29. First Amendment restrictions are ubiquitous in each location. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969) (permitting regulation of disruptive speech in schools); *United States v. Nassif*, 97 F.4th 968, 976, 465 U.S. App. D.C. 66 (D.C. Cir. 2024), *cert. denied*, 145 S. Ct. 552, 220 L. Ed. 2d 207 (2024) (allowing Congress to prohibit speech and demonstrations

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vehicle. As for parking areas outside transit stations, they are also "a reasonable buffer zone such that firearms may be prohibited there." *Wolford*, 116 F.4th at 989. Plaintiffs, after all, are allowed to keep a firearm in their vehicles so long as they secure it before exiting. We lastly note that Illinois bans firearms in parking areas adjacent to many different locations, *see generally* 430 ILCS 66/65, so we leave the application of the sensitive places doctrine to other parking areas for a later day.

within the U.S. Capitol); *Minnesota Voters All. v. Mansky*, 585 U.S. 1, 12-13, 138 S. Ct. 1876, 201 L. Ed. 2d 201 (2018) (providing that polling places are "government-controlled property set aside for the sole purpose of voting" where speech is restricted); *Braun v. Baldwin*, 346 F.3d 761, 764 (7th Cir. 2003) (limiting speech that encouraged jury nullification in courthouses).

On top of that, in *Anderson v. Milwaukee County*, 433 F.3d at 980, we upheld a restriction that prohibited passengers from distributing literature while on public buses. We highlighted a few reasons why buses were a space where free speech rights diminished. "[T]he bus is a governmentally controlled forum...." *Id.* at 979. "Bus passengers are a captive audience." *Id.* at 980. "It is reasonable for the bus company to attempt to ensure their comfort." *Id.* "Furthermore, the bus company has an interest in passenger safety." *Id.* "Given the nature of the forum, a ban on the distribution of literature on buses passes constitutional muster." *Id.*

First Amendment cases, including *Anderson*, involve the means-ends scrutiny that *Bruen* prohibits, and we do not repeat that inquiry. (Even if we could, it would be substantively different because the right to speak is not the same as the right to carry a firearm.) At the same time, we doubt that the Supreme Court intended to completely divorce the First and Second Amendments, especially when we look at restrictions that are defined solely by reference to physical location. The Court, indeed, has made direct comparison between the Amendments. *See Bruen*, 597 U.S. at 24 ("This Second Amendment standard

accords with how we protect other constitutional rights. Take, for instance, the freedom of speech in the First Amendment, to which *Heller* repeatedly compared the right to keep and bear arms.").

The government may lawfully restrict speech in the sensitive places identified in *Bruen*. That common feature of these places is important in a constitutional sense. And similar speech limits on public transit align the public transit firearm restriction with the principle that where one constitutional right diminishes, so might another.

Ultimately, under *Bruen*'s test, we are not concerned with whether the government has demonstrated a compelling interest in regulating firearms on public transit. 597 U.S. at 29 n.7. Maybe Illinois has made a good policy choice, maybe not. Our concern is whether the law aligns with the nation's tradition. We hold that 430 ILCS 66/65(a)(8) is constitutional because it comports with regulatory principles that originated in the Founding era and continue to the present.[31]

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31. The section of the Concealed Carry Act that bans firearms on public transit also forbids firearms in many other areas, including at any building under the control of the executive and legislative branches of government, childcare facilities, hospitals, establishments that earn a majority of their revenue from serving alcohol, public gatherings that require the issuance of a permit, parks, stadiums, libraries, airports, amusement parks, zoos, museums, nuclear facilities, and more. *See generally* 430 ILCS 66/65. What we have already said about daycares and nuclear power plants is dicta, and we avoid writing more. We can only refer future courts to the reasoning employed in our review of the public transit restriction.

## III. Conclusion

The district court in this case noted that it had "trouble applying what the Supreme Court said in *Heller* and *Bruen*" and was "doing the best" it could. Although we reverse, we certainly understand the district court's reasoning and how it reached its holding. Similarly, the Ninth Circuit finished its opinion in *Wolford* with commentary that the "lack of an apparent logical connection among the sensitive places is hard to explain in ordinary terms" and that the "seemingly arbitrary nature of Second Amendment rulings undoubtedly will inspire further litigation as state and local jurisdictions attempt to legislate within constitutional bounds." 116 F.4th at 1003.

Unsettled areas of the law are nothing new. We cannot yet know if these are legal growing pains that will subside with age, or if they signify a malady in need of a cure. And, for all that lower courts may think, our job is to apply binding precedent. If the current test proves unworkable, altering it is the sole province of the Supreme Court.

*Bruen* and *Rahimi* leave some open questions. One challenge, as we have said, is how to resolve conflicting evidence between different eras. Another is the stringency of the government's burden: how many historical analogues are needed to sustain a law? *See, e.g., Bruen*, 597 U.S. at 46 ("For starters, we doubt that *three* colonial regulations could suffice to show a tradition of public-carry regulation."). Relatedly, how do we know that the absence of historical regulation means that modern regulation is unconstitutional, rather than a reflection of different

but permissible policy choices? Phrased differently, what evidence tells us when "founding-era legislatures maximally exercised their power to regulate...."? *Rahimi*, 602 U.S. at 739-40 (Barrett, J., concurring). And with what "level of generality" are we to view the similarity between a modern regulation and its historical analogue? *Id.* at 740. Perhaps in another case we will be called upon to work within *Bruen* to resolve these questions. We need not address those issues here because no matter the answers, Section 65(a)(8) is well within our nation's history and tradition of firearm regulation.

We REVERSE the judgment of the district court and REMAND for proceedings consistent with this opinion.

ST. EVE, *Circuit Judge*, concurring. I agree with and join the majority opinion in full. As the majority opinion explains, the Plaintiffs here have standing (and we jurisdiction) because the threat of criminal prosecution for engaging in constitutionally protected activity is an injury-in-fact that a court may redress through injunctive or declaratory relief. In such circumstances, a separate, unchallenged law also barring the activity does not defeat redressability. *See ante*, at 10-11; *Reps. Comm. for Freedom of the Press v. Rokita*, 147 F.4th 720, 2025 U.S. App. LEXIS 19745, 2025 WL 2218472, at *4 (7th Cir. Aug. 5, 2025); *see also Animal Legal Def. Fund v. Reynolds*, 89 F.4th 1071, 1078 (8th Cir. 2024).

I write separately to highlight a difficult jurisdictional question that today's opinion prudently reserves for a future case: how to assess redressability where a plaintiff defines her injury as the inability to engage in protected activity—not the threat of prosecution for doing so—and an unchallenged law also prohibits that precise activity.

**I.**

To invoke the judicial power of the federal courts, litigants must have standing. *California v. Texas*, 593 U.S. 659, 668, 141 S. Ct. 2104, 210 L. Ed. 2d 230 (2021). One element of the irreducible constitutional minimum of standing is redressability, which demands that it be "'likely,' as opposed to merely 'speculative,'" that a favorable decision will redress the plaintiff's injuries. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (quoting *Simon v.*

*E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 38, 43, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976)).

The redressability requirement serves two functions. It prevents the issuance of advisory opinions, and it generally ensures "there is a sufficient 'relationship between the judicial relief requested and the injury suffered.'" *Diamond Alt. Energy, LLC v. EPA*, 145 S. Ct. 2121, 2133, 222 L. Ed. 2d 370 (2025) (quoting *California v. Texas*, 593 U.S. at 671). Yet what constitutes a "sufficient" relationship is the subject of long-running debates, at least two of which surface where a plaintiff challenges only a subset of the laws precluding her desired conduct.

**A.**

The first debate asks how close the relationship between the plaintiff's alleged injury and the requested relief must be. If it must be "likely" that a favorable decision will result in redress, how probable is "likely"? Would a fifty percent chance suffice? A seventy-five percent chance? *See* F. Andrew Hessick, *Probabilistic Standing*, 106 Nw. U. L. Rev. 55, 66-68 (2012); 13A Wright & Miller's Federal Practice & Procedure § 3531.6 (3d ed. 2025) (describing redressability determinations as "a matter of uncertain prediction"). Furthermore, should courts consider the likelihood of redress in relative or absolute terms? If there are multiple independent barriers to redress, would removing one suffice, or must the relief sought lift all barriers? *Compare Utah v. Evans*, 536 U.S. 452, 464, 122 S. Ct. 2191, 153 L. Ed. 2d 453 (2002) (requiring only that judicial relief "increase ... the likelihood" of redress), *with*

*Lujan*, 504 U.S. at 561 (requiring judicial relief actually make redress, itself, "likely").

A recent decision from the Supreme Court illustrates conflicting trends in the law: *Gutierrez v. Saenz*, 145 S. Ct. 2258, 222 L. Ed. 2d 531 (2025). In *Gutierrez*, a prisoner sought a declaratory judgment that state post-conviction procedures violated his due process rights by denying him access to DNA testing. The Fifth Circuit held that he lacked standing because a favorable decision would not entitle him to testing; his prosecutor could deny him access to the evidence on other grounds. *Id.* at 2262.

The Supreme Court reversed, reasoning that the Fifth Circuit erred "in transforming the redressability inquiry into a guess as to whether a favorable court decision will in fact ultimately cause the prosecutor to turn over the evidence." *Id.* at 2268. A declaratory judgment would remove an allegedly unconstitutional barrier between the plaintiff and the requested testing—and that was sufficient for redressability. *Id.*; *cf. Uzuegbunam v. Preczewski*, 592 U.S. 279, 291, 141 S. Ct. 792, 209 L. Ed. 2d 94 (2021) (acknowledging that "a single dollar often cannot provide full redress," but holding that "a partial remedy" may satisfy redressability); *Massachusetts v. EPA*, 549 U.S. 497, 525, 127 S. Ct. 1438, 167 L. Ed. 2d 248 (2007) (finding redressability satisfied where motor vehicle regulations would not "*reverse* global warming" but would eliminate some greenhouse gas emissions contributing to it); *Larson v. Valente*, 456 U.S. 228, 243, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982) (holding that the removal of a rule requiring the plaintiffs to register and report on their

activities sufficed for redressability even where another rule could require the same).

Several Justices dissented in *Gutierrez* , citing *Lujan*. *Gutierrez*, 145 S. Ct. at 2284 (Alito, J., dissenting) (protesting that the majority "makes a hash of redressability"); *see also id.* at 2269 (Barrett, J., concurring in the judgment). And in a second case from the same term, the Court asserted a more stringent formulation of redressability, requiring plaintiffs to show that judicial relief will cause "predictable" responses that will make redress of their injuries likely, in absolute terms. *See Diamond Alt. Energy*, 145 S. Ct. at 2134; *see also Murthy v. Missouri*, 603 U.S. 43, 57-58, 144 S. Ct. 1972, 219 L. Ed. 2d 604 (2024); *Simon*, 426 U.S. at 38.

Reconciling these two lines of cases presents a challenge for federal courts. But what it means for a favorable decision to "likely" redress a plaintiff's injury is not the only unsettled area of the redressability doctrine.

**B.**

A second debate concerns the *mechanism* of constitutionally permissible redress. Where a favorable decision may redress a plaintiff's injury, must that redress run through the court's judgment, or may it stem from the persuasive power and likely effect of a favorable, reasoned opinion?

In *Haaland v. Brackeen*, the Supreme Court adopted the former view:

> Redressability requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power. ... It is a federal court's judgment, not its opinion, that remedies an injury; thus it is the judgment, not the opinion, that demonstrates redressability.

599 U.S. 255, 294, 143 S. Ct. 1609, 216 L. Ed. 2d 254 (2023) (citation modified). So where plaintiffs seek declaratory relief, they must establish that the "preclusive effect" of a favorable judgment would likely redress their alleged injury, because "[w]ithout preclusive effect, a declaratory judgment is little more than an advisory opinion." *Id.* at 293-294.

Taken at its fullest, *Brackeen*'s statement that redress must derive from the power of a court's judgment constitutes a change in the redressability doctrine. *See* William Baude & Samuel L. Bray, *Proper Parties, Proper Relief*, 137 Harv. L. Rev. 153, 179 (2023) (observing that *Brackeen*'s conception of redressability "is not the conception that has always held sway in the past sixty years"). And it is a change with significant impact on how we assess redressability where a plaintiff challenges only some of the laws barring her desired conduct.

To understand that impact, I must turn to an earlier case from the Supreme Court, *Renne v. Geary*, 501 U.S. 312, 111 S. Ct. 2331, 115 L. Ed. 2d 288 (1991). In *Renne*, the plaintiffs challenged a law prohibiting political

endorsements in nonpartisan elections, alleging it violated their First Amendment rights. *Id.* at 314-15. In dicta, the Court found "reason to doubt" the redressability of the alleged injury because an unchallenged statute also barred the plaintiffs' desired conduct, and "invalidation of [the challenged statute] may not impugn the validity" of the unchallenged one. *Id.* at 319. Implied, then, was the assumption that if invalidation *would* impugn the other law, meaning the same constitutional reasoning applied to both, the plaintiff's injury could be redressable. Put more directly, *Renne* appears to have assumed that redress could stem from the reasoning of an opinion, not solely from a court's judgment.

After *Renne*, we and several of our sister circuits assessed whether an unchallenged law barred redressability by asking whether the "fates" of the laws were "intertwined." *Hollis v. Lynch*, 827 F.3d 436, 442 (5th Cir. 2016), *abrogated on other grounds by United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024); *see also Harp Advert. Ill., Inc. v. Vill. of Chi. Ridge*, 9 F.3d 1290, 1292 (7th Cir. 1993) (finding no redressability where a "valid" unchallenged law also precluded the plaintiff's desired activity); *Maldonado v. Morales*, 556 F.3d 1037, 1043-44 (9th Cir. 2009), *cert. denied*, 558 U.S. 1158, 130 S. Ct. 1139, 175 L. Ed. 2d 991 (2010) (reasoning that the plaintiff had standing because a favorable ruling "would likely allow him to surmount" an unchallenged, "similarly-worded" law).

It seems questionable whether these precedents survive *Brackeen*, leaving unsettled how we ought to

approach redressability analyses where an unchallenged law also bars the plaintiff's desired conduct.

**II.**

This case illustrates the challenges federal courts face when navigating these crosscurrents and new developments in redressability law.

The Plaintiffs here alleged that the threat of prosecution under 430 ILCS 66/70(e) for violating the transit restriction, 430 ILCS 66/65(a)(8), was an injury-in-fact redressable through declaratory relief. I agree. The Plaintiffs further alleged, however, that their inability to bear guns on the CTA and Metra was itself an injury-in-fact.

To assess the redressability of this second injury, we face an early fork in the road. If we need not interrogate "whether a favorable court decision will in fact" make it more likely that the Plaintiffs can bear concealed weapons on public transit, our analysis may be brief. *See Gutierrez*, 145 S. Ct. at 2268. A favorable decision would remove a barrier to the Plaintiffs' desired conduct and thus satisfy Article III's redressability requirement. *See id.* But under a more stringent application of the Court's redressability precedent, our analysis must continue. *See Diamond Alt. Energy*, 145 S. Ct. at 2133; *Renne*, 501 U.S. at 319.

