No. 25-541

In the
Supreme Court of the United States

BENJAMIN SCHOENTHAL, ET AL.,

Petitioners,

v.

KWAME RAOUL, ATTORNEY GENERAL OF ILLINOIS, ET AL.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF OF AMICI CURIAE SECOND AMENDMENT DEFENSE & EDUCATION COALITION, LTD., FEDERAL FIREARMS LICENSEES OF ILLINOIS, GUNS SAVE LIFE, CALIFORNIA RIFLE & PISTOL ASSOCIATION, AND SECOND AMENDMENT LAW CENTER IN SUPPORT OF PETITIONERS

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December 4, 2025

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AMICI CURIAE STATEMENT OF INTEREST[1]

The Second Amendment Defense and Education Coalition, Ltd. ("SADEC"), is an Illinois not-for-profit corporation. SADEC is dedicated to the defense of human and civil rights secured by law, including, in particular, the right to bear arms. SADEC's activities are furthered by the complementary programs of litigation and education.

Federal Firearms Licensees of Illinois ("FFL-IL") is an Illinois not-for-profit corporation that represents federally licensed gun dealers across the State of Illinois.

Guns Save Life ("GSL") is an Illinois not-for-profit corporation with many members throughout the state. GSL teaches and trains individuals in the use of firearms.

Amici SADEC, FFL-IL, and GSL have a direct interest in the questions presented here. Illinois has adopted one of the most expansive lists of so-called "sensitive places" in the country, including a sweeping ban on carrying firearms on public transportation, an essential means of travel for millions of Illinois residents. For the Illinois-based amici, these restrictions burden the day-to-day exercise of the right

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[1] No counsel for a party, nor any party, made a monetary contribution to fund this brief. No person other than the amicus parties, its members or counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Amici notified counsel for the parties that this brief would be filed on November 24, 2025, in compliance with Rule 37.2.

to bear arms by their members, supporters, and the communities they serve.

Founded in 1875, California Rifle & Pistol Association, Incorporated (CRPA), is a nonprofit organization that seeks to defend the Second Amendment and advance laws that protect the rights of individual citizens. CRPA works to preserve the rights of gun ownership, including the right to self-defense, the right to hunt, and the right to keep and bear arms. CRPA is also dedicated to promoting shooting sports, providing education, training, and competition for adult and junior shooters. In service of these ends, CRPA regularly participates as a party or amicus in firearm-related litigation.

Second Amendment Law Center, Inc. (2ALC) is a nonprofit corporation in Henderson, Nevada. 2ALC defends the individual rights to keep and bear arms as envisioned by the Founders. 2ALC also educates the public about the social utility of firearm ownership and provides accurate historical, criminological, and technical information to policymakers, judges, and the public.

Amici CRPA and 2ALC share a substantial interest in ensuring that this Court provides guidance on the limits of the "sensitive places" exception so that states cannot nullify the right to bear arms through expansive designations of "sensitive places" that disproportionately harm the populations most reliant on public transportation, including minorities, working-class individuals, women, and LGBTQ firearm owners.

SUMMARY OF ARGUMENT

Illinois imposes a blanket ban on carrying firearms within the state's public transportation system, barring licensed, vetted citizens from carrying on buses, trains, and within transit stations and their adjacent parking areas. 430 ILCS 66/65(a)(8). The Seventh Circuit upheld that ban by deeming public transportation a "sensitive place," relying on only the most tenuous historical analogues—none of which involved prohibitions on carrying in ordinary transportation open to the public. That decision expands the sensitive-places doctrine far beyond its historical bounds and reflects a broader trend in which courts treat modern policy concerns as sufficient to override the Second Amendment's text, history, and tradition

This Court's review is urgently needed because lower courts are transforming "sensitive places" from a narrow exception into an all-purpose justification for banning public carry in almost every context imaginable. The Seventh Circuit's decision—which upholds Illinois's public transit firearm restriction based on the thinnest of reeds—is not an anomaly. It is part of a broader pattern of judicial resistance to this Court's Second Amendment precedents, in which courts continue to prioritize modern policy concerns over text, history, and tradition.

Since *Bruen*, lower courts have upheld bans on carry in all manner of public places, including restaurants, bars, parks, playgrounds, wilderness areas, youth centers, stadiums and arenas, public libraries, museums, zoos, amusement parks, casinos

and other gambling establishments, "crowded places" like New York's Times Square, and even private property open to the public unless a proprietor affirmatively opts in. These courts are not just misreading *Bruen*; they are deliberately diluting it.

