No. 25-541

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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

This case implicates one of the central questions of post-*Bruen* Second Amendment litigation: the scope of the so-called "sensitive places" doctrine. Although this Court has referenced the "sensitive places" doctrine in three of its cases interpreting the Second Amendment, *see District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010); *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 30 (2022), and in *Bruen* this Court rejected the argument that the doctrine could be extended to cover "the island of Manhattan" in its entirety, 597 U.S. at 31, this Court has not had the occasion to discuss these historical restrictions in the context of a modern ban on carrying firearms in a specific location. Now is the time to do so. As states have been forced to respect the right to carry in public following *Bruen*, laws like the one at issue here have exploded in popularity. *See* Pet. 8. And this case is an excellent vehicle for providing much needed and timely guidance to the courts below as it presents a single restriction as a lens through which to view the historical record and the Second Amendment's protections.

ARGUMENT

Illinois urges denial because the lower courts have not split over the constitutionality of firearm carry restrictions on public transportation. *See* Brief in Opposition for Respondents Kwame Raoul and Robert Berlin at 8 ("IL BIO"). Indeed, since Petitioners filed the petition, the Fourth Circuit has also upheld a ban on carrying firearms on public transit. *See Kipke v. Moore*, 165 F.4th 194, 208–10

(4th Cir. 2026). Although the Ninth Circuit in *Wolford v. Lopez* struck down a transit ban, it did so because the law made even transporting a locked and unloaded firearm via public transit impossible, effectively banned carrying *off* of public transit as well. 116 F.4th 959, 1002 (9th Cir. 2024), *cert. granted on other grounds*, 146 S. Ct. 79 (2024). In other words, anyone taking the bus from point A to point B had to be disarmed on the bus and at his departure and destination points, no matter how clearly "nonsensitive" they might be. But the *Wolford* court suggested that a system like Illinois', which the panel below concluded permits firearms to be transported but requires them to be nonfunctional while riding, *see* Pet.App.38a, "almost certainly would be constitutionally permissible," *Wolford*, 116 F.4th at 1002. But the uniformity in result is all the more reason to grant the petition, as it is worse for *all* the lower courts to address an issue implicating a fundamental constitutional right to get it wrong than it is for some of them to do so.

The State has two primary rejoinders to this, neither is effective. First, it argues that the decision below was correct, as were the decisions of the other courts of appeals to weigh in on this issue. BIO 15. Second, it argues that because it presents only the constitutionality of a single locational restriction for review, this case is an inadequate "vehicle to address the law of sensitive places generally" and that this Court should permit additional percolation as the lower courts struggle with these issues. IL BIO 9, 13.

I.Illinois' primary contention is that the Seventh Circuit got this case right, and it argues that the historical record demonstrates, as the Seventh Circuit

concluded it does, that restrictions are permissible where they restrict firearms in "locations that 'serve[] the vulnerable population of children,' " IL BIO 16 (quoting Pet.App.41a–42a), on the government's own property, *id.*, and in "crowded and confined locations," IL BIO 16 (quoting Pet.App.29a).

A. The "vulnerable population" argument is directly contrary to the "principles underlying the Second Amendment." *United States v. Rahimi*, 602 U.S. 680, 692 (2024). As this Court explained in *Heller*, individual armed self-defense is "the *central component* of the right" protected by the Second Amendment. 554 U.S. at 599 (emphasis in original). Children and the elderly are indeed "vulnerable" for some purposes—they are more susceptible to many diseases, for instance, and less able to exert themselves physically. But *every population* is "vulnerable" where the threat is gunfire, and what makes "the vulnerable population of children" possibly unique in that regard is that they are unable to bear arms for their own protection. Disarming law-abiding adults only serves to put them in a similar position to children and enlarge the "vulnerable" segment of the population to include anyone who is unwilling to risk committing a felony. That makes even the non-arms-bearing population more vulnerable by depriving them of presence of armed citizens to deter the likelihood of armed criminal attack today, a relationship that exists as much today as at the Founding. *See* Pet. 17–18 (discussing laws requiring adults to bear arms at churches and public meetings).