We would next ask whether other, unchallenged laws also bar concealed weapons on public transit. By my count, the defendants and amici propose five: a CTA ordinance, a

Metra rule, two provisions of Illinois's unlawful possession of weapons statute, and a separate provision of Illinois's Firearm Concealed Carry Act. *See* CTA Ord. No. 016-110 § 1 (28) (2016); Passenger Code of Conduct, Metra, §§ III(I), IV(H); 720 ILCS 5/24-1(a)(4), (10); 430 ILCS 66/65(a)(5).[1]

Prior to *Brackeen*, our scrutiny of these unchallenged laws may have been limited. Take CTA's and Metra's rules restricting weapons on their buses and trains. These rules largely mirror Illinois's transit restriction. So their fates are probably "intertwined"; a declaratory judgment that the transit restriction unconstitutionally infringed the Second Amendment would likely prove persuasive in a subsequent suit challenging the local laws. *See Hollis*, 827 F.3d at 442 (reasoning that the plaintiffs had standing because if the challenged federal firearm law was unconstitutional, the overlapping and unchallenged state law was likely also unconstitutional).

But *Brackeen* instructs that redressability must stem from the preclusive power of a court's judgment. And to

1. Whether each law independently precludes concealed carry on public transit is a difficult question of state law that I (and the majority opinion) do not purport to reach today. For example, Section 5/24-2(a-5) of Illinois's unlawful possession of weapons statute seems to exempt concealed carry license holders from prosecution under 5/24-1(a)(4) and (10), even as (a)(4) and (10), as well as other provisions of Illinois law, appear to evince contrary intent. S*ee, e.g.*, 430 ILCS 66/70(f). And the cited CTA ordinance does not apply to people "authorized" to carry weapons by 5/24-2, where 5/24-2 exempts concealed carry license holders from prosecution under provisions of 5/24-1 but does not "authorize" conduct.

have preclusive effect, a judgment must both bind the same parties and resolve the same issues, actually and necessarily litigated in the first suit. *See Smith v. Bayer Corp.*, 564 U.S. 299, 307-08, 131 S. Ct. 2368, 180 L. Ed. 2d 341 (2011); *see also* 18 Wright & Miller, supra, § 4417. Here, it is unclear whether a judgment against Illinois and Cook County declaring the transit restriction unconstitutional would meet either requirement.

Begin with the parties. While Illinois may enforce transit system rules through its trespassing statute, 720 ILCS 5/21-3, the CTA and Metra, too, may enforce their own regulations. *See* 70 ILCS 3605/27; 70 ILCS 3615/3B.09c. Yet neither the CTA nor Metra are parties to this suit. A favorable decision would not bind them, and declaratory relief thus may not redress the Plaintiffs' injuries. Indeed, the Tenth Circuit reached this conclusion in a very similar suit. *See We the Patriots v. Grisham, Inc.*, 119 F.4th 1253, 1259-61 (10th Cir. 2024) (holding the plaintiffs lacked standing to challenge a state executive order barring firearms from public parks where county and city ordinances also barred firearms and the plaintiffs only sued the state).

The issues raised in a suit challenging CTA and Metra's regulations may prove distinct, too. For example, Cook County asserts that *Bruen* does not apply to the transit restriction because the law is exempt from scrutiny under the government-as-proprietor doctrine. *See Wis. Interscholastic Athletic Ass'n v. Gannett Co.*, 658 F.3d 614, 622 (7th Cir. 2011) ("Where the state acts as a proprietor ... its action will not be subjected to the

heightened review to which its actions as a lawmaker may be subject."); *Wolford v. Lopez*, 116 F.4th 959, 970-71 (9th Cir. 2024) (hypothesizing that a government bank could exclude those bearing arms as an exercise of its proprietary rights). Alternatively, Cook County argues that the transit restriction is a constitutional condition on government funding. *See Rust v. Sullivan*, 500 U.S. 173, 193, 111 S. Ct. 1759, 114 L. Ed. 2d 233 (1991).

The majority correctly rejects both theories. Illinois, which enacted the transit restriction, is not the proprietor of the CTA or Metra. The State delegated that role to the CTA and Metra, themselves. *See* 70 ILCS 3605/6 (vesting the "power to acquire, construct, own, operate and maintain for public service a transportation system in the metropolitan area of Cook County" with the CTA); 70 ILCS 3615/3B.09c (assigning the power to "make rules and regulations proper or necessary to regulate the use, operation, and maintenance" of its property and facilities to Metra's Chief of Police). Moreover, criminal laws, like the transit restriction, are necessarily exercises of sovereign rights, not proprietary ones. So the government-as-proprietor doctrine likely does not apply. Analogously, because the transit restriction relies on Illinois's police power, not its spending power, the unconstitutional conditions doctrine is likely also inapposite.

We therefore do not need to resolve the interplay between *Bruen*, the government-as-proprietor doctrine, and the unconstitutional conditions doctrine in this case. These issues are not "necessarily raised" and "actually litigated." A suit challenging CTA and Metra's rules, on

the other hand, may implicate them. It seems unlikely, then, that a favorable judgment here would preclude the CTA and Metra from enforcing or defending their rules in a subsequent dispute with the Plaintiffs. And without this preclusive power, *Brackeen* instructs us that the Plaintiffs lack standing.

One final observation. Even outside the government-as-proprietor and unconstitutional conditions context, Second Amendment plaintiffs seem especially likely to encounter standing challenges under a more stringent conception of redressability. Our system of cooperative federalism has produced an array of overlapping federal, state, and local laws regulating firearms. And *Bruen* demands a fact-intensive analysis of "how" and "why" each challenged law burdens the Second Amendment right. Against this backdrop, it seems improbable that challenges to two different laws would raise the exact same issues. So a judgment declaring one law unconstitutional would not preclude enforcement of the other.

## III.

The federal courts' approach to redressability is in flux. New developments have unsettled how we assess standing when overlapping laws bar activities the plaintiff alleges are constitutionally protected. Absent further guidance, we must proceed cautiously.

## APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION, FILED AUGUST 30, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

NO. 3:22-cv-50326
HON. IAIN D. JOHNSTON

BENJAMIN SCHOENTHAL *et al.*,

*Plaintiffs,*

v.

KWAME RAOUL *et al.*,

*Defendants.*

### MEMORANDUM OPINION AND ORDER

The Illinois Firearm Concealed Carry Act bans carrying firearms on public transportation, 430 ILCS 66/65(a)(8); to violate the ban is a misdemeanor, 430 ILCS 66/70(e). Plaintiffs Benjamin Schoenthal, Mark Wroblewski, Joseph Vesel, and Douglas Winston allege that the ban violates the Second Amendment[1] and bring

1. As it is incorporated by the Due Process Clause of the Fourteenth Amendment against the states. *McDonald v. City of Chicago*, 561 U.S. 742, 791, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010).

this action against several defendants with the power to enforce Illinois' criminal code: Attorney General Kwame Raoul,[2] DeKalb County State's Attorney Rick Amato, DuPage County State's Attorney Robert Berlin, Cook County State's Attorney Kimberly Foxx, and Lake County State's Attorney Eric Rinehart. Plaintiffs ask for a declaratory judgment that the ban is unconstitutional and seek to enjoin Defendants from enforcing it against them. Before the Court are three motions for summary judgment—one from Plaintiffs, one from Ms. Foxx,[3] and one from the remaining defendants ("State Defendants"). After an exhaustive review of the parties' filings and the historical record, as required by Supreme Court precedent, the Court finds that Defendants failed to meet their burden to show an American tradition of firearm regulation at the time of the Founding that would allow Illinois to prohibit Plaintiffs—who hold concealed-carry permits—from carrying concealed handguns for self-defense onto the CTA and Metra.[4] For the following

2. The Court is not so sure that the Illinois Attorney General has the authority to enforce the criminal aspects of the ban, but he doesn't make that argument. So, the Court will assume for purposes of these motions that the Illinois Attorney General can enforce the criminal components of the ban.

3. Ms. Foxx's briefs included a request for discovery sanctions, which the Court has already addressed. *Schoenthal v. Raoul*, No. 3:22-cv-50326, 2024 U.S. Dist. LEXIS 79497, at *5 (N.D. Ill. May 1, 2024).

4. Keeping in mind Justice Gorsuch's explanation in his concurrence in *Rahimi*, this Court's ruling is specific to the facts presented. *See United States v. Rahimi*, 602 U.S. 680, 144 S. Ct. 1889, 1909-10, 219 L. Ed. 2d 351 (2024) (Gorsuch, J., concurring).

reasons, Ms. Foxx's motion is denied, State Defendants' motion is denied, and Plaintiffs' motion is granted in part.

## LEGAL STANDARD

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine dispute of material fact exists if a reasonable factfinder could return a verdict for the nonmovant; it does not require that the dispute be resolved conclusively in favor of the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The Court must construe the "evidence and all reasonable inferences in favor of the party against whom the motion under consideration is made." *Rickher v. Home Depot, Inc.*, 535 F.3d 661, 664 (7th Cir. 2008).

Local Rule 56.1 statements of fact serve a valuable purpose in this process: they help the Court in "organizing the evidence and identifying disputed facts." *FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d 627, 633 (7th Cir. 2005). Each fact must be supported by evidentiary material. LR 56.1(d)(2); *Malec v. Sanford*, 191 F.R.D. 581, 583 (N.D. Ill. 2000) ("Factual allegations not properly supported by

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"Trump-appointed judge allows firearms on Illinois public transit" is a likely chyron for this decision. That's unfortunate. Federal judges—including those who will review this decision—engage in exacting, thoughtful, and careful analyses that are not results oriented or reducible to headlines and chyrons. We're doing the best we can.

citation to the record are nullities.").[5] Legal arguments aren't permitted in factual allegations or responses, and responses "may not set forth any new facts." LR 56.1(d)(4), (e)(2).[6] "District courts are 'entitled to expect strict compliance' with Rule 56.1, and do not abuse their discretion when they opt to disregard facts presented in a manner that does not follow the rule's instructions." *Gbur v. City of Harvey*, 835 F. Supp. 2d 600, 606-07 (N.D. Ill. 2011); *Ammons v. Aramark Unif. Servs.*, 368 F.3d 809, 817 (7th Cir. 2004).

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5. In arguing that portions of Plaintiffs' LR 56.1 statement should be disregarded, Ms. Foxx contends that Plaintiffs' "self-serving" affidavits are improper. However, a "self-serving" affidavit should not be excluded just because it is self-serving. *Hill v. Tangherlini*, 724 F.3d 965, 967 (7th Cir. 2013) ("As we have repeatedly emphasized over the past decade, the term 'self-serving' must not be used to denigrate perfectly admissible evidence through which a party tries to present its side of the story at summary judgment."). Nearly all litigants' statements are self-serving. And if a court could not consider self-serving affidavits during summary judgment, then no summary judgment motion could ever be granted, including Ms. Foxx's. The Court may ignore testimony from such affidavits if it contradicts previous sworn testimony from the declarant (also known as a "sham affidavit"), *James v. Hale*, 959 F.3d 307, 316 (7th Cir. 2020), or if there are other evidentiary concerns, *see Baines v. Walgreen Co.*, 863 F.3d 656, 662 (7th Cir. 2017), but the Court doesn't automatically strike any statement of fact that relies on a "self-serving" affidavit.

6. Plaintiffs improperly open their response to Defendants' statement of facts with an argument for why they reserve analysis of the relevance and importance of asserted facts for their brief. Such an explanation is gratuitous—that is how the LR 56.1 statements are *supposed* to work. The lengthy responses where they reiterate the legal arguments in their brief, *e.g.*, Dkt. 88 at 10 ¶ 65, 16 ¶ 88, 19 ¶ 96, violate LR 56.1.

*Appendix B*

**BACKGROUND**

In Illinois, openly carrying firearms is unlawful. 720 ILCS 5/24-1. Under the Firearm Concealed Carry Act, an individual with a concealed-carry license may generally carry a concealed handgun in public. 430 ILCS 66/10. This general permission, however, does not extend to a list of prohibited areas, including public transportation. Plaintiffs challenge this provision. The relevant part of the statute reads as follows:

> (a) A licensee under this Act shall not knowingly carry a firearm on or into:
>
> . . .
>
> (8) Any bus, train, or form of transportation paid for in whole or in part with public funds, and any building, real property, and parking area under the control of a public transportation facility paid for in whole or in part with public funds.

430 ILCS 66/65(a).

Plaintiffs are licensed under Illinois law to carry a concealed handgun. Dkt. 71 ¶¶ 9, 17, 25, 33. They don't use public transportation as much as they would like because of the statute's threat of criminal prosecution for carrying a concealed firearm on public transportation. *Id.* ¶¶ 12-13, 20-21, 27, 38-39; Dkt. 66 ¶ 22. There are

two specific transit systems that Plaintiffs declare they would use—the Chicago Transit Authority (CTA), which operates approximately 140 bus routes and 242 miles of rapid transit railroad track in the Chicago region, and the Metra commuter rail agency, which operates eleven lines serving the six-county Chicago region. Dkt. 64 ¶¶ 2-3; Dkt. 64-2 ¶ 7; Dkt. 64-3 ¶ 7; Dkt. 64-4 ¶ 11; Dkt. 64-5 ¶¶ 8-9.

Mr. Schoenthal, who resides in DeKalb County, Illinois, uses public transportation for both personal and work purposes—he currently uses Metra to travel to Northwestern Medicine Delnor Hospital, DuPage County, and downtown Chicago. Dkt. 64 ¶ 6; Dkt. 66-27 at 20:10-20; Dkt. 71 ¶¶ 7, 11; Dkt. 88 at 5 ¶ 24. Mr. Wroblewski resides in DuPage County, specifically Woodridge, Illinois. Dkt. 64 ¶ 7; Dkt. 66 ¶ 33; Dkt. 71 ¶ 15. He uses Metra to visit Chicago. Dkt. 66 ¶ 37; Dkt. 71 ¶ 19. Mr. Vesel lives in La Grange, Illinois, located in Cook County. Dkt. 64 ¶ 8; Dkt. 66 ¶¶ 43-44; Dkt. 71 ¶ 23. He hasn't taken public transportation for at least two years despite living less than half a mile from a Metra stop, but he wishes to take the CTA and Metra more frequently. Dkt. 64-4 ¶¶ 8, 11; Dkt. 66 ¶¶ 45, 48, 50; Dkt. 71 ¶¶ 27-28. Mr. Winston lives in Waukegan, in Lake County, Illinois. Dkt. 64 ¶ 9; Dkt. 66 ¶¶ 51-52; Dkt. 71 ¶ 31. Mr. Winston asserts that he has taken Metra (from the Ogilvie station) to travel to St. Louis.[7] Other than this asserted trip, he rarely takes public transit but wishes to do so more often by taking the CTA and Metra to visit Evanston and Chicago. Dkt. 64-5

7. The Court notes that this assertion doesn't make much sense as Amtrak, which travels to St. Louis, leaves Union Station, not Ogilvie, and Metra sure doesn't travel to St. Louis.

¶¶ 8-9; Dkt. 66 ¶¶ 55-56; Dkt. 71 ¶ 38. All four plaintiffs would carry a handgun on public transportation if not for the Firearm Concealed Carry Act's ban. Dkt. 71 ¶¶ 12-13, 20-21, 27, 38-39.