All too often, these decisions rely not on historical evidence of longstanding restrictions, but on superficial analogues or wholly unrelated regulations, such as laws prohibiting the discharge of firearms rather than their carriage. Courts have embraced broad exceptions to the right to carry in "crowded places," allowing governments to declare virtually any location where people gather off-limits, effectively collapsing the right into a narrow privilege that can be exercised only in sparsely populated areas.

Without this Court's intervention, sensitive-place designations will continue expanding until they extinguish the right to bear arms altogether. This Court should grant certiorari and reaffirm that "sensitive places" are the exception, not a vehicle for defeating the right to carry altogether.

ARGUMENT

I. References to "Sensitive Places" in *Heller* and *Bruen* Contemplate a Narrow Exception to the Right to Public Carry

In *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), this Court reaffirmed the original public meaning test for analyzing Second Amendment challenges set forth in *District of Columbia v. Heller*, 554 U.S. 570 (2008). Under that test, *Bruen* held that the Second Amendment protects the right to armed

self-defense in public. 597 U.S. at 19, 31-33. And this Court emphasized that courts may not apply interest balancing of any kind, whether styled as intermediate scrutiny, strict scrutiny, or any other cost-benefit gloss. *Id.* at 23. Instead, *Bruen* set out a categorical analysis, anchored in history and tradition:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Id. at 24.

In other words, the burden lies squarely with the government to "demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* at 17 (emphasis added); *see also id.* at 19, 24, 58 n.25, 59 & 70. This burden is demanding by design. The state cannot meet it simply by pointing to a few historical restrictions or creatively labeling modern policy preferences as "analogous." Instead, the government must "identify a *well-established and representative* historical analogue." *Id.* at 30 (emphasis added). A handful of isolated regulations cannot suffice because relying on such a sparse historical record "risk[s] endorsing outliers that our ancestors would never have accepted." *Id.*

(quoting *Drummond v. Robinson Twp.*, 9 F.4th 217, 226 (3d Cir. 2021)).

Instead, the government must prove that (1) its modern law shares common features with historically analogous regulations from the Founding Era; (2) those analogous regulations were prevalent, not merely outliers; and (3) the modern regulation and its purported historical analogues are "relevantly similar"—that is, similar in both "how" they operated and "why" they were adopted. *Id.*

As to the constitutionality of restrictions on *where* the right to bear arms may be exercised, this Court has already explained that "the historical record yields relatively few 18th- and 19th-century 'sensitive places' where weapons were altogether prohibited." *Bruen*, 597 U.S. at 30; *see id.* at 70 ("Apart from a few late-19th-century outlier jurisdictions, American governments simply have *not* broadly prohibited the public carry of commonly used firearms for personal defense."). And it warned in unambiguous terms:

> [E]xpanding 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 ... [it] would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense.

Id. at 31.

In short, this Court has already instructed that the "sensitive places" doctrine is a narrow carve-out, not a catch-all exception that can be invoked whenever the government prefers that people be disarmed. Historically, the "relatively few" truly sensitive places fall into three categories: "legislative assemblies, polling places, and courthouses." *Id.* at 30 (citing David Kopel & Joseph Greenlee, *The "Sensitive Places" Doctrine*, 13 Charleston L. Rev. 205, 229-36 (2018)). Nothing in the historical record supports broad designations of ordinary public places as "sensitive." Not fairs. Not streets. Not markets. Not bars or restaurants. And not transit hubs or public transportation—locations where carrying was not only common historically, but often essential for the safety of travelers. That is why courts must be careful to prevent analogical reasoning from becoming a tool for courts to ratify modern policies that the Founders would have rejected.

To be sure, courts may use analogical reasoning "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. But the government's mere declaration that a place is "sensitive" does not make it so. As one judge has explained, "most places are 'sensitive' for someone. Surely that, without more, cannot categorically justify a firearms regulation in all such places. Such a conclusion would give the government untrammeled power to restrict Second Amendment rights in any place even plausibly considered 'sensitive.'" *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1136-37 (10th Cir. 2015) (Tymkovich, J., concurring in part and dissenting in part).