Such a rule is entirely inconsistent with the Second Amendment's underlying principles. Illinois

responds that this objection "merely begs the question" because "this Court has instructed lower courts to look to history to determine those principles." IL BIO 21. But this Court already has defined the key principles underlying the right itself—which are founded on the basic, pre-existing right of self-defense. While this Court in *Heller*, *Bruen*, and *Rahimi* looked to historical restrictions to understand the principles underlying historically accepted forms of regulation, it did so while also respecting the principles underlying the right itself. *See Rahimi*, 602 U.S. at 691–92.

In any event, the "vulnerable population" argument is also historically unsupported and irrelevant to this case. As Petitioners have explained, the only restrictions on schools from around the Founding era placed limitations *on students* by virtue of the schools' *in loco parentis* authority over them. Pet. 26. Illinois responds by citing an 1870 Texas law that banned firearms among other places in "any school room or other place where persons are assembled for educational, literary or scientific purposes." 1870 Tex. Gen. Laws 63, 63, ch. 46, § 1. That law comes too late in time and is not "a well-established and representative historical analogue." *Bruen*, 597 U.S. at 30. Rather, it was adopted just after the ratification of the Fourteenth Amendment by a Texas legislature that had been readmitted to the Union for only a few months, *id.* at 36. And furthermore, it is irrelevant to a restriction on a public place like a bus station or a train. Illinois lampoons Petitioners' position as compelling the conclusion that "any adult not otherwise disqualified from public carry would have a constitutional right to bring a loaded, accessible handgun into a public

kindergarten," IL BIO 30, but an adult ordinarily has no right to be in a "public" kindergarten in the first place. As *Bruen* explained, historical analogues that "did not prohibit public carry in locations frequented by the general community," 597 U.S. at 56, are not valid analogues for laws that do. The State's and the panel's reliance on school regulations are beside the point when it comes to transit bans.

B. Illinois also briefly cites the fact that public transit is publicly owned as a justification for the ban. IL BIO 19. The Seventh Circuit also noted this was a "similarity between public transit" and "legislative assemblies, polling places and courthouses." Pet.App.42a. But there is *zero* evidence that those restrictions were based on public ownership or of any other historical bans that are based on public ownership, and Illinois does not develop this argument.

C. Illinois attempts to buttress the Seventh Circuit's "crowded" rationale, which was also embraced by the Second, Fourth, and Ninth Circuits with respect to at least some locational restrictions. *See* Pet. 20; *see also Kipke*, 165 F.4th at 218. But it is in irreconcilable conflict with *Bruen*'s statement that Manhattan could not be cast "as a 'sensitive place' simply because it is crowded." 597 U.S. at 31; Pet. 21. Illinois responds that while that might mean "crowdedness alone is not sufficient to render a place sensitive, [*Bruen*] did not hold that it is irrelevant to the analysis." IL BIO 22. But there is no meaningful distinction between "crowded" spaces and "crowded and confined spaces" that comports with the principles underlying the Second Amendment.

Moreover, there is no historical support for the "crowded" principle. It is notably not a feature of the courthouses, polling places, and legislatures that were treated as "sensitive" and secured at the Founding. In fact, the very sources on which the State relies support *Petitioner*'s argument that a locational restriction is only historically justified where it is accompanied by government provided security.

Illinois first points to the Statute of Northampton, which it argues forbade "going or riding armed by night or by day, in Fairs or Markets." 2 Edw., 3 c.3 (1328) (cleaned up); IL BIO 16–17. But as Petitioners have explained, that is the wrong part of the statute to focus on in a case like this one because the Statute did not forbid peaceable carriage in those places, but only carriage that caused "terror," in other words, carriage that actually disturbed the peace. *See* Pet. 16; *Bruen*, 597 U.S. at 45. Rather, the provision of the Statute of Northampton that speaks directly to this issue is the provision barring anyone other than the King's ministers "to come before the King's justices, or other of the King's ministers doing their office, with force and arms," which demonstrates that even 700 years ago, lawful carry was banned only where the government provided security. 2 Edw., c. 3; Pet. 17. Illinois calls this "reliance … misplaced" IL BIO 23, n.6 and while it acknowledges that the law exempted royal and judicial officers from the carry prohibition at issue, it argues that that statute does not do enough to demonstrate that the armed ministers of the king provided security, IL BIO 27. But that is a fairer inference from the text, which at least strongly suggests that the King's justices and ministers were accompanied by armed assistants or armed themselves while those around them were