**DISCUSSION**

In *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), the Supreme Court laid out the framework to be applied in analyzing regulations that restrict the bearing of arms. *Atkinson v. Garland*, 70 F.4th 1018, 1019-20 (7th Cir. 2023). Rejecting the two-step means-end approach that courts had employed after *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), the Court introduced a new and fundamentally different two-step test, holding that

> when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

*Bruen*, 597 U.S. at 17 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10, 81 S. Ct. 997, 6 L. Ed. 2d 105 (1961)); *see also Rahimi*, 144 S. Ct. at 1898 ("As we explained in *Bruen*, the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition.").[8] Although the test is grounded in history, "the Second Amendment permits more than just those regulations identical to ones that could be found in 1791." *Rahimi*, 144 S. Ct. at 1897-98. When analyzing "modern regulations that were unimaginable at the founding," the government has the burden to "identify a well-established and representative historical *analogue*, not a historical *twin*." *Bruen*, 597 U.S. at 30; *see also Rahimi*, 144 S. Ct. at 1897-98.

At the outset, the Court notes that cross motions for summary judgment provided a confusing procedural posture (to put it lightly). The summary judgment standard is a different beast from assessing the substantive merits. *Cf. DR Distribs., LLC v. 21 Century Smoking, Inc.*, No. 3:12-cv-50324, 2024 U.S. Dist. LEXIS 99866, at *39-43 (describing six reasons why "equating the probable

8. The motions before the Court were briefed before *Rahimi* was decided. However, *Rahimi* had little, if any, impact on the issues in this case. Reiterating that analogical reasoning is appropriate under *Bruen*, *Rahimi*'s "clarification" of how *Bruen* operates was akin to an *Allen* charge. *See Rahimi*, 144 S. Ct. at 1897-98 ("[S]ome courts have misunderstood the methodology of our recent Second Amendment cases. These precedents were not meant to suggest a law trapped in amber."). It did not suggest the availability of any new arguments that could not have been made on the basis of *Bruen* alone.

merits inquiry with the summary judgment inquiry" is "an uncomfortable fit"). With just one summary judgment motion, the Court construes the evidence in favor of the nonmovant. *Liberty Lobby*, 477 U.S. at 255. With cross motions, the Court must also switch back and forth between hats as it sifts through the facts presented before it. In this case, that is then exacerbated by the burden shifting imposed by *Bruen*.[9]

The main feature of this action is the as-applied claim under *Bruen*. But, like a movie theater with the inevitable slew of trailers preceding the feature film, the Court must first address several other issues raised by the parties.

## I. Preliminary Matters

Before addressing the merits, the Court addresses two threshold issues—venue and standing. *See Spuhler v. State Collection Serv.*, 983 F.3d 282, 284 (7th Cir. 2020); *In re LimitNone, LLC*, 551 F.3d 572, 577-78 (7th Cir. 2008).

9. In retrospect, entering a prompt trial date and holding a bench trial on the merits would have been a more satisfactory procedure. Alternatively, the Court could have cajoled the parties to have a "trial on the papers." *Cf. Crespo v. Unum Life Ins. Co. of Am.*, 294 F. Supp. 2d 980, 991 (N.D. Ill. 2003); *see generally* Morton Denlow, *Trial on the Papers: An Alternative to Cross-Motions for Summary Judgment*, Fed. Law., Aug. 1999, at 30. That would have also been a better approach compared to summary judgment, though it would lack the benefit of a public trial on an important issue.

*Appendix B*

**A. Venue**

In her summary judgment filings, Ms. Foxx challenges venue for the first time. But she failed to contest venue earlier, so the challenge is waived. Fed. R. Civ. P. 12(h).

**B. Standing**

Next, the parties dispute whether Plaintiffs have standing. "To establish 'the irreducible constitutional minimum of standing,' the plaintiff must have suffered an injury in fact traceable to the defendant and capable of being redressed through a favorable judicial ruling." *Sweeney v. Raoul*, 990 F.3d 555, 559 (7th Cir. 2021) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)). A plaintiff may bring a pre-enforcement challenge instead of breaking a law to challenge its legitimacy "so long as the threatened enforcement is 'sufficiently imminent.'" *Id.* (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014)). This requires the plaintiff to establish "both 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute,' and 'a credible threat of prosecution thereunder.'" *Id.* (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L. Ed. 2d 895 (1979)).

The undisputed facts show that each plaintiff would carry a concealed handgun on public transportation for the purpose of self-defense if not for the Firearm Concealed Carry Act's ban and its threat of arrest and prosecution.

Dkt. 71 ¶¶ 12-13, 20-21, 27, 38-39. That proposed course of conduct is "arguably affected with a constitutional interest," *Susan B. Anthony List*, 573 U.S. at 159 (quoting *Babbitt*, 442 U.S. at 298)—indeed, as discussed later, it falls within the ambit of the Second Amendment's right to armed self-defense. The conduct is also proscribed by the ban, as Plaintiffs assert they are concealed-carry licensees who will ride Metra and CTA, which receive public funding. *See* 70 ILCS 3615/1.03, 2.01(a). And finally, "there exists a credible threat of prosecution thereunder." *Susan B. Anthony List*, 573 U.S. at 159; *Ezell v. City of Chicago*, 651 F.3d 684, 695-96 (7th Cir. 2011) ("The very 'existence of a statute implies a threat to prosecute, so pre-enforcement challenges are proper, because a probability of future injury counts as "injury" for the purpose of standing.'" (quoting *Bauer v. Shepard*, 620 F.3d 704, 708 (7th Cir. 2010))). Defendants neither argue that the ban wouldn't reach Plaintiffs' proposed course of conduct nor disavow an intention to prosecute Plaintiffs under the ban. That satisfies the injury requirement for this pre-enforcement challenge.

However, each plaintiff's injury is limited to the specific proposed course of conduct in the record. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 339, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016); *Davis v. FEC*, 554 U.S. 724, 734, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008) ("Standing is not dispensed in gross. Rather, a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." (cleaned up)). The record shows that all four plaintiffs wish to carry concealed firearms

aboard Metra trains, and that only Mr. Vesel and Mr. Winston wish to do so on CTA buses. Dkt. 64-2 ¶ 7; Dkt. 64-3 ¶ 7; Dkt. 64-4 ¶ 11; Dkt. 64-5 ¶ 8. Plaintiffs' injuries are also limited by where they intend to take public transit. Mr. Schoenthal takes Metra from the Elburn station (in Kane County) to Delnor Hospital (also in Kane County), "central DuPage," and Chicago (in Cook County), and he swears he would take public transit more often, absent the Firearm Concealed Carry Act's prohibition. Dkt. 66 ¶ 24; Dkt. 88 at 5 ¶ 24.[10] The evidence for Mr. Wroblewski involves proposed trips to only Chicago. Dkt. 64-3 ¶ 7; Dkt. 66 ¶ 37. Mr. Vesel swears he would take trips to Chicago and Rosemont (also in Cook County). Dkt. 64-4 ¶¶ 9, 11. And Mr. Winston's testimony similarly includes locations in only Cook County—Chicago, Evanston, and the Ogilvie Metra station. Dkt. 64-5 ¶¶ 8-9.[11]

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10. Mr. Schoenthal's supplemental declaration indicates that he would like to use the DeKalb bus system to reach the Elburn Metra station. Dkt. 87-1 ¶ 2. There are two issues. First, this fact is presented without a citation to the statements of fact. *See* LR 56.1(g) ("When addressing facts, the memorandum must cite directly to specific paragraphs in the LR 56.1 statements or responses."). Second, this is an example of actual self-serving testimony that need not be accepted as true. *See James*, 959 F.3d at 316 ("[T]he sham-affidavit rule prohibits a party from submitting an affidavit that contradicts the party's prior deposition or other sworn testimony."). As Ms. Foxx points out, during deposition, Mr. Schoenthal made no mention of the DeKalb bus system when naming all the forms of public transportation that he wanted to use. *See* Dkt. 66-27 at 20:10-28:17.

11. Mr. Winston's use of public transit in St. Louis, Missouri, is irrelevant to this case.

State Defendants challenge Plaintiffs' standing on the basis that Plaintiffs have failed to show an injury with respect to buildings, real property, and parking areas. But Plaintiffs all say they would take Metra more often if they could carry their handguns onto the train, and boarding a Metra train requires stepping foot on Metra's real property. *Cf. Nw. Mem'l Found. v. Johnson*, 141 Ill. App. 3d 309, 490 N.E.2d 161, 164, 95 Ill. Dec. 688 (Ill. App. Ct. 1986) ("[T]his court takes judicial notice of the fact that the hospital complex is located in a densely populated urban area which necessitates the need for adequate employee parking."). So, they have standing with respect to Metra's real property, at least as far as needed to board a Metra train.

As for causation, Defendants, as the attorney general of Illinois and the state's attorneys of the Illinois counties relevant to Plaintiffs, enforce the statute. Dkt. 71 ¶¶ 1-6. But whether Plaintiffs' injuries can be traced to a particular defendant depends on where Plaintiffs use public transportation, based on the facts in the record. So for Mr. Schoenthal, his injuries can only be traced to Ms. Foxx (Cook County), Mr. Berlin (DuPage County), and Mr. Raoul.[12] And for Mr. Wroblewski, Mr. Vesel, and Mr. Winston—who specify only that they would take trips to locations in Cook County (Chicago, Evanston, Rosemont), but say nothing about their proposed points of departure—their injuries can be traced to only Ms. Foxx and Mr. Raoul. No plaintiff has standing against Mr.

12. Although Mr. Schoenthal rides Metra in Kane County (Elburn station, Delnor Hospital), Plaintiffs did not name the Kane County state's attorney as a defendant.

Amato (DeKalb County) or Mr. Rinehart (Lake County) absent evidence that a plaintiff would go to a Metra station located in Lake County. (There are no Metra stations in DeKalb County.)

Plaintiffs seek an injunction of the ban or a declaration that the ban is unconstitutional—either of which would redress Plaintiffs' injuries. But Ms. Foxx argues that this isn't enough because the public transit that Plaintiffs use have separate policies banning firearms. Plaintiffs' injuries to be redressed, however, aren't just that they can't carry their handguns on public transportation; after all, for a pre-enforcement challenge, there has to be a "credible threat of prosecution." *Babbitt*, 422 U.S. at 298. Plaintiffs' injuries trace back to the threat of enforcement from some of the defendants, so either an injunction or a declaration would redress that injury, regardless of potential injuries inflicted by nonparties. So, Plaintiffs have satisfied the redressability requirement of standing. *See Larson v. Valente*, 456 U.S. 228, 243 n.15, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982); *see also Martin v. Evans*, 241 F. Supp. 3d 276, 283 (D. Mass. 2017) (finding that the plaintiffs met the redressability requirement even though nonparty law enforcement officials, such as transit police, could also enforce the statute being challenged).

## II. *Bruen*-Avoidance Arguments

Not immediately conceding *Bruen*'s relevance, Ms. Foxx tries to borrow principles from other areas of law to defend the Firearm Concealed Carry Act's ban. Both her arguments fail.

*Appendix B*

## A. Government as a proprietor

Ms. Foxx first asserts that a "background principle[]" of constitutional law exempts the Firearm Concealed Carry Act's ban from the "strictures of the Second Amendment" and obviates the need to undertake the historical analysis called for by *Bruen*. Dkt. 68 at 3. Her argument—which is breathtaking, jawdropping, and eyepopping—is this: the ban applies only to property "funded in whole or in part" by Illinois, so Illinois has a proprietary interest in what it regulates. Because governments, like private property owners, enjoy "an absolute right to exclude others" from their property, Illinois may exclude whomever it wishes. *Id.* at 3-4. On her view, when the government regulates its own property, that regulation is exempt from the coverage of the Second Amendment, or any other constitutional guarantee of individual rights.[13] (More on this later, but

13. She says that this logic extends to Illinois' "proprietor[ship] of government funds." Dkt. 68 at 5. If her contention is that by partially funding some property the government thereby acquires a plenary authority over it, that argument obviously fails. As discussed below, not even property fully owned by the public affords to government the sweeping powers over it claimed by Ms. Foxx; a fortiori the argument fails with respect to property partially owned or funded by the public.

To the extent she maintains that the government's disbursement of funds allows it to lay down rules governing the conduct of third parties who use what it funds in something other than its sovereign capacity, that argument likewise fails. In support of this argument, she draws on cases about Congress' ability to "fix the terms" on which public money is disbursed under the Spending Clause. *E.g.*, *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17, 101 S.

under Ms. Foxx's argument, demonstrators could be barred from the Daley Center Plaza, despite it being a quintessential public forum. *Pindak v. Dart*, 125 F. Supp. 3d 720, 746 (N.D. Ill. 2015); *Grutzmacher v. Public Bldg. Com.*, 700 F. Supp. 1497, 1502 (N.D. Ill. 1988).)

Although the right to exclude—including the right to exclude those bearing arms—may be a fundamental aspect of private property ownership, likely undiminished by the Second Amendment, *see Cedar Point Nursery v. Hassid*, 594 U.S. 139, 150, 141 S. Ct. 2063, 210 L. Ed. 2d 369 (2021); *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1261 (11th Cir. 2012), it doesn't necessarily follow that when a *government* like Illinois (through its transit agencies) act as a proprietor, the ban on arms bearing doesn't implicate Plaintiffs' rights under the Second Amendment. The constitutional protection afforded to other individual rights isn't nullified on public property;

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Ct. 1531, 67 L. Ed. 2d 694 (1981). But "legislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the [recipients] agree to comply with federally imposed conditions." *Id.* "Unlike ordinary legislation, which imposes congressional policy on regulated parties involuntarily, Spending Clause legislation operates based on consent . . . . For that reason, the legitimacy of Congress' power to enact Spending Clause legislation rests not on its sovereign authority to enact binding laws, but on whether the recipient voluntarily and knowingly accepts the terms of that contract." *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 219, 142 S. Ct. 1562, 212 L. Ed. 2d 552 (2022) (cleaned up). Thus, if Spending Clause jurisprudence is at all instructive here, it forecloses Ms. Foxx's argument: a contract between Illinois and those who receive its funds cannot govern the conduct of nonconsenting nonparties like Plaintiffs.

Ms. Foxx's proffered authority says nothing to the contrary.[14] She first cites several[15] First Amendment cases:

- *Gilles v. Blanchard*, 477 F.3d 466 (7th Cir. 2007)—which held that a public university's prohibition against uninvited visitors using its library lawn to speak was consistent with the First Amendment—for its assertion that "[p]ublic property is property, and the law of trespass protects public property, as it protects private property, from uninvited guests." *Id.* at 470.

- *Adderley v. Florida*, 385 U.S. 39, 87 S. Ct. 242, 17 L. Ed. 2d 149 (1966)[16]—which held

14. Her argument is an impressive bricolage, cobbling together broad statements of principle drawn from disparate areas of law. Of course, however, what is said in judicial opinions "must 'be taken in connection with the case in which those expressions are used,' *Cohens v. Virginia*, [19 U.S. (6 Wheat.)] 264, 399, 5 L. Ed. 257 (1821), and may not be 'stretch[ed] . . . beyond their context,' *Brown v. Davenport*, 596 U.S. 118, 141, 142 S. Ct. 1510, 212 L. Ed. 2d 463 (2022)." *Rahimi*, 144 S. Ct. at 1910 (Gorsuch, J., concurring) (second alteration in original).

15. Ms. Foxx also cites *Lloyd Corp. v. Tanner*, 407 U.S. 551, 569, 92 S. Ct. 2219, 33 L. Ed. 2d 131 (1972), for its assertion that property does not "lose its private character merely because the public is generally invited to use it for designated purposes." Dkt. 68 at 4. But that case dealt with an alleged First Amendment right to distribute handbills in a private shopping mall against the wishes of the mall's owner. It is clear from its context that the quoted language refers only to private property, so it isn't relevant to her argument.