Moreover, true "sensitivity" can be demonstrated not by legislative fiat but by genuine safeguards that reflect the government's own valuation of the risk. As the Kopel & Greenlee article cited with approval in *Bruen* explained:

> The government's behavior can demonstrate the true importance of the alleged government interest. Passing a statute declaring some place to be a 'gun free zone' does nothing to deter criminals from entering with guns and attacking the people inside. In contrast, when a building, such as a courthouse, *is protected by metal detectors and guards*, the government shows the seriousness of the government's belief that the building is sensitive . . . Conversely, *when the government provides no security at all*—such as in a Post Office or its parking lot—*the government's behavior shows that the location is probably not sensitive*.

Kopel & Greenlee, *supra*, at p. 292 (emphasis added).

Here, Illinois's designation of public transit as a "sensitive place" under 430 ILCS 66/65(a)(8) fails that test outright. Illinois does not provide controlled entry, metal detectors, or a meaningful law-enforcement presence. Riders remain exposed to violent crime—with far more regularity than in the secure government buildings historically recognized as sensitive. If public transit were truly "sensitive," Illinois would secure it accordingly. It has chosen not to do so. That choice speaks louder than the label the state slapped on it.

In short, *Bruen* and *Heller* make clear that the "sensitive places" exception is narrow and must, like all firearm restrictions, be grounded in text, history, and tradition. It is not a license for governments to disarm the public at will. Public transit bears none of the hallmarks of historically recognized sensitive places and lacks the security measures typically found in sensitive places.

II. Lower Courts Are Expanding the "Sensitive Places" Exception Beyond Any Historically Recognized Limit

In the wake of *Bruen*'s affirmation of the right to public carry, a troubling pattern has emerged. Many states have sought to circumvent this Court's holding by designating all manner of ordinary public places as "sensitive." In so doing, they have done exactly what *Bruen* expressly warned against. *See* 597 U.S. at 31. They have converted a narrow exception for "sensitive places" into a catch-all justification for banning carry almost everywhere. Illinois is but one example among many. Since *Bruen*, New York, New Jersey, Hawaii, California, Maryland, and others have adopted lists of so-called "sensitive places" that are so expansive they collectively cover most activities of daily life—making public carry the rare exception rather than the constitutional rule.

These efforts to dramatically over-designate "sensitive places" were initially rejected, in whole or in part, by the district courts that first examined them.[2] Regrettably, lower courts have begun to

[2] *See, e.g.*, *May v. Bonta,* 709 F. Supp. 3d 940, 970 (C.D. Cal. 2023), *aff'd in part, rev'd in part sub nom. Wolford v. Lopez,* 116

reverse that trend, often by stretching this Court's references to "sensitive places" well beyond any historically grounded justification. Indeed, some appellate courts have adopted an ahistorical "crowded places" doctrine, under which almost any place where people gather is presumptively "sensitive." This is in direct tension with *Bruen*'s unambiguous warning against "expanding the category of 'sensitive places' simply to all places of public congregation." 597 U.S. at 31.

F.4th 959 (9th Cir. 2024) (granting preliminary injunction as to most "sensitive places" designated by California's SB 2); *Koons v. Platkin*, 673 F. Supp. 3d 515, 670 (D.N.J. 2023) (enjoining New Jersey's restrictions on carrying on most government property, public gatherings, zoos, parks, libraries, museums, healthcare facilities, casinos, bars and restaurants serving alcohol, entertainment facilities, and the "vampire rule"); *Wolford v. Lopez*, 686 F. Supp. 3d 1034, 1076 (D. Haw. 2023), *aff'd in part, rev'd in part,* 116 F.4th 959 (9th Cir. 2024) (enjoining Hawaii's restrictions on carrying in parking areas adjacent to government buildings, places serving alcohol, beaches, parks, banks, and the vampire rule); *Kipke v. Moore*, 695 F. Supp. 3d 638 (D. Md. 2023) (enjoining Maryland's restrictions on carrying in locations that sell alcohol, at public gatherings, and the "vampire rule"); *Nat'l Ass'n for Gun Rts. v. Grisham*, No. 23-771, 2023 WL 5951940, at *4 (D.N.M. Sept. 13, 2023) (restraining New Mexico Governor's executive order banning carry in most places in Albuquerque); *Springer v. Grisham*, 704 F. Supp. 3d 1206, 1219 (D.N.M. Dec. 5, 2023) (enjoining New Mexico Governor's executive order banning carry in public parks); *see also B&L Prods., Inc. v. Newsom*, No. 22-01518, 2023 WL 7132054, at *15 (C.D. Cal. Oct. 30, 2023) (holding that government-owned fairgrounds are not sensitive places); *United States v. Ayala*, 711 F. Supp. 3d 1333 (M.D. Fla. 2024) (invalidating ban on carrying in post offices because post offices have existed since the Founding, but the first restriction on carry within them was enacted in 1972).