disarmed (just as is the case today in courthouses) than Illinois' insistence that the language about "fairs and markets" effectuated a complete ban on carrying in crowded locations when both this Court and courts throughout our country's history have concluded that the language "was no obstacle to public carry for self-defense." *Bruen*, 597 U.S. at 45; *see also, e.g.*, *State v. Huntly*, 25 N.C. 418 (3 Ired. 418) (1843) (per curiam).

Illinois' criticism of Petitioners' reading of the Statute of Northampton demonstrates a deeper problem with its argument. Illinois argues Petitioners have insufficient support for their "comprehensive security" theory generally just as it suggests additional evidence would be needed to adopt Petitioners' reading of the Statute specifically, *see, e.g.*, IL BIO 26, but that reverses the burden imposed by this Court. Petitioners have advanced a "comprehensive security" theory of sensitive places because it fits the historical facts, as more and more evidence demonstrates. *See generally* Angus McClellan, *The Second Amendment, Sensitive Places, and Comprehensive Government Security (Notes)* (Feb. 5, 2026), https://perma.cc/3Z5E-95RH (compiling hundreds of sources from the Founding era that show "locational restrictions on the carrying of firearms were strictly limited to places where the government provided comprehensive security"). But this Court can reject that view of the case while simultaneously holding that the Seventh Circuit and other lower courts to adopt the "crowding" rationale have done the analysis wrong—it is the State's burden

to show arms can be banned *anywhere*, not Petitioners'.[1]

That said, much of Illinois' later support for a "crowding" principle *also* supports the comprehensive security principle better than it supports Illinois. Illinois' alleged analogues include a pair of New Orleans ordinances from 1817 and 1872 banning firearms in ballrooms and a New Mexico law from 1852 that banned firearms at any "ball or fandango." The New Mexico law charged the individual holding the "ball or fandango" "that he must maintain good order" and effectively deputized the host with the powers of a sheriff and required him to swear that "he will not permit any person to enter said Ball … with fire arms or other deadly weapons." 1852 N.M. Laws 67, 69, § 3. The 1817 version of the New Orleans ordinance required that "there will be a person appointed to receive and take care of [any weapon] which he shall carefully keep" until their owners leave the ball, GENERAL DIGEST OF THE ORDINANCES AND RESOLUTIONS OF THE CORPORATION OF NEW ORLEANS

[1] If the burden is properly positioned, Cook County's separate arguments, that Petitioners have waived reliance on the "comprehensive security" theory, *see* Br. in Opp'n of Eileen O'Neill Burke at 4, or failed to offer evidence that public trains and busses in Illinois are not secured against unlawful armed entry, *id.* at 5, are entirely irrelevant. It is up to Cook County to prove it bans firearms in places where they can be banned, not for Petitioner to show that they really do have the right to carry—that is presumed. In any event, Plaintiffs have advanced, and both decisions below considered, a security-based theory of this case from its inception. *See, e.g.*, Pet.App.23a. Cook County, on the other hand, did not make this waiver objection below. *See Freeman v. Pittsburgh Glass Works, LLC*, 709 F.3d 240, 250 (3d Cir. 2013) ("The doctrine of appellate waiver is not somehow exempt from itself.").