16. The brief mistakenly asserts that the quote comes from *Greer v. Spock*, 424 U.S. 828, 836, 96 S. Ct. 1211, 47 L. Ed. 2d 505

that the trespass convictions of protestors who blocked the entrance of a county jail did not violate the First Amendment in the absence of any evidence that the sheriff had a discriminatory, viewpoint-based purpose in invoking and enforcing the law—for its assertion that "[t]he State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." *Id.* at 47.

- *International Soc'y for Krishna Consciousness v. Lee*, 505 U.S. 672, 112 S. Ct. 2701, 120 L. Ed. 2d 541 (1992)—which held that a ban on solicitation in a government-owned airport terminal (a nonpublic forum) did not violate the First Amendment—for the proposition that actions taken by the government as a proprietor are reviewed only for reasonableness. *Id.* at 679.

Ms. Foxx's position—that government's powers over public property are equivalent to those of private owners of property—is untenable, and was rejected by the Supreme Court long ago.[17] The cited cases don't

(1976), rather than *Adderley*. In fairness, *Greer* also cites the same sentence from *Adderley* at the pincite given.

17. *Compare, e.g., Commonwealth v. Davis*, 162 Mass. 510, 39 N.E. 113, 113 (Mass. 1895) (Holmes, J., majority opinion) ("For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a

treat government ownership of property as a trump to the protection ordinarily due to an individual right. Although the government sometimes has greater power to regulate public property compared to elsewhere, otherwise protected conduct doesn't become categorically unprotected. If, as Ms. Foxx suggests, all speech on government property were exempt from First Amendment protection, the elaborate First Amendment doctrines of public forums and governmental motivations (and the different degrees of scrutiny applicable to each) would be utterly superfluous.

Ms. Foxx's other citations are equally unavailing. *Engquist v. Oregon Department of Agriculture*, 553 U.S. 591, 128 S. Ct. 2146, 170 L. Ed. 2d 975 (2008)—which held that a public employee could not raise an equal protection claim for arbitrary treatment when not based on membership in any particular class—asserts that the Supreme Court has "long held the view that there is a crucial difference, with respect to constitutional analysis, between the government exercising 'the power to regulate or license, as lawmaker,' and the government acting 'as proprietor, to manage [its] internal operation.' *Id.* at 598 (quoting *Cafeteria & Rest. Workers Union, Loc. 473 v. McElroy*, 367 U.S. 886, 896, 81 S. Ct. 1743, 6 L. Ed. 2d 1230 (1961)). In context, this refers only to the

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member of the public than for the owner of a private house to forbid it in his house."), *with Hague v. CIO*, 307 U.S. 496, 515-16, 59 S. Ct. 954, 83 L. Ed. 1423 (1939) ("The privilege of a citizen of the United States to use the [public] streets and parks for communication of views on national questions may be regulated in the interest of all; . . . but it must not, in the guise of regulation, be abridged or denied").

government's greater powers as an employer. But even if construed to refer to all proprietorship, it doesn't suggest that constitutional protections cease to be effective on public property. *Reeves, Inc. v. Stake*, 447 U.S. 429, 100 S. Ct. 2271, 65 L. Ed. 2d 244 (1980)—a case that applied the "market participant" exception to the Dormant Commerce Clause in allowing a state-owned enterprise to discriminate in favor of its own citizens—is inapposite. That a state-owned enterprise is exempt from limitations imposed by one part of the Constitution concerned with federalism says nothing about whether it is bound to respect individual rights.

Finally, and decisively, whatever is true elsewhere in the law, Ms. Foxx's proposed framework contradicts *Bruen*, which rejects the relevance of place to the threshold question of whether certain conduct is covered by the Second Amendment. *See Bruen*, 597 U.S. at 32 ("Nothing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms."); *see also Oakland Tactical Supply, LLC v. Howell Township*, 103 F.4th 1186, 1201-02 (6th Cir. 2024) (Kethledge, J., dissenting) ("Thus—as described by the Court—the Second Amendment guarantees (1) to law-abiding citizens (2) a right to keep and bear arms (3) in common usage (4) for purposes of 'confrontation' (or 'self-defense')."). If the fact of government ownership is relevant to the constitutionality of the Firearm Concealed Carry Act's ban, it can only enter the calculus at *Bruen*'s second step.

* * *

Perhaps recognizing the futility of the first argument, Ms. Foxx purports to clarify (but in fact seems to change) her position in her reply brief.[18] She relies on the ambiguity of the word *proprietor*. Rather than founding the argument for rational basis review on the government's ownership of property simply, the reply brief stakes Ms. Foxx's case on the latitude afforded to the government when it acts as a "market participant"—that is, a proprietor in the sense of running an enterprise.

She disavows the notion, propounded by her opening brief, that "the government as proprietor argument" makes all "government-owned or controlled property 'exempt' from the Second Amendment." Dkt. 95 at 6; *compare id. with* Dkt. 68 at 3-4 ("One of the cornerstone principles of American law is that the owner or proprietor of private property has an absolute right to exclude others from that property. . . . That principle applies with equal force to the government . . . ."). Now, she says, only when the government is "acting as a market participant" and managing its internal operations does lesser scrutiny kick in. Thus, she no longer relies on a putative categorical exception from the Second Amendment's ambit, but an exception from *Bruen*'s framework of scrutiny within the Second Amendment's scope.

Although this is a slightly better argument than the last, it too must be rejected. The argument falters

18. Waiting until the reply brief is reason enough to reject the argument. *See James v. Sheahan*, 137 F.3d 1003, 1008 (7th Cir. 1998). Because this is ostensibly part of the same argument Ms. Foxx presented in her opening brief, however, the Court still addresses it.

at its major premise: that the lax standard of review employed when the government exercises "managerial" authority[19]—for instance, in regulating nonpublic forums, making employment decisions, or prohibiting certain kinds of employee speech—applies in the Second Amendment context.

In the wake of *Heller*, it is true, the scope of government's managerial power over the Second Amendment was unclear.[20] And though the Supreme Court has not yet explicitly addressed the issue, *Bruen* decisively rejected the means-end scrutiny characteristic of other areas of constitutional law, describing the Second Amendment as itself the product of a considered balancing "struck by the traditions of the American people" that "elevates above all other interests the right of law-abiding, responsible citizens" to use arms for self-defense. *Id.* at 26 (quoting *Heller*, 554 U.S. at 635). This is fatal to Ms.

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19. *See* Robert C. Post, *Between Governance and Management: The History and Theory of the Public Forum*, 34 UCLA L. Rev. 1713, 1782 (1987).

20. *See, e.g.*, Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense*: *An Analytical Framework and a Research Agenda*, 56 UCLA L. Rev. 1443, 1533 (2009) ("Courts need to work out a government-as-proprietor doctrine for the right to bear arms much as they have done for the freedom of speech."). And some courts found that the fact of property ownership did afford the government greater regulatory power. *E.g., Bonidy v. Postal Serv.*, 790 F.3d 1121, 1127 (10th Cir. 2015) (holding that government buildings were categorically exempt from Second Amendment scrutiny, and in the alternative, that the government's proprietary interest in a post office weighed heavily in favor of a ban on carrying guns there in upholding it under intermediate scrutiny).

Foxx's argument. The justification of the lenient treatment afforded to exercises of managerial power is precisely that kind of interest balancing—namely, a concern for the government's interest in efficiently carrying out its mission. *See, e.g.*, *Engquist*, 553 U.S. at 598-600; *Lee*, 505 U.S. at 682-83; *Lehman v. City of Shaker Heights*, 418 U.S. 298, 303-04, 94 S. Ct. 2714, 41 L. Ed. 2d 770 (1974).

*Bruen* maintains that freestanding policy considerations, no matter how weighty, cannot be invoked to defeat the right protected by the Second Amendment, strictly insisting that all the relevant interest balancing was done at the Second Amendment's ratification. 597 U.S. at 26 (quoting *Heller*, 554 U.S. at 635). The right to bear arms may be regulated *only* in the name of an interest that finds at least analogical support in the American tradition. *See Rahimi*, 144 S. Ct. at 1898 (describing how *Bruen* requires that regulations be "consistent with the principles that underpin our regulatory tradition" so that the "balance struck by the founding generation" is faithfully applied to "modern circumstances").[21] It would turn *Bruen* on its head to default to rational basis review when the government asserts an interest that it isn't required to demonstrate was part of the historical

21. Whether this should be conceived of as a finding (1) that the conduct at issue was not part of the right to begin with, or (2) that the right was traditionally defeasible in the face of the asserted interest, is ultimately inconsequential here; either way, the only way to justify a regulation of conduct that falls *prima facie* within the Second Amendment is to point to an analogous interest embodied in the regulatory tradition.

tradition of firearm regulation. Nearly[22] every district court to be confronted with similar arguments has rejected them.[23] This Court likewise rejects them.

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22. One district court refused to enjoin a ban on bearing arms in "mass transit facilities and in vehicles owned by the State [of Maryland]" on the ground that it constituted a permissible sensitive-place restriction, while leaving open the possibility that the regulation might also be justified by Maryland's status as a "market participant." *Kipke v. Moore*, 695 F. Supp. 3d 638, 655-56 (D. Md. 2023) (denying a motion for preliminary injunction); *Kipke v. Moore*, Nos. GLR-23-1293, GLR-23-1295, 2024 U.S. Dist. LEXIS 137003, at *15-16 (D. Md. Aug. 2, 2024) (adopting the analysis for denying a preliminary injunction to grant summary judgment). For this latter possibility, it relied on *Bldg. & Const. Trades Council of the Metro. Dist. v. Associated Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218, 113 S. Ct. 1190, 122 L. Ed. 2d 565 (1993)—which held that a state's market activity was not preempted by the National Labor Relations Act as its regulatory activity in the same area would be—and its assertion that a State may "manage its own property when it pursues its purely proprietary interests . . . where analogous private conduct would be permitted." *Id.* at 231-32. Read in context, however, the court is not announcing a general principle, but only describing its statutory holding under the NLRA: that only state regulation, and not "proprietary conduct" lawful for an equivalent private party, was preempted by that federal statute. *Id.* at 232. So, *Building & Construction Trades Council* provides little support for a general market-participant exception to the recognition of individual rights.

23. *Koons v. Platkin*, 673 F. Supp. 3d 515, 601 (D.N.J. 2023), *appeal docketed*, No. 23-2043 (3d Cir. Jan. 9, 2024) ("[T]he State is not *exempt* from recognizing the protections afforded to individuals by the Constitution simply because it acts on government property."); *id.* at 605 n.33 (rejecting the state's "market participant" theory); *Wolford v. Lopez*, 686 F. Supp. 3d 1034, 1062 (D. Haw. 2023), *appeal docketed*, No. 23-16164, 2024 U.S. App. LEXIS 15155 (9th Cir. June 21, 2024) ("Whether the government acted as a proprietor may

### B. First Amendment intermediate scrutiny

Ms. Foxx also relies on *Heller*'s statement that the Second Amendment can protect modern forms of arms in the same way that the First Amendment protects modern forms of communication. *Heller*, 554 U.S. at 582. She cites examples of intermediate scrutiny applied to content-neutral "time, place, or manner" restrictions. Take, for example, Ms. Foxx's reliance on *Anderson v. Milwaukee County*, 433 F.3d 975 (7th Cir. 2006), in which the court found that the government's interest in protecting bus passengers (a captive audience) allowed it to restrict otherwise protected speech. 433 F.3d at 980. But the intermediate scrutiny standard applied to content-neutral "time, place, or manner" restrictions is what *Bruen* unambiguously rejected. *See Bruen*, 597 U.S. at 22-24 ("Not only did *Heller* decline to engage in means-end scrutiny generally, but it also specifically ruled out the intermediate-scrutiny test that respondents and the United States now urge us to adopt."). Ms. Foxx's attempt to apply intermediate scrutiny by treating the Firearm

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have been relevant when assessing Second Amendment challenges under a means-end scrutiny test, but it has no place under the first step of the *Bruen* analysis."); *United States v. Ayala*, F. Supp. 3d, No. 8:22-cr-369-KKM-AAS, 711 F. Supp. 3d 1333, 2024 U.S. Dist. LEXIS 7326, at *41-43 (M.D. Fla. Jan. 12, 2024), *appeal docketed*, No. 24-10462 (11th Cir. May 7, 2024) ("The United States must point to a historical tradition justifying any claimed power to regulate conduct protected by the Second Amendment's plain text, even as a proprietor."); *May v. Bonta*, F. Supp. 3d , Nos. SACV 23-01696-CJC (ADSx), SACV 23-01798-CJC (ADSx), 2023 U.S. Dist. LEXIS 231208, 2023 WL 8946212, at *17 (C.D. Cal. Dec. 20, 2023), *appeal argued*, No. 23-4356 (9th Cir. Apr. 11, 2024).

Concealed Carry Act's ban as a "time, place, or manner" restriction cannot succeed.

## III. The Main Event (*Bruen* Analysis)

### A. A disclaimer about "historical evidence"

There's one more matter to address before reaching the substantive *Bruen* analysis. *Bruen* exemplifies the phrase "easier said than done." It certainly left open a plethora of procedural questions about how to conduct the historical inquiry. *See, e.g., United States v. Daniels*, 77 F.4th 337, 359-60 (5th Cir. 2023), *vacated*, S. Ct. , No. 23-376, 144 S. Ct. 2707, 219 L. Ed. 2d 1313, 2024 U.S. LEXIS 2910 (July 2, 2024) (Higginson, J., concurring) ("More foundationally, courts are laboring to give meaning to the *Bruen* requirement of 'historical inquiry.'"); *Rahimi*, 144 S. Ct. at 1927 & n.1 (Jackson, J., concurring) (collecting cases). The Supreme Court has acknowledged the potential difficulty but provided little guidance: "To be sure, '[h]istorical analysis can be difficult; it sometimes requires resolving threshold questions, and making nuanced judgments about which evidence to consult and how to interpret it.'" *Bruen*, 597 U.S. at 25 (alteration in original) (quoting *McDonald*, 561 U.S. at 803-04 (Scalia, J., concurring)). And multiple courts have expressed frustration at the process. *See, e.g., Worth v. Harrington*, 666 F. Supp. 3d 902, 917 (D. Minn. 2023), *aff'd sub nom. Worth v. Jacobson*, 108 F.4th 677, (8th Cir. 2024); *United States v. Hill*, No. 3:23cr114, 703 F. Supp. 3d 729, 2023 U.S. Dist. LEXIS 211689, at *28-41 (E.D. Va. Nov. 28, 2023), *appeal docketed*, No. 24-4194 (4th

Cir. Apr. 8, 2024); *see also Vidal v. Elster*, 602 U.S. 286, 328, 144 S. Ct. 1507, 219 L. Ed. 2d 56 (2024) (Sotomayor, J., concurring) ("One need only read a handful of lower court decisions applying *Bruen* to appreciate the confusion this Court has caused."). Several data points support the notion that *Bruen*'s analysis can be complicated. Here are just a few: (1) four justices thought it was important to author concurring opinions in *Rahimi*, with a fifth justice joining one of those concurrences; (2) Justice Thomas—the author of *Bruen*—dissented in *Rahimi*; and (3) eight justices reversed the Fifth Circuit's unanimous decision and had "no trouble," *Rahimi*, 144 S. Ct. at 1902, reaching the opposite conclusion of the judges on the Fifth Circuit under the same framework.