As the Petitioners aptly describe, the Seventh Circuit's decision below illustrates this doctrinal drift well. Pet.9-10 (quoting Pet.App.45a) (describing the Seventh Circuit holding that "temporar[y] regulat[ions of] the manner of carrying firearms" in "a crowded and confined space" where people tend to congregate "do[] not offend the Second Amendment"); *see also* Pet.20-23 (discussing the Seventh Circuit's inadequate historical basis for finding a tradition of banning firearms in crowded places). But the Seventh Circuit is hardly alone in its willingness to equate "sensitive places" with "crowded" ones.

Indeed, the Second Circuit's recent decision in *Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2025), provides the template for the developing "crowded places" doctrine that now threatens to swallow *Bruen*'s "sensitive places" exception. There, the court upheld large portions of New York's post-*Bruen* sensitive-places regime on the grounds that states may broadly prohibit firearms in "crowded places." *Id.* at 1018-39. To support this sweeping principle, the court relied on a remarkably thin historical foundation: two Founding-era laws said to "replicate[] the medieval English law prohibiting firearms in fairs and markets," three Reconstruction-era laws, and two territorial regulations. *Id.* at 1019-21.[3]

[3] With regard to carry in parks, specifically, the *Antonyuk* court also cited eight municipal regulations (unaccompanied by relevant state laws) that regulated firearms in public parks in some way. 120 F.4th at 1022. To the extent those rules barred mere carry in parks as opposed to hunting, discharging, brandishing, or other conduct, they hardly stand for the broader

From this handful of sources, the court declared that a "'long, unbroken line,' [citation omitted], beginning from medieval England and extending beyond Reconstruction, indicates that the tradition of regulating firearms in often-crowded public forums is 'part of the "immemorial" custom' of this Nation." *Id.* (quoting Darrell A. H. Miller, *Constitutional Conflict and Sensitive Places*, 28 Wm. & Mary Bill Rts. J 459, (2019)). But even a cursory review shows that the court's historical support for this purported tradition is astonishingly weak—especially given *Bruen*'s express finding that "the historical record yields relatively few 18th- and 19th-century 'sensitive places' where weapons were altogether prohibited." 597 U.S. at 30.

But the Second Circuit went even further in *Frey v. City of New York*, 157 F.4th 118 (2d Cir. 2025), stretching *Antonyuk*'s already-elastic "crowded places" reasoning and applying it to restrictions on carry on public transit and in Times Square. *Id.* at 134-36. Although the *Frey* court acknowledged the complete "lack of a distinctly similar historical regulation" governing the carrying of firearms on public transportation,[4] it nevertheless upheld the

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principle that carry can be restricted in any place of public congregation.

[4] The court stressed that the lack of direct historical analogues is the "natural consequence" of the lack of "mass transit systems at the time of the Founding." *Frey*, 157 F.4th at 135-36. But even assuming that public transportation did not exist in any form in the 18th century, the court makes no effort to identify a single restriction from even the 19th century, when railroads and streetcars revolutionized mass transit.

transit ban. *Id.* at 135-36. To bridge the historical gap, the court relied on a handful of laws restricting guns in *ballrooms*—five state and territorial laws and one municipal ordinance[5]—reasoning that such "enclosed" venues were sufficiently "crowded" to justify an analogy to modern metros and subways. *Id.* at 135-36.

The Third Circuit followed a similar path in *Koons v. Att'y General of New Jersey*, 156 F.4th 210 (3d Cir. 2025), upholding New Jersey's ban on carrying firearms on public transit (among other purported "sensitive places"). But its historical analysis rested on an even thinner foundation than the Second Circuit's. And it illustrates just how far some courts are willing to stretch *Bruen*'s history-and-tradition test. Indeed, *Koons* relied almost exclusively on nine Reconstruction-era laws that prohibited shooting at or from trains, not carrying firearms while riding them. *Id.* at 270-71 & n.179.