371 (1831), and the 1872 version, which expanded the places where firearms were prohibited, "authorized and required" the New Orleans police force "to examine all persons entering any of the places specified [for banning weapons], and to arrest and prefer the proper charge against all persons violating this ordinance," JEWELL'S DIGEST OF THE CITY ORDINANCES OF THE CITY OF NEW ORLEANS 1 (1882), https://perma.cc/846J-ZSPJ. In other words, these laws explicitly provided for some means to ensure that armed individuals actually could not enter. In arguing that the "how" and "why" of these laws can be generalized to "prohibit[ing] the possession of firearms in crowded, confined places" (an odd description of a ballroom) in response to a "heightened risk of violence," Illinois utterly fails to contend with this critical feature of these laws, which distinguish them from Illinois' which disarms the law-abiding while doing *nothing* to stop an individual bent on violence from carrying. In spite of the ban, there are still guns on public transit in Illinois. *See* Angelica Sanchez & Andy Koval, *2 men shot on CTA bus on Northwest Side*, WGN9 (Apr. 28, 2025), https://perma.cc/LD8Z-BSB3; *see also* David Struett, *Violent attacks surge on CTA as Trump threatens $50 million funding cut over transit crime*, CHI. SUN TIMES (Mar. 2, 2026), https://perma.cc/W7WL-JT52; Transcript of Oral Argument 68–70, *Bruen*, 597 U.S. 1 (2022) (No. 20-843).

II. Illinois' attempts to minimize the importance of this issue or criticize this case's utility as a vehicle to address it also fail. First, as discussed above, the question of whether the lower courts have been analyzing "sensitive place" laws correctly, and whether "crowding" or "vulnerable populations"

specifically are adequate justifications for locational restrictions, are among the most important outstanding questions respecting the Second Amendment's protections. Whether the Court is inclined affirmatively to adopt Petitioners' theory or not, assessing the validity of the Seventh Circuit's reasoning is a worthwhile use of this Court's docket. It is affirmatively *helpful* that this case presents a single, specific restriction, providing this Court with an opportunity to clarify the historically grounded bounds of the right and provide significant guidance to the lower courts without requiring it to "comprehensively define 'sensitive places' in this case" any more than in *Bruen*. 597 U.S. at 30. For the same reason, Illinois' argument in favor of greater percolation, *see* IL BIO 14, misses the mark. A grant would not stop the lower courts from considering other locational restrictions. It would provide them and the government parties enacting such restrictions with much needed guidance that could inform better opinions and better legislation. *Compare* CC BIO 16 ("[P]arks cannot be considered sensitive places."), *with* 430 ILL. COMP. STAT. 66/65(a)(13) (2014) (banning carrying a firearm in "[a]ny public park, athletic area, or athletic facility under the control of a municipality or park district").

Illinois argues that the specific location at issue here and the form of the restriction it has enacted both undermine this case as a vehicle for working through general issues about locational restrictions. As to the first point, there are no "direct historical analogues" for transit bans. *Contra* IL BIO 11. The purported "analogues" are private railroad rules and restrictions on passengers. These rules, made by companies not bound by the Second Amendment, cannot possibly

help in deriving the historical meaning of the Second Amendment. *Cf. Rahimi*, 602 U.S. at 737–38 (Barrett, J., concurring). As to the second, that firearms can be transported in inoperable condition on public transit, but not carried there for self-defense, makes this case a *better* vehicle for discussing locational restrictions. If, as in *Wolford*, firearms were banned on the bus, this Court could hold the ban unconstitutional because it amounts to a ban *off* the bus as well. But this case neatly presents the question, can a state ban a firearm on a bus? It does not matter that the firearm is physically on the bus if it is rendered inoperable; that still "makes it impossible for citizens to use them for the core lawful purpose of self-defense." *Heller*, 554 U.S. at 630.

Finally, none of the other vehicle objections have merit. Most notably, Illinois states that Cook County "has consistently argued that petitioners lack standing because they failed to challenge other rules that independently restrict their ability to carry firearms on public transit," IL BIO 11, but Illinois itself does not endorse that argument and Cook County, which spent pages on a spurious waiver argument, did not even bother to make that argument here. In any event, the Seventh Circuit rejected the argument. Pet.App.14a.

CONCLUSION

The Court should grant the petition.

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Respectfully submitted,

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