This case highlights one such question in the mix. The parties' disputes over how to proffer and use historical evidence exhibit the confusion occasioned by *Bruen*. Much ink has been spilled about the nature of the evidence the Court can consider in conducting the historical analysis required under *Bruen*, including what is an adjudicative fact and what is a legislative fact. The Court has spent a considerable amount of time considering the parties' arguments. In its discretion, this order is based upon what evidence the Court believes was properly proffered.

The Court has discretion in determining whether a party has failed to comply with Local Rule 56.1, but it must consider whether the party's submission has adequately complied with the purpose and intent of the rule or has impeded the rule's effectiveness. *Cracco v. Vitran Express, Inc.*, 559 F.3d 625, 632 (7th Cir. 2009); *see also Ammons*, 368 F.3d at 817. In this case, because of the lack

of clear guidance as to how to treat the historical evidence required by *Bruen*'s framework, the Court doesn't believe that Plaintiffs' noncompliance was an attempt to deceive Defendants or otherwise gain an unfair advantage. They didn't completely ignore Local Rule 56.1; Plaintiffs compiled a statement of facts related to each individual plaintiff's personal experience. Defendants have also responded to the historical matter presented by Plaintiffs directly in their briefs, so Plaintiffs' noncompliance doesn't appear to have substantially changed Defendants' arguments. And as stated previously, the Court prefers to decide things based on evidence. *Schoenthal*, 2024 U.S. Dist. LEXIS 79497, at *5.[24]

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24. The Court acknowledges that, even in considering the "full" record before it, historical inquiries reliant on party presentation (not to mention potentially evolving views of history) may lead to inconsistent results. Justice Scalia's discussion of a pitfall in analyzing legislative history rings true here:

> But not the least of the defects of legislative history is its indeterminacy. If one were to search for an interpretive technique that, *on the whole*, was more likely to confuse than to clarify, one could hardly find a more promising candidate than legislative history. And the present case nicely proves that point.
>
> Judge Harold Leventhal used to describe the use of legislative history as the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one's friends. If I may pursue that metaphor: The legislative history of [the statute at issue] contains a variety of diverse personages, a selected few of whom—its "friends"—the Court has introduced to us in support of its result. But there are many other faces in the crowd, most of which, I think, are set against today's result.

Having said all that, this Court will adhere to Justice Kavanaugh's direction in his concurrence in *Rahimi*. *See Rahimi*, 144 S. Ct. at 1923-24 (Kavanaugh, J., concurring). This Court will quit its bellyaching and get on with it.

### B. Plain text of the Second Amendment

The first step under *Bruen* is to determine whether the Second Amendment's "plain text"[25] covers the regulated conduct. *Bruen*, 597 U.S. at 17. Embedded within this step is first defining Plaintiffs' proposed course of conduct.

#### 1. Proposed course of conduct

Plaintiffs' proposed course of conduct, which Defendants don't dispute, is the licensed concealed carrying of handguns for self-defense on public transportation and associated facilities. *See* Dkt. 71 ¶¶ 12-13, 20-21, 39.

Note that this proposed conduct necessitates treating Plaintiffs' challenge to the Firearm Concealed Carry Act's ban as an as-applied challenge, as they have not argued that *any* person who "knowingly carr[ies] a firearm" onto public transit (or associated real property), 430 ILCS

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*Conroy v. Aniskoff*, 507 U.S. 511, 519, 113 S. Ct. 1562, 123 L. Ed. 2d 229 (1993) (Scalia, J., concurring); *see also Vidal*, 602 U.S. at 327-28 (Sotomayor, J., concurring) (applying the comparison to "history-and-tradition inquir[ies]").

25. The Second Amendment reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

66/65(a), is presumptively protected by the plain text of the Second Amendment. For example, the Firearm Concealed Carry Act doesn't consider one's purpose in carrying a handgun on public transit, and so its prohibition on carrying a handgun for purposes other than lawful self-defense would not implicate the Second Amendment.[26]

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26. And with even one constitutional application, a facial challenge to the statute fails. *See United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). Plaintiffs argue that *Salerno* doesn't apply to this case. But the Supreme Court recently reiterated the applicability of *Salerno* to a facial challenge under the Second Amendment. *Rahimi*, 144 S. Ct. at 1898 ("This is the 'most difficult challenge to mount successfully,' because it requires a defendant to 'establish that no set of circumstances exists under which the Act would be valid.'" (quoting *Salerno*, 481 U.S. at 745)).

Ms. Foxx also argues that Plaintiffs' facial challenge must fail because the Seventh Circuit, in *Bevis v. City of Naperville*, held that there is no Second Amendment protection for "weapons that may be reserved for military use." 85 F.4th 1175, 1194 (7th Cir. 2023), *cert. denied sub nom. Harrel v. Raoul*, 144 S. Ct. 2491, 219 L. Ed. 2d 1333 (2024). Plaintiffs point out that they wish to carry only handguns on public transit, but that misses the point of a facial challenge. Plaintiffs also respond that "the statute indisputabl[y] refers generally to 'firearms,' not specifically to the category of arms *Bevis* held are unprotected." Dkt. 87 at 12. This argument, as it is articulated by Plaintiffs, doesn't contend that "firearms" *excludes* military weapons. Nor does their reliance on *Heller*'s silence help; *Heller*'s silence is not equivalent to rejection. *See In re Deere & Co. Repair Serv. Antitrust Litig.*, F. Supp. 3d , No. 3:22-cv-50188, 703 F. Supp. 3d 862, 2023 U.S. Dist. LEXIS 210516, at *37 (N.D. Ill. Nov. 27, 2023) (citing *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38, 73 S. Ct. 67, 97 L. Ed. 54 (1952)); *cf. United States v. Gay*, 98 F.4th 843, 846 (7th Cir. 2024). But reading the text of the Firearm Concealed Carry Act is helpful. Although the statute doesn't define

Because Plaintiffs have framed their challenge in terms of how the Firearm Concealed Carry Act *applies to them*, the Court proceeds accordingly. *See Doe v. Reed*, 561 U.S. 186, 194, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010); *Moody v. NetChoice, LLC*, 603 U.S. 707, 144 S. Ct. 2383, 2416 n.1, 219 L. Ed. 2d 1075 (2024) (Thomas, J., concurring) ("Federal courts are free to consider challenged statutes as applied to the plaintiff before them and limit any relief accordingly.").

**2. Text of the Second Amendment**

The Second Amendment guarantees the "right to possess and carry weapons in case of confrontation." *Heller*, 554 U.S. at 592. Naturally, Plaintiffs contend that their proposed conduct is covered by the Second Amendment's text. State Defendants appear to concede this point, but Ms. Foxx disagrees.

She first argues that the Firearm Concealed Carry Act's ban doesn't "infringe" on Plaintiffs' right to keep and bear arms, and so their proposed conduct and its violation of the ban don't fall under the Second Amendment's protection. She compares the definitions of "infringe" and "abridge" (from the First Amendment), relying on

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"firearm" on its own, a "concealed firearm" is defined as a "loaded or unloaded handgun," and "handgun" is defined as a one-handed gun excluding stun guns or tasers, machine guns, short-barreled rifles or shotguns, and specific pneumatic guns, spring guns, paintball guns, and BB guns. 430 ILCS 66/5. This definition doesn't appear to allow for the military weapons contemplated by *Bevis*, so this is not a basis on which Plaintiffs' facial challenge fails.

dictionary definitions from 1755 and 1773 to argue that "infringe" must denote a total destruction of a right—more than a mere "abridgement." But both of these words have multiple definitions, and Ms. Foxx cherry-picks the definitions to suit her argument. In particular, the second definition for "infringe" reads in full: "To destroy; to hinder." *Infringe, v.a. (1773)*, Samuel Johnson's Dictionary Online, https://johnsonsdictionaryonline.com/views/search.php?term=infringe (last visited Aug. 30, 2024). But she omits "to hinder"—which wouldn't require completely obstructing the right—without any explanation. Merriam-Webster's definition likewise doesn't require wholesale destruction—"to encroach upon in a way that violates law or the rights of another"—and it notes that "infringe" was first used with that meaning in 1513. *Infringe Definition & Meaning*, Merriam-Webster, https://www.merriam-webster.com/dictionary/infringe (last updated Aug. 20, 2024).

Other courts have agreed with this more modest—and plain—reading of "infringe." *See, e.g., Frein v. Pa. State Police*, 47 F.4th 247, 254 (3d Cir. 2022) ("[The Second Amendment] also forbids lesser 'violat[ions]' that 'hinder' a person's ability to hold on to his guns." (citations omitted)); *Md. Shall Issue, Inc. v. Moore*, 86 F.4th 1038, 1044 n.8 (4th Cir. 2023), *reh'd en banc*, F.4th , 116 F.4th 211, 2024 U.S. App. LEXIS 21378 (4th Cir. Aug. 23, 2024) ("[T]his stilted construction of the word 'infringed' lacks grounding in original meaning, history, and *Bruen* itself.").[27] And

27. The Fourth Circuit did not address this issue after the case was reheard *en banc*.

*Bruen* itself involved a regulation that didn't wholly ban individuals from possessing firearms—it was a licensing scheme. *Bruen*, 597 U.S. at 11-12. "Infringe" doesn't mean what Ms. Foxx says it means.

Ms. Foxx next argues that the Second Amendment doesn't cover Plaintiffs' proposed conduct because using a firearm on a crowded and confined public transit vehicle would result in more force than necessary for lawful self-defense, citing two inapposite cases.[28] Even if the Second Amendment's reach were limited by that principle of self-defense,[29] Ms. Foxx fails to show how that limitation applies to the facts of this case beyond

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28. Both cases assert that one may not use more force than necessary to repel an attacker. *Fowler v. O'Leary*, No. 87 C 6671, 1993 U.S. Dist. LEXIS 3554, at *34 (N.D. Ill. Mar. 19, 1993) ("Illinois law does not readily accept a claim of self-defense when the defendant provokes the incident, uses force greater than necessary to ward off the imminent danger, or uses force when he could have avoided the situation."); *People v. Morgan*, 187 Ill. 2d 500, 719 N.E.2d 681, 700, 241 Ill. Dec. 552 (Ill. 1999) (requiring that a person "reasonably believe[]" that the force used "is necessary to prevent imminent death or great bodily harm"). But these cases plainly say nothing about Ms. Foxx's proposed principle—that one may not defend oneself if the force to be used would collaterally injure third parties.

29. In *Heller*, the Supreme Court was careful to "not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation," 554 U.S. at 594, but it offered no further guidance as to what confrontations don't count. *See Heller*, 554 U.S. at 720 (Breyer, J., dissenting). We do know, however, that the Second Amendment draws no location-based home—public distinction. *See Bruen*, 597 U.S. at 4; *see also Oakland Tactical Supply*, 103 F.4th at 1202-03 (Kethledge, J., dissenting).

the unsubstantiated assertion that "there are few if any circumstances" where someone could discharge a firearm in a public transportation vehicle without endangering a third party. Dkt. 86 at 16.

### C. Potential historical analogues

Because Plaintiffs' proposed conduct falls under the plain text of the Second Amendment, the conduct is presumptively protected. *Bruen*, 597 U.S. at 17. The second step is determining whether the regulation is consistent with the historical tradition of firearm regulation in this country. *Id.* Defendants bear the burden in this regard. As to how they can meet that burden, *Bruen* examined historical regulations as potential analogues, focusing on *why* and *how* regulations burdened the right to armed self-defense. *See id.* at 29. In addition to engaging in that mode of analogical analysis, the parties argue for other approaches potentially left open by *Bruen*.

The parties start by disagreeing over whether public transportation existed at the Founding. But whether there's anything from 1791 that might appropriately be labeled "public transportation" isn't a silver bullet that shortcuts *Bruen*'s framework. Even if there were something that could rightly be described as a *form of transportation funded by the public* at the time of the Second Amendment's ratification, how firearms were regulated there (if at all) wouldn't necessarily determine whether or how they can be regulated somewhere fitting that same description today. Regulation of today's public transportation may implicate different justifications or

impose different burdens on the Second Amendment right based on public transportation's role in society. In other words, the *how* and *why* of such a regulation might be very different. Metra trains and CTA buses obviously didn't exist then, so resolving the permissibility of Illinois' law requires some degree of analogical reasoning. *See Bruen*, 597 U.S. at 27-28.[30]

So as to not bury the lede, the Court finds that Defendants have failed to meet their burden. That failure is dispositive. Still, mindful of the Seventh Circuit's directive to develop a full record in the trial court, the Court will address the parties' many arguments relating to historical analogues and other possible approaches to analyze the constitutionality of the Firearm Concealed Carry Act's prohibition against carrying concealed firearms on public transportation.

### 1. Historical regulations

The approach demonstrated by *Bruen* (and by *Rahimi*) for assessing the constitutionality of a challenged regulation is to compare it with historical regulations. The Court understands this process involves several

30. The parties (and some courts) have labeled this the "nuanced" historical approach, based on *Bruen*'s language that "cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach." *Bruen*, 597 U.S. at 28. Like Modell in *Diner*, the Court isn't comfortable with the word "nuance." Nevertheless, rather than transform an adjective into its own doctrine, this Court sees the "nuanced" approach as a difference in degree as to how much analogizing must be done.

discrete steps. First, there is the factual question of whether the historical regulation exists. Next, the Court must determine how much weight, if at all, the historical regulation has in this inquiry. *See Bruen*, 597 U.S. at 34 ("We categorize these historical sources because, when it comes to interpreting the Constitution, not all history is created equal."). If the vetted historical regulations disclose some principle underpinning the tradition of firearm regulation in this country, then the Court can compare the challenged regulation in this case to the historical regulations. *See id.* at 29-30; *see also Rahimi*, 144 S. Ct. at 1898. In determining whether the regulations are "relevantly similar," "how and why the regulations burden a law-abiding citizen's right to armed self-defense" are "*central*" considerations. *Bruen*, 597 U.S. at 29; *Rahimi*, 144 S. Ct. at 1898.

**a. Regulation of crowded spaces (Statute of Northampton)**

Defendants cite the Statute of Northampton 1328, 2 Edw. 3 c. 3 (Gr. Brit.), and similar state laws patterned after it. *Bruen* rejected the Statute of Northampton as an analogue justifying a general ban on public carry. *See* 597 U.S. at 40-41. State Defendants, relying on *Antonyuk v. Chiumento*, 89 F.4th 271, 357 n.74 (2d Cir. 2023), *vacated sub nom. Antonyuk v. James*, S. Ct. , No. 23-910, 144 S. Ct. 2709, 219 L. Ed. 2d 1315, 2024 U.S. LEXIS 2929 (2024),[31] argue that the statute, accompanied by the similar state

31. *Antonyuk* was vacated "for further consideration in light of *United States v. Rahimi*, 602 U.S. 680, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024)." 2024 U.S. LEXIS 2929, at *1.

statutes, provides support for the narrower proposition that bearing arms may be restricted in crowded places like fairs and markets.