The statutes *Koons* invoked all regulate the same conduct: the dangerous act of *discharging* a firearm at a locomotive or railcar or firing a gun from inside a moving train. *Id.* Examples include an 1855 Indiana law punishing anyone who "shall shoot a gun, pistol,

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[5] *Id.* at 135 (citing 1870 Tex. Gen. Laws 63 (identifying ballrooms as a place of public assembly where arms are prohibited); 1889 Ariz. Sess. Laws 17 (same); 1890 Okla. Sess. Laws 495 (same); 1903 Mont. Laws 355 (same); 1864–65 N.M. Laws 406 (prohibiting firearms in "balls or fandangos"); New Orleans, La., An Ordinance Respecting Public Balls, art. 1 (Oct. 27, 1817), *reprinted in* General Digest of the Ordinances and Resolutions of the Corporation of New Orleans 371, 371 (1831) (prohibiting weapons in ballrooms).

or other weapon ... at or against any locomotive,"[6] an 1876 Iowa law criminalizing "present[ing] or discharge[ing]" a firearm at a railroad train,[7] and similar bans from the Wyoming Territory (1879), Indiana (1881), Texas (1889), Nevada (1891), Georgia (1895), Alabama (1899), and Florida (1899). *Id.*[8] These

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[6] 1855 Ind. Acts 153 ("[A]ny person who shall shoot a gun, pistol, or other weapon ... at or against any locomotive, or car, or train of cars containing persons, on any railroad in this State, shall be deemed guilty of a misdemeanor[.]").

[7] 1876 Iowa Acts 148 ("If any person ... shall present or discharge any gun, pistol, or other fire arm at any railroad train, car or locomotive engine he shall be deemed guilty of a misdemeanor and be punished accordingly.").

[8] 1879 Wyo. Terr. Sess. Laws 97 ("It shall be unlawful for any person in this Territory to ***fire any rifle, revolver, or other fire arm*** of any description whatever, from any window, door, or other part of any railroad car or train, engine or tender, or along the line of railroad during the passing of any train or engine[.]"); 1 Rev. Stat. Ind. 366 (1881) ("Whoever ***maliciously or mischievously shoots a gun, rifle, pistol, or other missile or weapon*** ... at or against any stage-coach, locomotive, railroad-car, or train of cars, or street-car on any railroad in this State, ... shall be imprisoned in the county jail not more than one year nor less than thirty days[.]"); 1889 Tex. Gen. Laws 36 ("[A]ny person who shall ***willfully or maliciously ... fire a gun or pistol at or into any coach or passenger car of a moving railway train***, shall be deemed guilty of a misdemeanor[.]"); 1891 Nev. Stat. 78 ("If any person or persons ... ***shall discharge any gun, pistol or any other fire arm at any train, car, locomotive or tender*** ... shall be deemed guilty of a misdemeanor[.]"); 1895 Ga. Laws 147 ("Any person who shall throw a rock or other missile at, towards, or into any car of any passenger train upon any railroad or street railroad, or ***shoot any gun, pistol, or firearms of any kind at, towards, or into any such car, or shoot while in such car any gun, pistol or other weapon of any kind***, shall be guilty or [sic] a misdemeanor."); 1899 Ala. Acts 154 ("[I]t shall be unlawful for any person to ***discharge any***

are clearly public discharge laws, not public carry regulations. Yet *Koons* treated them as if they reflected a tradition of "limit[ing] the ability of passengers to *bear* firearms on trains," *id.* at 270 (emphasis added), effectively rewriting their plain terms to fill the historical gap.

The Ninth Circuit took the expansion of the exception even further in *Wolford v. Lopez*, 116 F.4th 959 (9th Cir. 2024), where it upheld many of the post-*Bruen* "sensitive place" restrictions adopted by Hawaii and California, including Hawaii's "vampire rule"[9] and the ban on carry even in the vast wilderness of California's state parks. *Id.* at 982-85 (citing Cal. Penal Code § 26230(a)(13) (real property "under the control of the … Department of Fish and Wildlife"); *id.* at 992-96 (citing Haw. Rev. Stat. § 134-9.5(a) ("vampire rule"). In doing so, the Ninth Circuit announced its own sensitive-places test. For places that existed at the time of the Founding, *Wolford*

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gun, pistol, or other firearm, except in self defense, while on a passenger train in this State; or to ***recklessly handle*** any firearm or other weapon in the presence of any other person or persons on any train carrying passengers in this State."); 1899 Fla. Laws 93 ("[I]t shall be unlawful for any person to ***discharge any gun, pistol, or other fire-arm, except in self defense, while on any passenger train in this State***; or to *recklessly handle* any fire-arm or other weapon in the presence of any other person or persons on any train carrying passengers in this State.").