Plaintiffs' response to this argument draws on two reasons that *Bruen* deemed the Statute of Northampton to not be probative in that case. First, they argue that the Statute of Northampton is too old and should therefore be afforded no weight in ascertaining an *American* tradition. *Bruen*, 597 U.S. at 41 ("[T]he Statute of Northampton—at least as it was understood during the Middle Ages—has little bearing on the Second Amendment adopted in 1791."). State Defendants address this issue by citing the later state statutes that were based on the Statute of Northampton. This includes two commonwealth/state statutes from the Founding era: one from Virginia and one from North Carolina.[32]

Defendants also present Reconstruction-era statutes from three states—Tennessee, Texas, and Missouri—and two territories—Oklahoma, and Arizona.[33] Plaintiffs'

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32. Act of Oct. 16, 1786, ch. 49, 1786 Va. Acts 35 (forbidding and punishing affrays); *A Collection of the Statutes of the Parliament of England in Force in the State of North-Carolina* 60-61 (François-Xavier Martin ed., 1792). Plaintiffs argue that the North Carolina law was never in force. This doesn't affect the Court's analysis, so there is no need to address this factual dispute now.

33. Act of June 11, 1870, ch. 13, 1870 Tenn. Pub. Acts 28 (preserving the peace and preventing homicide); Act of Aug. 12, 1870, ch. 49, 1870 Tex. Gen. Laws 63 (regulating the right to keep and bear arms); Act of Mar. 5, 1883, sec. 1, § 1274, 1883 Mo. Laws 76; *Acts, Resolutions and Memorials of the Fifteenth Legislative*

response to these statutes amounts to "too little, too late"—they argue that they are outliers and not old enough to be probative of the meaning of the Second Amendment. But *Bruen* didn't foreclose using such later-in-time laws to show the continuation of a tradition from before the Founding. *See Bruen*, 597 U.S. at 65-68 (rejecting postbellum and territorial laws because they "contradict[] the overwhelming weight of other evidence"). Defendants present these statutes in that light: to show a "'long, unbroken line,' beginning from medieval England and extending beyond Reconstruction," of the regulation of firearms in crowded public forums. *Antonyuk*, 89 F.4th at 358 (quoting *Bruen* 142 S. Ct. at 2136).

Even granting the existence of such a longstanding tradition, however, that doesn't address Plaintiffs' second response to these laws—that they aren't appropriate analogues because *why* they burdened the right to armed self-defense is not sufficiently similar.[34] *Bruen* found

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*Assembly of the Territory of Arizona* 30-31 (Prescott 1889) (defining and punishing certain offenses against the public peace); *The Statutes of Oklahoma, 1890*, at 495 (Will T. Little et al. ed., Guthrie, The State Capital Printing Co. 1891) (Territory of Oklahoma Penal Code, article 47).

34. The Court acknowledges that it is using a double negative. But the Court is using the double negative because describing the *why* as "different" doesn't seem quite right. *See* Susan Thurman, *The Only Grammar Book You'll Ever Need* 93-94 (2003) ("One exception to the rule of avoiding double negatives is when you intend a positive or lukewarm meaning."). And, at the risk of sending grammar geeks into a tither (or a dither), not all double negatives create a positive. *See Flores v. Minnesota*, 906 F.2d 1300, 1302 (8th Cir. 1990) ("The instruction states that there is '*no* presumption' an intoxicated person

that the Statute of Northampton wasn't a general ban on bearing weapons; instead, the offense was arming oneself *to terrify others*. *Bruen*, 597 U.S. at 43-44.[35] This language is also reflected in the corresponding state statutes. For example, the Virginia statute states that nobody shall "ride armed by night nor by day, in fairs or markets, or in other places, *in terror of the county*." Ch. 49, 1786 Va. Acts 35; *see also Rahimi*, 144 S. Ct. at 1901. Plaintiffs wish

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was '*in*capable' of premeditation . . . . The double negative here does not create a positive. The instruction simply tells the jury not to rule out the possibility of premeditation merely because Flores had been drinking: they should still consider whether or not he was capable of premeditation, and whether he in fact premeditated the killing.").

35. *Rahimi* implies the same requirement of an intent to terrify others (and potentially other elements, like using dangerous or unusual weapons). *See Rahimi*, 144 S. Ct. at 1901 ("Whether classified as an affray law or a distinct prohibition, the going armed laws prohibited riding or going armed, with dangerous or unusual weapons, to terrify the good people of the land. Such conduct disrupted the public order and led almost necessarily to actual violence." (cleaned up) (citations omitted)).

On the other hand, one of Defendants' experts, Dr. Brennan Rivas, notes that some scholars have found that these laws didn't require an intent element to terrorize others, and that carrying deadly weapons was inherently terrifying. Dkt. 64-11 at 20 n.57. Although this is at odds with *Bruen*'s interpretation, *Bruen* had a different record before it. *See Bruen*, 597 U.S. at 45 ("Respondents do not offer any evidence showing that, in the early 18th century or after, the mere public carrying of a handgun would terrify people."). Although reliance on party presentation in compiling a historical record would seem to allow for evolving understandings of history, Defendants don't offer evidence that the act of carrying a concealed handgun in public was alone sufficient to be considered terrifying, so the Court accepts *Bruen*'s understanding of these statutes.

to carry *concealed* arms in self-defense, so the Firearm Concealed Carry Act's ban burdens Plaintiffs' Second Amendment right for a wholly different reason than the Statute of Northampton and similar state statutes did. The *why* is different. A concealed arm doesn't terrorize; it's concealed. Consequently, these historical laws do not serve as an appropriate historical analogue.

**b. The Black Act**

Ms. Foxx also attempts to find a historical analogue in the Black Act 1723, 9 Geo. 1 c. 22 (Gr. Brit.), which prohibited the carrying of weapons in forests and on roads if the bearer's face was disguised. But Ms. Foxx doesn't present any evidence that the attitudes reflected in the Black Act carried over into "*this* Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17 (emphasis added). Without some evidence the Black Act reflects American attitudes at the time the Second Amendment was adopted, it cannot support the Firearm Concealed Carry Act's ban. *See id.* at 34-35, 39 (noting that it's less helpful "to rely on an 'ancient' practice that had become 'obsolete in England at the time of the adoption of the Constitution' and never 'was acted upon or accepted in the colonies.'" (quoting *Dimick v. Schiedt*, 293 U.S. 474, 477, 55 S. Ct. 296, 79 L. Ed. 603 (1935))).[36]

36. Even if the Black Act were to disclose some tradition, it's not "relevantly similar" to the ban, both in *why* and *how* the right to armed self-defense is burdened. The Black Act was enacted to prosecute gangs (seemingly inspired by Robin Hood) that operated from nearby forests (and roads). L. Radzinowicz, *The Waltham*

### c. Concealed-carry laws

Ms. Foxx then argues that 19th century laws from Tennessee, Texas, and Arkansas[37] show a tradition of regulating concealed firearms.[38] Plaintiffs' individual

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*Black Act: A Study of the Legislative Attitude Towards Crime in the Eighteenth Century*, 9 Cambridge L.J. 56, 56-58 (1945); Pat Rogers, *The Waltham Blacks and the Black Act*, 17 Hist. J. 465, 467 (1974). The act's name shows that it was primarily concerned with *who* rather than *where*—the gang members were known as the "Blacks" because of how they obscured ("blackened") their faces. *See* Rogers, *supra*, at 468-69. At a very high level of generality, perhaps the two acts are similar in their motivation to keep public order. But though the Black Act contains a place restriction, it's inextricably coupled with the condition that one has disguised their face, because it was targeted at a specific group of people known to have an unlawful purpose in carrying weapons. The justification behind the Black Act is different from the Firearm Concealed Carry Act's ban, and the Black Act forbade people from carrying guns on roads only *if* they were masked, a condition not present in Illinois' ban. So, again, the *how* and *why* are different.

37. Act of Apr. 12, 1871, ch. 34, 1871 Tex. Gen. Laws 25 (regulating the keeping and bearing of deadly weapons); Act of Oct. 19, 1821, ch. 13, 1821 Tenn. Pub. Acts 15 (preventing the wearing of dangerous and unlawful weapons); *Revised Statutes of the State of Arkansas Adopted at the October Session of the General Assembly of Said State, A.D. 1837*, at 280 (William McK. Ball & Sam. C. Roane, eds., Boston, Weeks, Jordan and Company 1838).

38. Ms. Foxx lists a Louisiana statute in her statement of facts, but she doesn't reference it in her memorandum of law supporting her motion for summary judgment. Because it's not mentioned in her legal argument, the Court doesn't consider the Louisiana law in its analysis. *See generally* LR 56.1(a); *Bruen*, 597 U.S. at 25 n.6. In addition, Ms. Foxx says in her reply that she also cites Alabama law,

responses to the Tennessee and Arkansas statutes are that the statutes support Plaintiffs' position because of an exception for travelers. The Court sets that aside for now, as the exception matters only if the laws establish a historical tradition of banning concealed firearms in the first place.

Plaintiffs rely on *Bruen* to discount the relevance of the Texas statute in establishing a historical tradition. *Bruen* examined an 1871 Texas law that required "reasonable grounds for fearing an unlawful attack on his person" to carry a pistol, and it deemed the statute (along with two Texas Supreme Court cases analyzing the constitutionality of the statute) to be outliers, "provid[ing] little insight into how postbellum courts viewed the right to carry protected arms in public." *Bruen*, 497 U.S. at 64-65. Ms. Foxx's only counter in her reply brief is that the New York law in *Bruen* had broader restrictions than the Firearm Concealed Carry Act's ban. Although it's true that this case involves looking for different analogues than *Bruen* did, that doesn't provide a reason to challenge *Bruen*'s finding that 1870s Texas was an outlier in its view of the right to bear arms.

Plaintiffs also respond with two general arguments concerning the Texas and Arkansas statutes: (1) the laws are too recent, and (2) the laws aren't sufficiently

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but the only reference to Alabama law in her opening memorandum concerns the meaning of "journey" underlying the traveler exception, rather than the statute itself.

widespread.[39] As for the first argument—that 19th century laws cannot independently demonstrate the scope of the Second Amendment—*Bruen* shied away from any definitive statement on the matter. *Id.* at 37-38 ("We also acknowledge that there is an ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868 when defining its scope (as well as the scope of the right against the Federal Government). We need not address this issue today . . . ." (citations omitted)). *Rahimi* similarly sidestepped the issue. *See Rahimi*, 144 S. Ct. at 1898 n.1; *id.* at 1929 n.4 (Jackson, J., concurring); *id.* at 1933 n.2 (Thomas, J., dissenting). Contrary to Plaintiffs' characterization, lower courts still must deal with the ambiguity.

As a result, this Court disagrees with Plaintiffs that *Bruen* mandates automatically writing off any law from the Reconstruction era. *Bruen* may have cautioned "against giving postenactment history more weight than it can rightly bear," but it also recognized that evidence of how the Second Amendment was interpreted "through the end of the 19th century" can be a "critical tool of constitutional interpretation." *Bruen*, 597 U.S. at 35-36 (quoting *Heller*, 554 U.S. at 605). The potential relevance of

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39. Plaintiffs grouped the statutes by time period in their response, so the 1821 Tennessee statute was sorted into the Founding era bucket—separate from the mid to late 19th century bucket where Plaintiffs addressed the Texas and Arkansas statutes. The Court isn't sure what cutoff Plaintiffs have created to deny Arkansas' 1837 law the "Founding era" label and instead count it as "mid"-19th century.

evidence through the late 19th century is underscored by the fact that this case concerns determining the historical view of public carry—after all, "the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry." *Id.* at 38.

That leaves Plaintiffs' argument that the statutes aren't sufficiently widespread.[40] As discussed above, *Bruen* disregarded the Texas statute as an outlier, and Ms. Foxx provides nothing to the contrary. This Court follows Supreme Court precedent. Left with only the Tennessee and Arkansas statutes, Defendants have failed to meet their burden of showing a national tradition. *Bruen* suggests that only two or three regulations often won't be sufficient—it discounted Texas as an outlier despite West Virginia's similar provision, and it "doubt[ed] that *three* colonial regulations could suffice to show a tradition of public-carry regulation." *Id.* at 46, 65. This isn't to say that simply looking at the number of states is enough to exclusively conclude that there wasn't a tradition, as Plaintiffs seem to imply,[41] but Defendants

40. Although Plaintiffs' brief was organized such that this response wasn't directed at the Tennessee statute, the Court finds it more sensible to include Tennessee in this part of the discussion. To artificially separate similar laws and then attack a subset as not sufficiently widespread isn't a logical way to approach the argument.

41. Regarding what's a widespread tradition versus just a few outliers, Plaintiffs don't do much to actually apply the reasoning in *Bruen* to the facts in this case, but the Court can certainly imagine some relevant factors that might have been helpful to this analysis, such as the geographic regions represented by the state regulations

have failed to meet their burden under the facts of this case. With that, there's no need to discuss the so-called "traveler exception" in the context of Ms. Foxx's motion for summary judgment.

### d. Railroads

State Defendants present restrictions by railroad companies across the country in the late 19th century.[42] Some of these restrictions merely required that passengers keep their firearms unloaded and in their bags, while others barred firearms completely. Plaintiffs respond that these railroad companies were private entities and so the restrictions aren't relevant under *Bruen*, that the

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or the impact of migration patterns on cultural norms. One might even consider when the particular states joined the Union, although the emphasis on Founding-era statutes may already take that into account by proxy, as it consequently puts more focus, to some extent, on the original thirteen states. *Bruen*'s discussion of sensitive places and the lack of historical evidence suggests that there are times when only two or three regulations might be sufficient, but it's unclear if *Bruen* meant for that logic to apply beyond the "sensitive places" inquiry (nor does Ms. Foxx argue this as a reason for construing only a few state statutes as a widespread tradition).

42. They argue that these railroad restrictions are a continuation of the tradition of regulating public forums and crowded places, as established by the Statute of Northampton and similar state statutes. However, as explained above, the tradition of regulation established by that line of statutes addressed public carry for the purpose of terrorizing others. So if the railroad restrictions are a continuation of this tradition, then they also cannot be an appropriate analogue for this case. But the railroad restrictions don't have the same wording about inflicting terror, so the Court treats these as a separate source for a potential analogue.

restrictions aren't old enough, and that the restrictions aren't sufficiently widespread.

The Court agrees that the private nature of these restrictions defeats State Defendants' attempt to show a national tradition that would support the Concealed Carry Act's prohibition. The Second Amendment protects against governmental—not private—intrusion on rights and liberties. *See Rahimi*, 144 S. Ct. at 1897.[43]

**2. Sensitive places**

Defendants also levy arguments under *Bruen*'s directive that analogies to "sensitive places" can establish whether laws are constitutionally permissible. The discussion of sensitive places starts with this language in *Heller*:

> Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion

43. The Court sees the opening that State Defendants have identified. *Heller* and *Bruen* both included the assurance that schools could still constitutionally restrict firearms as sensitive places, considering that there were no public schools at the Founding. However, it's above this Court's pay grade to infer from the Supreme Court's silence that private restrictions alone can establish a historical tradition of regulation. Neither *Heller* nor *Bruen* explained why restrictions in schools are constitutional. *See Heller*, 554 U.S. at 626-27; *Bruen*, 597 U.S. at 30. The Court has enough trouble applying what the Supreme Court did say in *Heller* and *Bruen*; it's loath to attempt to apply the Supreme Court's silence. What's more, it certainly can't infer the Supreme Court's silence in favor of Defendants when they bear the burden.

> should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

*Heller*, 554 U.S. at 626-27. *Heller* also added in a footnote: "We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive." *Id.* at 627 n.26. *Bruen* then turned this unremarkable use of the word "sensitive" into its own vehicle of analogical reasoning:

> Consider, for example, *Heller*'s discussion of "longstanding" "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." 554 U. S. at 626. Although the historical record yields relatively few 18th-and 19th-century "sensitive places" where weapons were altogether prohibited—*e.g.*, legislative assemblies, polling places, and courthouses—we are also aware of no disputes regarding the lawfulness of such prohibitions. See D. Kopel & J. Greenlee, The "Sensitive Places" Doctrine, 13 Charleston L. Rev. 205, 229-236, 244-247 (2018); see also Brief for Independent Institute as *Amicus Curiae* 11-17. We therefore can assume it settled that these locations were "sensitive places" where arms carrying could be prohibited consistent

> with the Second Amendment. And courts can use analogies to those historical regulations of "sensitive places" to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible.

*Bruen*, 597 U.S. at 30. This Court views the "sensitive places" doctrine as but one method for demonstrating a historical analogue. Earlier, the Court analyzed the parties' arguments regarding whether a historical tradition existed and whether the historical regulations part of that tradition were analogous to the Firearm Concealed Carry Act's ban today. The "sensitive places" doctrine merely provides a shortcut for the former because the Supreme Court has stated there to be a longstanding tradition of prohibiting firearms in sensitive places.[44]

*Bruen* offers no insight as to what common thread might tie these sensitive places together, assuming a common thread is needed among these to support an analogy. *See, e.g., Bruen*, 597 U.S. at 114 (Breyer, J., dissenting) (noting the ambiguity and wondering where "the many locations in a modern city with no obvious 18th- or 19th-century analogue" such as "subways, nightclubs,

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44. Some courts have characterized it as an exception to the general *Bruen* framework. *See, e.g., Wolford*, 686 F. Supp. 3d at 1049. Courts often refer to different analyses as "exceptions" even though they really aren't. *See In re Deere*, 703 F. Supp. 3d 862, 2023 U.S. Dist. LEXIS 210516, at *32 n.12 (citing *Paper Sys. v. Nippon Paper Indus. Co.*, 281 F.3d 629, 632 (7th Cir. 2002)). This Court might disagree on the label, but the approach is still substantively the same.

movie theaters, and sports stadiums" fall); *see also, e.g.*, *Heller*, 554 U.S. at 721 (Breyer, J., dissenting) ("Why these?"). Courts are left to guess if the location is sensitive because of what occurs at the location, who is present at the location, how many people are present at the location, or some other consideration. The only hint that *Bruen* provides is that Manhattan is *not* a "sensitive place":

> Although we have no occasion to comprehensively define "sensitive places" in this case, we do think respondents err in their attempt to characterize New York's proper-cause requirement as a "sensitive-place" law. In their view, "sensitive places" where the government may lawfully disarm law-abiding citizens include all "places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available." Brief for Respondents 34. It is true that people sometimes congregate in "sensitive places," and it is likewise true that law enforcement professionals are usually presumptively available in those locations. But expanding the category of "sensitive places" simply to all places of public congregation that are not isolated from law enforcement defines the category of "sensitive places" far too broadly. Respondents' argument would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense that we discuss in detail below. See Part III-B, *infra*. Put simply,

> there is no historical basis for New York to effectively declare the island of Manhattan a "sensitive place" simply because it is crowded and protected generally by the New York City Police Department.

*Bruen*, 597 U.S. at 30-31.

The task before this Court is to decipher whether public transit can be analogous to schools or government buildings (including legislative assemblies, polling places, and courthouses), or to some other sensitive place if Defendants are able to identify one.[45] The Court found

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45. Plaintiffs insist that *Bruen* didn't endorse "government buildings" generally or "schools" as sensitive places, but that is based on a strained reading of *Bruen*'s language. *See also Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring) (quoting *Heller* to emphasize that "[p]roperly interpreted, the Second Amendment allows a 'variety' of gun regulations"). Other district courts also disagree with Plaintiffs, either implicitly by analogizing to schools or explicitly rejecting the argument. *E.g., Kipke*, 695 F. Supp. 3d at 650; *United States v. Robertson*, No. 22-po-867-GLS, 2023 U.S. Dist. LEXIS 4998, at *12-13 (D. Md. Jan. 9, 2023); *Md. Shall Issue, Inc. v. Montgomery County*, 680 F. Supp. 3d 567, 584 (D. Md. 2023), *appeal docketed*, No. 23-1719, 2024 U.S. App. LEXIS 4132 (4th Cir. Feb. 22, 2024); *Springer v. Grisham*, F. Supp. 3d , No. 1:23-cv-00781 KWR/LF, 704 F. Supp. 3d 1206, 2023 U.S. Dist. LEXIS 217447, at *23-24 (D.N.M. Dec. 5, 2023), *appeal docketed*, No. 23-2194 (10th Cir. Mar. 25, 2024). Only one district court takes such a narrow reading of *Bruen*, arguing that *Bruen*'s "these locations" refers only to legislative assemblies, polling places, and courthouses based on the grammatical rule that pronouns "generally" refer back to the nearest antecedent. *Ayala*, 711 F. Supp. 3d 1333, 2024 U.S. Dist. LEXIS 7326, at *36. But that logic breaks down in *Bruen*'s next sentence. *Bruen* instructs courts

only a handful of other courts that have considered the issue of how to analogize to the established "sensitive places" (and none that have explicitly extended the list of sensitive places). For example, some courts concluded that playgrounds and other adjoining school grounds are analogous to schools—a seemingly straightforward analysis. *Siegel v. Platkin*, 653 F. Supp. 3d 136, 151 (D.N.J. 2023);[46] *Kipke*, 695 F. Supp. 3d at 650; *Kipke*, 2024 U.S. Dist. LEXIS 137003, at *15-16; *Springer*, 704 F. Supp. 3d 1206, 2023 U.S. Dist. LEXIS 217447, at *23-24; *We The Patriots, Inc. v. Grisham*, 697 F. Supp. 3d 1222, 1237 (D.N.M. 2023), *appeal docketed*, No. 23-2166 (10th Cir. Mar. 11, 2024). In a similar vein, childcare facilities have also been deemed "sensitive." *Md. Shall Issue*, 680 F. Supp. 3d at 584.[47]

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to analogize to "those historical regulations of 'sensitive places'"—and "those" modifies "regulations" not "sensitive places," so it refers back to "such prohibitions," which in turn refers back to the "longstanding" laws discussed by *Heller*. *See Bruen*, 597 U.S. at 30 (quoting *Heller*, 554 U.S. at 626). This is a convoluted and pedantic way of saying that the Court finds it appropriate to analogize to government buildings and schools.

46. In a subsequent ruling (that is on appeal), the court maintained its position regarding school playgrounds. *Koons*, 673 F. Supp. 3d at 639.

47. The use of a public space for educating children may be seen as analogous to schools, even if the space isn't exclusively for children. *Lafave v. County of Fairfax*, No. 1:23-cv-1605 (WBP), 2024 U.S. Dist. LEXIS 152000, at *37-38 (E.D. Va. Aug. 23, 2024) (finding Fairfax County's parks to be sensitive places because children attend summer camps at the parks and the county operates three preschools there). But merely having children or students present isn't enough—one court reasonably declined to declare the New York

Courts have also considered whether buffer zones (e.g., a 1000-foot radius) around sensitive places are susceptible of the same treatment as the sensitive places themselves. One court found so. *United States v. Walter*, No. 3:20-cr-0039, 2023 U.S. Dist. LEXIS 69163, at *21-23 (D.V.I. Apr. 20, 2023). Another found the opposite, because the buffer zone around a school zone contained non-school property. *United States v. Allam*, 677 F. Supp. 3d 545, 560-62 (E.D. Tex. 2023). Yet another court specified that only the public locations within a buffer zone were sensitive and that private property within a buffer zone wasn't a sensitive location. *United States v. Metcalf*, No. CR 23-103-BLG-SPW, 2024 U.S. Dist. LEXIS 17275, at *21-23 (D. Mont. Jan. 31, 2024).

Defendants in this case offer various theories as to what makes a place "sensitive." The Court finds none of them convincing.

**a. Publicly owned or operated, publicly accessible, and crowded**

State Defendants argue that modern public transit systems are sensitive places because they are crowded spaces that are publicly accessible and publicly owned or operated.[48] Based on *Bruen*'s admonition that Manhattan

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subway system a sensitive place "just by virtue of its connection with the school system." *Frey v. Nigrelli*, 661 F. Supp. 3d 176, 206-07 (S.D.N.Y. 2023), *appeal docketed*, No. 23-365 (2d Cir. Jan. 10, 2024).

48. The Court found no examples of this precise combination of factors considered by other courts—the closest was courts that

isn't a sensitive place just because it is crowded and generally protected by law enforcement, crowdedness

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have decided how broadly to construe "government buildings." Some courts have taken "government buildings" to mean any building owned by the government, rejecting the notion that there must be some kind of core government function associated with the building. *Kipke*, 695 F. Supp. 3d at 655-56 (analogizing mass transit facilities to both schools and government buildings); *Kipke*, 2024 U.S. Dist. LEXIS 137003, at *15-16; *Md. Shall Issue*, 680 F. Supp. 3d at 588 (finding public libraries to be sensitive places); *We The Patriots*, 697 F. Supp. 3d 1222, 2023 U.S. Dist. LEXIS 183043, at *31-32; *Robertson*, 2023 U.S. Dist. LEXIS 4998, at *12-14, 19-22 (finding the National Institutes of Health to be a sensitive place); *United States v. Power*, No. 20-po-331-GLS, 2023 U.S. Dist. LEXIS 4226, at *9-16, 19-21 (D. Md. Jan. 9, 2023) (same); *United States v. Marique*, No. 22-00467-PJM, 2023 U.S. Dist. LEXIS 145677, at *12-14 (D. Md. Aug. 17, 2023), *appeal docketed*, No. 23-4576 (4th Cir. Oct. 23, 2023) (same); *United States v. Tallion*, No. 8:22-po-01758-AAQ, 2022 U.S. Dist. LEXIS 225175, at *20-22, 25 (D. Md. Dec. 12, 2022) (same). Other courts have taken a narrower approach. *Ayala*, 711 F. Supp. 3d 1333, 2024 U.S. Dist. LEXIS 7326, at *36 (finding that post offices aren't "government buildings" under *Bruen*); *United States v. Gearheart*, No. 6:23-po-00079-HBK-1, 2024 U.S. Dist. LEXIS 71033, at *27-28 (E.D. Cal. Apr. 18, 2024) (declining to find Yosemite National Park in its entirety to be a sensitive place, with the caveat that specific buildings in the park might be sensitive places); *United States v. Tolmosoff*, No. 6:23-po-00187-HBK-1, 2024 U.S. Dist. LEXIS 66920, at *26-27 (E.D. Cal. Apr. 11, 2024) (same). Absent further guidance, this Court is disinclined to construe "government buildings" so broadly because the examples of government buildings provided by *Bruen* all bear some relation to the processes of our democratic government, though the Court would also not go as far as to reject post offices as government buildings. Even if it were to construe "government buildings" broadly, that still wouldn't fully support State Defendants' theory, as they construe "buildings" even more broadly so as to include public transportation vehicles.

alone is insufficient to qualify a location as sensitive. State Defendants' theory adds two more conditions—so it's not directly contrary to *Bruen*'s rejection of crowded and generally protected places—but those two added conditions still "would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense." *Bruen*, 597 U.S. at 31. After all, the streets of Manhattan—or Chicago, to pick an example closer to home—are crowded, publicly accessible, and publicly owned. State Defendants contend that "only a small slice of modern cities would be sensitive" under their test, Dkt. 94 at 15, but they don't explain how the additional two conditions would exclude most modern cities.

**b. Regulation of historical sensitive places**

State Defendants also compare the Firearm Concealed Carry Act's ban to historical regulation of legislative assemblies and polling places.[49] But this argument fails on account of the purposes of the regulations. State Defendants ask the Court to find the regulations to be relevantly similar because of the shared purpose of protecting the public order, but treating any place where the government would want to protect public order and safety as a sensitive place casts too wide a net—this would seem to justify almost any gun restriction.

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49. This mode of analysis is more akin to the analysis comparing the Firearm Concealed Carry Act's ban to various historical regulations, but State Defendants frame it as part of their "sensitive places" argument.

**c. Enclosed, moving vehicles with no escape**

Ms. Foxx doesn't offer a comprehensive theory for defining "sensitive places," but she argues that public transit (specifically the trains and buses) are sensitive places because they are enclosed, moving vehicles with no escape. But Ms. Foxx neither analogizes to the enumerated sensitive places nor provides any evidence to support the creation of a new "sensitive place" category, so this argument fails.

**3. Plaintiffs' arguments**

As stated, because Defendants bear the burden to justify the ban as consistent with the American tradition of firearm regulation, Plaintiffs don't need to independently prove that the ban is inconsistent with the American tradition. But, for the sake of developing a full record, the Court addresses Plaintiffs' arguments. Plaintiffs' arguments are based on the faulty premise that by simply citing colonial statutes regarding firearm possession, without considering the historical context, these statutes alone foreclose any firearm regulation today. But that's not what *Bruen* requires.

**a. "Public transportation"**

Plaintiffs argue that the lack of firearm regulation for "public transportation" at the Founding renders the Firearm Concealed Carry Act's ban necessarily unconstitutional. Plaintiffs detail two types of transportation that they

allege are analogous: stagecoaches (including horse-drawn omnibuses) and ferries. But even if such transportation at the Founding was "public,"[50] that isn't an independent basis upon which to grant Plaintiffs summary judgment. As explained, *Bruen* doesn't say that a lack of regulation in a place or situation that happens to fit some modern label is dispositive. *Cf. Antonyuk*, 89 F.4th at 301-02 ("[T]he absence of a distinctly similar historical regulation in the presented record, though undoubtedly relevant, can only prove so much."). Instead, in contemplating how a lack of regulation might be relevant, *Bruen* offers few suggestions of what might show that a challenged regulation is inconsistent with the Second Amendment. The only one potentially applicable to the record before the Court—and the only one that the parties argue—is to examine if the challenged regulation "addresses a general societal problem that has persisted since the 18th century" and there is no "distinctly similar" historical regulation. *Bruen*, 597 U.S. at 26-27.

For the societal problem that the Firearm Concealed Carry Act addresses, State Defendants assert that the goal of the statute is to protect public order and safety from the dangers posed by concealed carry, which Plaintiffs don't challenge. In support of this assertion, State Defendants cite the statute's language that a concealed-carry permit

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50. Plaintiffs discuss stagecoaches, but their evidence doesn't support the notion that stagecoach services were provided by public entities. *See also, e.g.*, Dkt. 72 Ex. 2 at 182 (discussing a waterman's displeasure after the introduction of "private coaches"). In addition, State Defendants, relying on their experts' reports, disputed whether ferries were actually publicly operated. *See* Dkt. 83 at 9 ¶¶ 47-49.

is issued only to an individual who "does not pose a danger to himself, herself, or others, or a threat to public safety." 430 ILCS 66/10(a)(4). The source of danger (i.e., the societal problem) that the modern law addresses is the risk posed by the person with the firearm. By contrast, the lack of firearm restrictions for stagecoaches and ferries (and, indeed, sometimes the explicit permission to carry firearms) was tied to a different societal problem: dangers from the outside, such as wildlife. Dkt. 83 at 8 ¶ 45. Thus, the evidence about stagecoaches and ferries, as presented, isn't probative.[51] In other words, the *why* is not sufficiently similar to foreclose the possibility of Defendants putting forth a relevantly similar regulation to justify the ban.