[9] The "vampire rule" refers to laws prohibiting carry even on private property open to the public by default—that is, unless the property owner expressly invites in those who wish to carry. The constitutionality of that provision is before this court in *Wolford v. Lopez*, No. 24-1046.

requires only that the government identify historical regulations "similar in number and timeframe to the regulations that the Supreme Court cited as justification for designating other places as sensitive." *Id.* at 980. "For places that are newer, [the state] must point to regulations that are analogous to the regulations cited by the Court, taking into account that it is illogical to expect a government to regulate a place before it existed in its modern form." *Id.*

Most troubling, the court held that "[f]or both types of places," the government needs only to find analogous regulations that "evince a *principle* underpinning our Nation's historical tradition of regulating firearms in places relevantly similar to those covered by the challenged law"; they "need not be a close match." *Id.* at 980-81 (citing *United States v. Rahimi*, 602 U.S. 680, 692 (2024)) (emphasis added). In other words, the state needs establish no more than a general "principle" of regulating arms in "relevantly similar" places. By justifying modern carry bans with such loose analogies, *Wolford* opens the door to arbitrarily categorizing vast swaths of public property as "sensitive."

Indeed, after the Ninth Circuit denied en banc review, several dissenting judges explained that "[w]ith their new public carry bans, Hawaii and California have effectively disarmed law-abiding Hawaiians and Californians from publicly carrying during most of their daily lives." *Wolford v. Lopez*, No. 23-16164, 2025 WL 98026, at *14 (9th Cir. Jan. 15, 2025) (VanDyke, Callahan, Ikuta, R. Nelson, Lee, & Bumatay, JJ., dissenting from denial of rehearing en banc). And the panel itself acknowledged that the

result of its analysis appears quite "arbitrary," lacking "an apparent logical connection among the sensitive places [that] is hard to explain in ordinary terms." *Wolford*, 116 F.4th at 1003 (observing that "[a] State likely may ban firearms in museums but not churches; in restaurants but not hospitals; in libraries but not banks").

But it is not difficult to explain. Simply put, the Ninth Circuit has drifted far from *Heller* and *Bruen* by treating "sensitive places" as an open-ended category governed by abstract "principles" as opposed to concrete historical tradition. In place of historically recognized "sensitive places"—such as legislative assemblies, polling places, and courthouses—the court embraced a framework that allows governments to justify bans wherever they can identify a vaguely analogous "principle" of past regulation.

Lower courts are rewriting *Bruen*'s "sensitive places" exception, converting a narrow exception into a vehicle for prohibiting public carry in most places where people live and work. As explained above, the decisions of the Second, Third, Seventh, and Ninth Circuits dilute the test in differing ways. But they all reach the same end, treating the lack of historical restrictions not as a constitutional barrier but as an invitation to expand "sensitive places" beyond all historically recognized limits. Only this Court can halt this doctrinal drift and restore the historically grounded approach that *Heller* and *Bruen* demand.

III. The Seventh Circuit Ignores a Critical Difference Between Carry Regulations in Modern-day Illinois and the Historical Analogues It Cites

While a majority of states have adopted some form of permitless or "constitutional" carry under which anyone who may legally possess a firearm may carry it without a permit, Illinois has not. Like 20 other states, it allows carry only if the individual has undergone the process to obtain a license to do so. As a result of this vetting, state-level data reflect that Americans with carry permits are exceptionally law-abiding, to a greater extent than the general population.