**b. Places that required firearms**

Plaintiffs also argue that there is no way to show a tradition of restricting firearms in crowded locations because of statutes that *required* people to bear arms at places of worship and public meetings.[52] However,

51. In their reply brief, Plaintiffs try to go the opposite direction, starting with the motivation of the historical statutes and arguing that similar, external dangers on public transportation necessarily permits them to carry guns today. But this argument is logically flawed because it again ignores the different social contexts and different regulatory justifications in its attempt to draw an equivalence between "public transit" then and "public transit" now. In addition, "[a]rguments raised for the first time in a reply brief are waived." *James*, 137 F.3d at 1008.

52. 19 *The Colonial Records of the State of Georgia*, pt. 1, at 137-39 (Allen D. Candler ed., 1911) (1770 law); *Archives of Maryland: Proceedings of the Council of Maryland 1636-1667*, at 103 (William

Plaintiffs fail to logically connect the existence of those statutes to the proposition that there can *never* be a restriction of a firearm on public transit.

Plaintiffs also cite 17th century colonial laws—from Massachusetts, Maryland, Virginia, and Rhode Island[53]—requiring that arms be borne when traveling more than one mile (Massachusetts), two miles (Rhode Island), "any considerable distance" (Maryland), or "abroad" (Virginia). But Plaintiffs treat these laws as if they're "trapped in amber." *Rahimi*, 144 S. Ct. at 1897-98. Just as "public transit" then isn't necessarily equivalent to "public transit" now, requiring firearms on a two-mile trip in the

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Hand Browne ed., Baltimore, Maryland Historical Society 1885); 1 *The Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of the Legislature in the Year 1619*, at 174, 263 (William Waller Hening ed., New York, R. & W. & G. Bartow 1823) (1631 and 1642 laws); *The Public Records of the Colony of Connecticut* 95 (J. Hammond Trumbull ed., Hartford, Brown & Parsons 1850); 1 *Records of the Colony of Rhode Island and Providence Plantations* 94 (John Russell Bartlett ed., Providence, A. Crawford Greene and Brother 1856) (1639 law). Two notes about this list of statutes: first, Plaintiffs cited one more law from Virginia that allegedly required men to bear arms at church, but the Court was unable to find it in Plaintiffs' cited material; second, Plaintiffs included Massachusetts in their list of states that required going armed to public meetings, but they cited no Massachusetts statute.

53. 1 *Records of the Governor and Company of the Massachusetts Bay in New England* 190 (Nathaniel B. Shurtleff ed., Boston, William White 1853) (1636 law); *Archives of Maryland, supra* , at 103 (1642 law); 1 *The Statutes at Large, supra*, at 127 (1631 Virginia law); 1 *Records of the Colony of Rhode Island and Providence Plantations, supra*, at 94 (1639 law).

17th century doesn't necessarily mean one has the same right today. Plaintiffs fail to contend with the different context of such trips when the laws were enacted.

### c. Sensitive places

As for their theory of "sensitive places," Plaintiffs argue that the key characteristic shared by legislative assemblies, polling places, and courthouses is the security provided by the government at these locations. In support, Plaintiffs cite a few sources. First, they cite David B. Kopel & Joseph G.S. Greenlee, *The "Sensitive Places" Doctrine: Locational Limits on the Right to Bear Arms*, 13 Charleston L. Rev. 205 (2018), specifically where authors argue that the presence of security indicates the government's assessment of whether that location is sensitive.[54] Next, Plaintiffs cite two amicus briefs—one before the Second Circuit and one before the Third Circuit—both of which rely on Mr. Kopel and Mr. Greenlee's argument that sensitive places were about protecting government deliberation from violent interference. Although the Third Circuit has yet to decide

54. Although *Bruen* cited Mr. Kopel and Mr. Greenlee's article, it did so for only the narrow proposition that legislative assemblies, polling places, and courthouses are examples of sensitive places from the 18th and 19th centuries. *See Bruen*, 597 U.S. at 30. This Court doesn't see this as a wholesale endorsement of Mr. Kopel and Mr. Greenlee's theories for what makes a place sensitive, especially as *Bruen* disclaimed that it wasn't defining "sensitive places." To be clear, the Court is not discrediting (or crediting) Mr. Kopel and Mr. Greenlee's conclusions. The Court seeks to differentiate between academic research and legal precedent only as it pertains to what is binding on this Court.

its case, the Second Circuit didn't adopt the argument from the amicus brief. *See Antonyuk*, 89 F.4th 271.[55]

The Court found only two courts that have addressed this question head-on. In the case now on appeal before the Third Circuit, the district court, relying solely on the arguments in Kopel and Greenlee's article, agreed with Plaintiffs' "security" theory. *Koons*, 673 F. Supp. 3d at 635. Another court unhesitatingly rejected the theory, calling it "baseless," but it offered little explanation. *Kipke*, 695 F. Supp. 3d at 650. *Bruen*'s only discussion of a location's security in relation to its status as a sensitive place was its rejection of Manhattan as a sensitive place even though it is crowded and has general protection provided by the city. *Bruen*, 597 U.S. at 30-31. Based on that, general protection alone should also be insufficient.

Plaintiffs' theory, however, differs in its formulation: they argue that a sensitive place must have "comprehensive" security, a presumably higher level of security that doesn't run afoul of *Bruen*'s rejection of Manhattan as a sensitive place. According to Plaintiffs, the closest modern equivalent to the "comprehensive" security at the Founding are the armed guards and metal detectors found at courthouses and airports.[56] There are at least

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55. Although the statute in that case had its own list of "sensitive places," *Antonyuk* didn't frame its analysis with reference to "sensitive places" as the term is used by *Bruen*.

56. If the Court accepted Plaintiffs' theory, that would also doom Plaintiffs' facial challenge—Plaintiffs acknowledge in their reply brief that "[i]f Illinois were to install TSA-like security for its

two reasons why this makes little sense. First, that only courthouses and airports have modern security measures that meet Plaintiffs' definition of "comprehensive" doesn't explain why prohibitions at polling places and legislative assemblies are permissible. Polling places and legislative assemblies lack such security, but the Supreme Court has nevertheless deemed them to be sensitive places. Second, Plaintiffs fail to establish why "comprehensive" security is the right threshold. Their examples from the Founding era consist of laws that required and/or paid law enforcement to be present at legislatures, courthouses, and polling places, and Plaintiffs offer no explanation for how or why that translates to metal detectors in today's social context. *See United States v. Berkowitz*, 927 F.2d 1376, 1384 (7th Cir. 1991) ("We repeatedly have made clear that perfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are waived . . . .").

## CONCLUSION

This action has been properly brought before this Court—despite the disputes over venue and standing, the parties can't escape the Court. The parties also can't escape that this case requires navigating the murky waters of *Bruen*. Plaintiffs' proposed conduct—carrying concealed handguns on public transit for self-defense—falls within the presumptive ambit of the Second Amendment, shifting the burden to Defendants

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subways, buses, or trains, then it could constitutionally ban firearms at those locations." Dkt. 92 at 8 n.2.

to show that the Firearm Concealed Carry Act's ban falls within the historical tradition of firearm regulation in this country. On the record before the Court in this case, Defendants have failed to meet their burden.

As for injunctive relief, Plaintiffs have made no argument regarding why they're entitled to injunctive relief. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006). Because they've forfeited the argument, they haven't established their entitlement to an injunction.

The claims against Rick Amato and Eric Rinehart are dismissed without prejudice for lack of subject-matter jurisdiction. Rick Amato and Eric Rinehart are terminated from the case. The remaining State Defendants' motion for summary judgment is denied. Kimberly Foxx's motion for summary judgment is denied.

Plaintiffs' motion for summary judgment is granted in part. The Court grants declaratory relief against Kwame Raoul, Kimberly Foxx, and Robert Berlin, in their official capacities, that the Firearm Concealed Carry Act's ban on carrying concealed firearms on public transportation, as defined in the statute, 430 ILCS 66/65(a)(8), violates the Second Amendment, as applied to:

- Benjamin Schoenthal carrying a concealed firearm for self-defense on Metra, and on Metra's real property to the extent necessary to ride Metra.

*Appendix B*

The Court grants declaratory relief against Kwame Raoul and Kimberly Foxx, in their official capacities, that the Firearm Concealed Carry Act's ban on carrying concealed firearms on public transportation, as defined in the statute, 430 ILCS 66/65(a)(8), violates the Second Amendment, as applied to:

- Mark Wroblewski carrying a concealed firearm for self-defense on Metra, and on Metra's real property to the extent necessary to ride Metra;

- Joseph Vesel carrying a concealed firearm for self-defense on Metra and the CTA, and on Metra and the CTA's real property to the extent necessary to ride Metra and the CTA; and

- Douglas Winston carrying a concealed firearm for self-defense on Metra and the CTA, and on Metra and the CTA's real property to the extent necessary to ride Metra and the CTA.

Date: August 30, 2024

/s/ Iain D. Johnston
HON. IAIN D. JOHNSTON
*United States District Judge*

## APPENDIX C — CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

### U.S. Const. amend. II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

*Appendix C*

**U.S. Const. amend. XIV, § 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Appendix C*

**430 ILCS 66/65**

Sec. 65. Prohibited areas.

(a) A licensee under this Act shall not knowingly carry a firearm on or into:

(1) Any building, real property, and parking area under the control of a public or private elementary or secondary school.

(2) Any building, real property, and parking area under the control of a pre-school or child care facility, including any room or portion of a building under the control of a pre-school or child care facility. Nothing in this paragraph shall prevent the operator of a child care facility in a family home from owning or possessing a firearm in the home or license under this Act, if no child under child care at the home is present in the home or the firearm in the home is stored in a locked container when a child under child care at the home is present in the home.

(3) Any building, parking area, or portion of a building under the control of an officer of the executive or legislative branch of government, provided that nothing in this paragraph shall prohibit a licensee from carrying a concealed firearm onto the real property, bikeway, or trail in a park regulated by the Department of Natural Resources or any other designated public hunting area or building where firearm possession is permitted as established by the Department of Natural Resources under Section 1.8 of the Wildlife Code.

(4) Any building designated for matters before a circuit court, appellate court, or the Supreme Court, or any building or portion of a building under the control of the Supreme Court.

(5) Any building or portion of a building under the control of a unit of local government.

(6) Any building, real property, and parking area under the control of an adult or juvenile detention or correctional institution, prison, or jail.

(7) Any building, real property, and parking area under the control of a public or private hospital or hospital affiliate, mental health facility, or nursing home.

(8) Any bus, train, or form of transportation paid for in whole or in part with public funds, and any building, real property, and parking area under the control of a public transportation facility paid for in whole or in part with public funds.

(9) Any building, real property, and parking area under the control of an establishment that serves alcohol on its premises, if more than 50% of the establishment's gross receipts within the prior 3 months is from the sale of alcohol. The owner of an establishment who knowingly fails to prohibit concealed firearms on its premises as provided in this paragraph or who knowingly makes a false statement or record to avoid the prohibition on concealed firearms under this paragraph is subject to the penalty under subsection (c-5) of Section 10-1 of the Liquor Control Act of 1934.

(10) Any public gathering or special event conducted on property open to the public that requires the issuance of a permit from the unit of local government, provided this prohibition shall not apply to a licensee who must walk through a public gathering in order to access his or her residence, place of business, or vehicle.

(11) Any building or real property that has been issued a Special Event Retailer's license as defined in Section 1-3.17.1 of the Liquor Control Act during the time designated for the sale of alcohol by the Special Event Retailer's license, or a Special use permit license as defined in subsection (q) of Section 5-1 of the Liquor Control Act during the time designated for the sale of alcohol by the Special use permit license.

(12) Any public playground.

(13) Any public park, athletic area, or athletic facility under the control of a municipality or park district, provided nothing in this Section shall prohibit a licensee from carrying a concealed firearm while on a trail or bikeway if only a portion of the trail or bikeway includes a public park.

(14) Any real property under the control of the Cook County Forest Preserve District.

(15) Any building, classroom, laboratory, medical clinic, hospital, artistic venue, athletic venue, entertainment venue, officially recognized university-related organization property, whether owned or leased, and any real property, including parking areas, sidewalks, and common areas

under the control of a public or private community college, college, or university.

(16) Any building, real property, or parking area under the control of a gaming facility licensed under the Illinois Gambling Act or the Illinois Horse Racing Act of 1975, including an inter-track wagering location licensee.

(17) Any stadium, arena, or the real property or parking area under the control of a stadium, arena, or any collegiate or professional sporting event.

(18) Any building, real property, or parking area under the control of a public library.

(19) Any building, real property, or parking area under the control of an airport.

(20) Any building, real property, or parking area under the control of an amusement park.

(21) Any building, real property, or parking area under the control of a zoo or museum.

(22) Any street, driveway, parking area, property, building, or facility, owned, leased, controlled, or used by a nuclear energy, storage, weapons, or development site or facility regulated by the federal Nuclear Regulatory Commission. The licensee shall not under any circumstance store a firearm or ammunition in his or her vehicle or in a compartment or container within a vehicle located anywhere in or on the street, driveway,

parking area, property, building, or facility described in this paragraph.

(23) Any area where firearms are prohibited under federal law.

(a-5) Nothing in this Act shall prohibit a public or private community college, college, or university from:

(1) prohibiting persons from carrying a firearm within a vehicle owned, leased, or controlled by the college or university;

(2) developing resolutions, regulations, or policies regarding student, employee, or visitor misconduct and discipline, including suspension and expulsion;

(3) developing resolutions, regulations, or policies regarding the storage or maintenance of firearms, which must include designated areas where persons can park vehicles that carry firearms; and

(4) permitting the carrying or use of firearms for the purpose of instruction and curriculum of officially recognized programs, including but not limited to military science and law enforcement training programs, or in any designated area used for hunting purposes or target shooting.

(a-10) The owner of private real property of any type may prohibit the carrying of concealed firearms on the property under his or her control. The owner must post

a sign in accordance with subsection (d) of this Section indicating that firearms are prohibited on the property, unless the property is a private residence.

(b) Notwithstanding subsections (a), (a-5), and (a-10) of this Section except under paragraph (22) or (23) of subsection (a), any licensee prohibited from carrying a concealed firearm into the parking area of a prohibited location specified in subsection (a), (a-5), or (a-10) of this Section shall be permitted to carry a concealed firearm on or about his or her person within a vehicle into the parking area and may store a firearm or ammunition concealed in a case within a locked vehicle or locked container out of plain view within the vehicle in the parking area. A licensee may carry a concealed firearm in the immediate area surrounding his or her vehicle within a prohibited parking lot area only for the limited purpose of storing or retrieving a firearm within the vehicle's trunk. For purposes of this subsection, "case" includes a glove compartment or console that completely encloses the concealed firearm or ammunition, the trunk of the vehicle, or a firearm carrying box, shipping box, or other container.

(c) A licensee shall not be in violation of this Section while he or she is traveling along a public right of way that touches or crosses any of the premises under subsection (a), (a-5), or (a-10) of this Section if the concealed firearm is carried on his or her person in accordance with the provisions of this Act or is being transported in a vehicle by the licensee in accordance with all other applicable provisions of law.

(d) Signs stating that the carrying of firearms is prohibited shall be clearly and conspicuously posted at the entrance of a building, premises, or real property specified in this Section as a prohibited area, unless the building or premises is a private residence. Signs shall be of a uniform design as established by the Illinois State Police and shall be 4 inches by 6 inches in size. The Illinois State Police shall adopt rules for standardized signs to be used under this subsection.