In its own challenge to California's "sensitive places" law, Amicus CRPA presented extensive data to that effect, and the district court acknowledged it in its ruling. "Simply put, CCW permitholders are not the gun wielders legislators should fear." *May*, 709 F. Supp. 3d at 969.[10] So law-abiding are those with permits that several major police organizations in California submitted an amicus brief in support of the *May* plaintiffs. They argued that "[i]n California, CCW permit holders are some of the most highly vetted, trained, responsible and law-abiding citizens, who do not jeopardize public safety." *See* Amicus Brief

[10] Other courts have found the same. *Wolford*, 686 F. Supp. 3d at 1076 ("[T]he vast majority of conceal carry permit holders are law-abiding."); *Koons*, 673 F. Supp. 3d at 577 ("[D]espite ample opportunity for an evidentiary hearing, the State has failed to offer any evidence that law-abiding responsible citizens who carry firearms in public for self-defense are responsible for an increase in gun violence.").

of Peace Officers Research Association of California, et al. at 6, *May v. Bonta*, No. 23-4356 (9th Cir. Feb. 23, 2024), ECF No. 57.1. And even RAND, a research organization that typically argues for stricter gun laws, has recognized the same: "[E]vidence generally shows that, as a group, license holders are particularly law abiding and rarely are convicted for violent crimes." Rosanna Smart, et al., *The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effect of Gun Policies in the United States* 427 (4th ed. 2024), available at https://www.rand.org/pubs/research_reports/RRA243-9.html.

This is critical to the sensitive places analysis. Until the 20th century, almost any citizen could carry firearms openly in public without undergoing government vetting. While some towns and cities adopted permitting requirements in the late 19th century, those by and large applied only to *concealed* carry, while permitless open carry was almost always still an option. Today, by contrast, Illinois does not permit open carry in most instances, so concealed carry, pursuant to a carry permit, is the only way for citizens to exercise their rights.

The Seventh Circuit did not consider this critical difference in "how" its modern ban operates compared to its purported historical analogues. And the Ninth Circuit expressly disregarded it, ruling that "[i]f a particular place is a 'sensitive place' such that firearms may be banned, then firearms may be banned—for everyone, including permit holders—consistent with the Second Amendment." *Wolford*, 116 F.4th at 981. That conclusion skips the *Bruen* analysis altogether. "[W]hether modern and historical

regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are 'central' considerations when engaging in an analogical inquiry." 597 U.S. at 29. Considering the extensive vetting burden on permit-holders in present-day Illinois that was absent before 1900, the modern location restrictions and the proposed historical analogues are plainly not "comparably justified."

Moreover, "our Nation's tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat to the physical safety of others from those who have not." *Rahimi*, 602 U.S. at 700. Illinois has not shown (because it cannot) that the people to whom it grants carry permits "pose a credible threat." In fact, the opposite is true; their most distinct shared characteristic is that they pose no known danger, as Illinois may confirm before even issuing them a permit.

To be sure, this does not mean that people with carry permits cannot be prohibited from carrying in truly sensitive places. As this Court has confirmed, the historical record supports a "relatively few" places where carry can be constitutionally prohibited, but the examples it provided were legislative assemblies, polling places, and courthouses. *Bruen*, 597 U.S. at 30. The shared "principle[] that underpin[s] our regulatory tradition," *Rahimi,* 602 U.S. at 692, is a limitation on carrying arms where the deliberative business of governance is conducted. That is what legislative assemblies, polling places, and courthouses all have in common under *Rahimi*'s approach, and what the places of public transit at issue here do not.

Our history supports government restrictions on "firearms possession in places where important and legally definitive governmental decisions are regularly made." *Ayala*, 711 F. Supp. 3d at 1347. Modern analogues might include places like city council chambers or voter registration centers, but they would not include the sorts of places people frequent as part of their daily lives, such as run-of-the-mill parks, restaurants that offer beer or wine with dinner, or city buses.

In short, Illinois's law differs from its purported historical analgoues both in "how" it operates—requiring rigorous vetting for permit holders—and in "why" it restricts carry—targeting routine crime rather than political intimidation. The Seventh Circuit ignored these critical differences. Historical "sensitive place" restrictions applied narrowly to sites of civic decision-making, not to everyday public spaces. Illinois's public transit carry ban thus burdens (overwhelmingly) law-abiding citizens in a way history cannot justify.

CONCLUSION

Lower courts are increasingly weaponizing the "sensitive places" doctrine, evading *Bruen* and effectively confining lawful public carry to sparsely populated areas while banning it in the centers of modern life. Only this Court can halt this troubling trend and restore the historically sound framework for evaluating carry restrictions that this Court's precedents require.

This Court should grant certiorari and reaffirm that the Second Amendment is a robust, enforceable guarantee and that the "sensitive places" exception remains both narrow and historically justified.

December 4, 2025 Respectfully submitted,

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